

Readopt with amendment He-P 3200, effective 10/1/09 (Document # 9556), to read as follows:

CHAPTER He-P 3200 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

Statutory Authority: RSA 132:10-b, I

PART He-P 3201 DEFINITIONS

He-P 3201.01 Definitions.

(a) “Above-50-percent” means deriving, or expecting to derive, more than half of annual revenue from the sale of food items from WIC food instruments including WIC gross food sales that exceed, or are likely to exceed, gross food sales derived from the food stamp program.

(b) “Applicant” means an individual who appears in person or by telephone to request program benefits.

(c) “Authorized vendor” means a vendor that has been approved to redeem food instruments as defined in (s) below.

(d) “Authorized vendors in the same geographical area” means a minimum of 5 authorized vendors, all within a 7-mile radius of each other, are accepting food instruments from 20 or more households on a monthly basis.

(e) “Benefits” means supplemental foods and nutrition education designed to improve the health status of women, infants, and children.

(f) “Breastfeeding women” means “breastfeeding women” as defined in 7 CFR 246.2.

(g) “Cash value voucher” means a fixed dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain approved fruits and vegetables as defined in 7 CFR 246.2.

(h) “Categorical eligibility” means “categorical eligibility” as defined in 7 CFR 246.2.

(i) “Certification” means “certification” as defined in 7 CFR 246.2.

(j) “Certification period” means the period of program benefits established by federal regulations according to participant category.

(k) “Chain store” means multiple stores owned by the same entity in the State of New Hampshire using the same name and/or federal tax ID number.

(l) “Children” means “children” as defined in 7 CFR 246.2.

(m) “Competent professional authority” means “competent professional authority” as defined in 7 CFR 246.2.

(n) “Days” means calendar days unless otherwise specified.

- (o) “Department” means the New Hampshire department of health and human services.
- (p) “Disqualification” means the act of ending program participation of a participant, authorized vendor or local agency, whether as a punitive sanction or for administrative reasons.
- (q) “Enrollment” means the enlistment of an applicant into the program through the receipt of benefits.
- (r) “Food delivery system” means the method used by the department and local agencies to provide supplemental foods to participants.
- (s) “Food instrument” means a voucher, check, electronic benefit transfer (EBT) card, coupon or other document which is used to obtain supplemental foods through the special supplemental nutrition program for women, infants and children (WIC).
- (t) “Homeless” means lacking a fixed or regular nighttime residence.
- (u) “Inadequate participant access” means the average monthly number of households redeeming food instruments at an authorized vendor is 20 or more and another authorized vendor is not within 7 miles.
- (v) “Incidence” means one isolated instance or single occurrence of a violation of WIC program rules.
- (w) “Infants” means “infants” as defined in 7 CFR 246.2.
- (x) “Local agency” means “local agency” as defined in 7 CFR 246.2.
- (y) “Nutrition education” means “nutrition education” as defined in 7 CFR 246.2.
- (z) “Nutritional risk” means “nutritional risk” as defined in 7 CFR 246.2.
- (aa) “Participants” means “participants” as defined in 7 CFR 246.2 and includes a parent, legal guardian, or other adult representing a minor child.
- (ab) “Participation” means “participation” as defined in 7 CFR 246.2.
- (ac) “Peer group” means a classification of authorized vendors into groups based on common characteristics or criteria that affect food prices for the purpose of applying appropriate competitive price criteria.
- (ad) “Postpartum women” means “postpartum women” as defined in 7 CFR 246.2 and includes non-breastfeeding women.
- (ae) “Pregnant women” means “pregnant women” as defined in 7 CFR 246.2.
- (ag) “Program” means “program” as defined in 7 CFR 246.2.
- (ah) “Proxy” means an individual designated in writing to receive and redeem a food instrument on behalf of a participant or a parent or a caretaker of an infant or child participant.

(ai) “Sanctions” means administrative actions taken against participants and vendors for reasons of program abuse.

(aj) “Single investigation” means 2 or more on-site transactions within a 12-month period, the number of which depends on the severity of the alleged vendor violation, in which a department representative covertly poses as a participant, parent or caretaker of an infant or child participant or proxy.

(ak) “Supplemental foods” means “supplemental foods” as defined in 7 CFR 246.2.

(al) “Suspension” means a temporary prohibition from participation in the program.

(am) “Termination” means the removal of a vendor or participant from the program for cause and/or failure to comply with any WIC program rule or requirement.

(an) “Vendor” means any retail food store or pharmacy authorized to redeem food instruments.

(ao) “Vendor agreement” means a binding legal agreement between the retailer and the state agency.

(ap) “WIC approved” means meets the criteria for approved foods described in 7 CFR Part 246.

PART He-P 3202 PARTICIPANT ELIGIBILITY CRITERIA

He-P 3202.01 Residence.

(a) Except as allowed in (c) below, all WIC applicants shall reside within the jurisdiction of the state of New Hampshire and the service area of the local agency.

(b) As proof of residence, the applicant shall provide to the local agency one of the following documents:

- (1) Valid unexpired driver’s license or state issued identification card;
- (2) Current utility or rent receipt;
- (3) New Hampshire resident tax receipt; or
- (4) Envelope with physical address recently postmarked.

(c) A homeless or migrant applicant shall not be required to provide residence documentation.

He-P 3202.02 Income. All applicants shall have an income at or below 185 percent of the Federal Poverty Guidelines as published annually in the Federal Register in effect at the time of income determination. Income shall be verified by proof of income such as a paycheck stub, employer verification or federal tax return or participation in another program for which financial eligibility is at or below the same standard.

He-P 3202.03 Category. All applicants shall be pregnant, breastfeeding, or postpartum women, infants, or children under age 5 as verified by information such as one of the following:

- (a) Health care provider documentation of applicant’s pregnancy; or

(b) Applicant's birth certificate containing date of birth as documentation of age.

He-P 3202.04 Nutritional Risk.

(a) An applicant shall be eligible to participate in the program if the applicant is at nutritional risk as defined by 7 CFR 246.2.

(b) An applicant shall be deemed to be at nutritional risk if a competent professional authority determines that the applicant has any of the conditions listed in 7 CFR 246.7(e).

He-P 3202.05 Priority System. If funding is insufficient for complete participation within the area serviced by the local agency, participation shall be limited by the use of prioritization in accordance with 7 CFR 246.7(e)(4).

PART He-P 3203 FOODS PROVIDED

He-P 3203.01 Supplemental Foods.

(a) Supplemental foods shall be provided to participants based upon category and nutritional need in accordance with 7 CFR 246.10(e)(10) and 7 CFR 246.11(c) where category refers to a pregnant woman, breastfeeding woman, postpartum woman, infant, or child.

(b) Maximum allowable types, quantities, or volumes of foods may be tailored by a competent professional authority, according to an individual's nutritional status or shopping and storage considerations within a category as specified above.

He-P 3203.02 Approved Foods. Food packages and food types shall comply with 7 CFR 246.10(c).

He-P 3203.03 Restrictions.

(a) Flavored milk shall not be allowed as an approved supplemental food.

(b) Only 1% low fat milk or skim milk shall be allowed for women and children older than 24 months, except as allowed in (c) below.

(c) If the participant has special medical needs that require whole milk and/or special formula, for which medical documentation from a licensed healthcare provider is provided to the department, the participant shall be allowed whole milk and/or special formula.

(d) Dried fruits shall not be allowed as an approved supplemental food.

(e) Fresh bananas as partial substitute for infant foods shall not be allowed as an approved supplemental food.

(f) Organic foods, with the exception of fresh, frozen, or canned fruits and vegetables, shall not be allowed as an approved supplemental food.

(g) Foods containing artificial sweeteners such as aspartame, sucralose, or saccharine shall not be allowed as an approved supplemental food.

- (h) Low iron infant formula shall not be allowed as an approved supplemental food.
- (i) The department shall limit approved supplemental food items if:
 - (1) Container size or type changes prior to the department annual update of approved foods as described in (j) and (k) below;
 - (2) The item is not widely available within New Hampshire;
 - (3) Costs are excessive and nutritional content is similar in relation to the store or least expensive brands; or
 - (4) The foods are included in a cost-containment initiative such as a competitively bid manufacturers' rebate.

(j) The department shall periodically and as necessary review and approve foods which meet the criteria in He-P 3203.02 and He-P 3203.03.

(k) The department shall limit food brands or items through competitive procurement or cost-containment actions in accordance with Adm 603, provided such actions would reduce actual costs of supplying these foods to participants.

He-P 3203.04 Prorating Food Packages. Participants who fail to pick up WIC food instruments at the scheduled time shall be eligible to obtain a partial allocation of the food package prescribed by the competent professional authority for that monthly food instrument cycle subject to the following:

- (a) Within the first 8 days of the cycle, participants shall be provided the full monthly food package;
- (b) Between the 9th and 15th day, participants shall:
 - (1) Receive the full monthly amount of cereal, whole grains, fruits and vegetables, and legumes; and
 - (2) Be provided prorated amounts of milk or formula, baby food, fish, and juice;
- (c) Between the 16th and 21st day, participants shall:
 - (1) Receive the full monthly amount of cereal, whole grains, fruits and vegetables, and legumes; and
 - (2) Be provided prorated amounts of milk or formula, baby food, fish, and juice; and
- (d) Between the 22nd and 31st day, food instruments shall not be issued and participants shall not be allowed to participate for that cycle.

PART He-P 3204 LOCAL AGENCY PARTICIPATION

He-P 3204.01 Local Agency Requirements. A local health or human service agency shall certify participants and provide them with food instruments, nutrition education, and related benefits under State-

approved agreements between the local health and human service agency and the department in accordance with 7 CFR 246.5 and 7 CFR 246.6.

PART He-P 3205 VENDOR PARTICIPATION

He-P 3205.01 Selection of Vendors.

(a) The following procedures shall apply to the selection of vendors for the WIC program:

- (1) A geographic vendor needs assessment shall be completed by the department in order to determine the number of authorized vendors needed within the same geographical area prior to vendors receiving an application;
- (2) Retail food stores and pharmacies eligible to be authorized shall submit a written application to the department which includes, at a minimum:
 - a. Legal name and physical address of store;
 - b. Billing name and address, if different;
 - c. Business phone number and owner's personal phone number;
 - d. Name(s) of owner(s), type of ownership and previous ownership(s);
 - e. Owner's home address;
 - f. Owner's e-mail address;
 - g. Name and mailing address of landlord;
 - h. Name of manager;
 - i. Store square footage;
 - j. Food establishment class license;
 - k. Hours of operation;
 - l. Number of registers and scanners;
 - m. Annual or estimated sales;
 - n. List of primary WIC food suppliers, including infant formula;
 - o. Current food stamp program identification number and authorization status, including any actions pending or under appeal;
 - p. The full names of any local agency staff who hold dual employment with the store or pharmacy;

q. A full disclosure by the owner, partner, officer or manager of any convictions or civil judgments outlined in He-P 3205.01(b)(15); and

r. The full names and mailing addresses of any owners, partners, or principle officers;

(3) Vendors shall provide information regarding gross food sales and inventory supplier records for approved foods upon the request by the department in order to evaluate the vendor's eligibility under He-P 3205.01(a) and (b) and 7 CFR 246.12(h)(xv); and

(4) An on-site review of each new applicant vendor shall be performed by the department in accordance with 7 CFR 246.12(g)(vii)(6) as follows:

a. Department employees who hold dual employment with any WIC-authorized or applicant vendor, regardless of capacity, shall not be involved in the review of vendor qualifications for authorization; and

b. The review shall include a price inventory of approved foods and an assessment of the applicant vendor's qualifications using the selection criteria in accordance with (b) below.

(b) The department shall deny authorization of an applicant vendor or terminate an authorized vendor if any of the following criteria are true at any time:

(1) The store location is not within NH borders;

(2) The applicant vendor or authorized vendor does not provide information regarding gross food sales and inventory supplier records upon request by the department in accordance with He-P 3205.02(a) and 7 CFR 246.12(h)(xv);

(3) The department determines that the applicant vendor or authorized vendor is not able to meet all program requirements or existing selection criteria as evidenced by:

a. Sanction points obtained under He-P 3207.03;

b. Category I violations as described in He-P 3207.03(d);

c. Monitoring requirements in accordance with He-P 3206;

d. Failure to attend face-to-face training upon initial application as set forth in 7 CFR 246.12(i)(1); or

e. Failure to attend face-to-face training as scheduled by the department thereafter as described in He-P 3205.04;

(4) The number and proximity of other authorized vendors in the same geographical area is not in accordance with 7 CFR 246.12(g)(1) and He-P 3201.01(d);

(5) The store's annual revenue from sales of WIC-approved food meets the "above 50 percent" threshold, as defined in He-P 3201.01(a), unless inadequate participant access exists;

- (6) The applicant vendor or authorized vendor does not purchase all infant formula from the department's approved list of manufacturers, distributors and retailers;
- (7) A minimum quantity and variety of foods as listed in the vendor agreement and approved in accordance with He-P 3203.02 and He-P 3203.03 are not available for purchase at a retail food store, even if inadequate participant access would be a result of such denial;
- (8) The price ranges of foods approved in accordance with He-P 3203.02 and He-P 3203.03 in retail food stores are not comparable to or lower than currently authorized vendors in the same peer group, even if inadequate participant access would be a result of such denial;
- (9) The applicant vendor or authorized vendor is not open for business at least 9 hours per day, 6 days a week;
- (10) A conflict of interest exists in that a retail store employee is dually employed by the WIC program;
- (11) The applicant vendor or authorized vendor has prior, pending, or under appeal WIC or food stamp program disqualifications, civil money penalties, unpaid penalties or other sanctions;
- (12) For retail food stores only, the applicant vendor or authorized vendor is not authorized by the food stamp program;
- (13) The applicant vendor or authorized vendor does not accept, at a minimum, cash for food purchases from the general public as well as WIC participants;
- (14) The majority of comments and recommendations from local agency staff and participants indicate a negative assessment;
- (15) In accordance with 7 CFR 246.12(g)(3)(ii), the current owner(s), officer(s), or manager(s) have been criminally convicted of or had a civil judgment for any of, but not limited to, the following in the previous 6 years:
 - a. Fraud;
 - b. Antitrust violations;
 - c. Embezzlement;
 - d. Theft;
 - e. Forgery;
 - f. Bribery;
 - g. Falsification or destruction of records;
 - h. Making false statements;
 - i. Receiving stolen property;

j. Making false claims; or

k. Obstruction of justice;

(16) The authorized vendor has 5 or more sanction points currently pending, assigned or under appeal;

(17) For retail food stores only, the applicant vendor or authorized vendor does not provide a variety of staple foods for sale including fresh, frozen, or canned fruits and vegetables, fresh, frozen or canned meats, dairy products, and grain products such as bread, rice and pasta;

(18) For applicant vendor or authorized vendors, the retail store does not contain a cash register or sales machine that imprints the date of food instrument redemption on the sales receipt;

(19) For retail food stores only, the vendor's monthly average volume of WIC business over the most recent 12 months is less than \$200.00 and another authorized vendor is located within 2 miles, unless inadequate participant access is determined as defined in He-P 3201.01(u);

(20) The department determines that the store location was sold or had a change in ownership to circumvent a WIC sanction in accordance with 7 CFR 246.12(g)(7);

(21) The vendor or store owner has prior, pending, or under appeal disqualifications or sanctions by other US Department of Agriculture, Food and Nutrition Service Programs; or

(22) The applicant vendor provides false or misleading information on the vendor application or other required program documents.

(c) Pending or current disqualification from or sanction by other US Department of Agriculture, Food and Nutrition Service Programs or failure to meet rules or standards of another state agency or local health agency which results in suspension of license shall constitute sole grounds for denial of authorization.

(d) A store that has been denied authorization initially or terminated during the course of a current agreement period based on (b) or (c) above shall not reapply for the later of the following:

(1) A minimum of 6 months from the date of vendor receipt of the department's notice; or

(2) Six months from the date of an appeal decision upholding the department's decision to deny authorization or terminate.

He-P 3205.02 Written Agreement.

(a) Written agreements shall include the requirements of 7 CFR 246.12(h) and the following:

(1) The vendor shall stock sufficient quantities of all categories of foods approved in accordance with He-P 3203.02 and He-P 3203.03 to meet participant demands;

(2) The vendor shall maintain minimum inventory in accordance with He-P 3205.01(b)(7); and

(3) The vendor shall:

- a. Provide only the brand, type, size of infant formula and WIC-approved foods specified on a food instrument;
- b. Provide supplemental foods at the current cash price or at less than the current price charged to other customers and deduct the value of manufacturer or store coupons presented by participants, parents or caretakers of infant and child participants, or proxies from the purchase amount charged to the WIC program;
- c. Purchase all infant formula from the approved infant formula supplier list updated and maintained by the department;
- d. Clearly indicate the retail price of all WIC approved food items, either individually on each item or at the shelf or point of display;
- e. Maintain a functioning cash register or sales machine that imprints the date of redemption and the products purchased on the receipt to be attached to the food instrument;
- f. Provide the department information on inventory records for foods approved in accordance with He-P 3203.02 and He-P 3203.03 and gross food sales, upon request during the term of the current vendor agreement and for 3 years from the expiration of the current vendor agreement;
- g. Not provide food quantities that exceed the amount listed on the food instrument;
- h. Not issue participants, parents or caretakers of infant and child participants, or proxies a “rain check” or merchandise credit in lieu of particular foods which vendor does not have in stock or which are not selected by the participant, parent or caretaker of an infant or child participant, or proxy at the time a food instrument is redeemed;
- i. Not accept food instruments from participants, parents or caretakers of infant and child participants, or proxies prior to the valid date or after the expiration date recorded on a food instrument or accept food instruments that have been altered;
- j. Not discriminate based on race, color, national origin, age, disability, sex, gender identity, religion, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual’s income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the United States Department of Agriculture;
- k. Provide WIC customers the same courtesies provided to non-WIC customers;
- l. Require the adult participant, parent, caretaker of infant or child participant or proxy to enter the redemption date and purchase price on the food instrument, including only those approved supplemental food items actually purchased and sign the food instrument in the presence of the cashier;
- m. Submit food instruments for payment to be received by the department within 30 days of the redemption date;

- n. Attend training on WIC program procedures as scheduled by the department with at least one opportunity to reschedule;
- o. Ensure that cashiers and all other staff are fully trained and understand WIC program requirements;
- p. Ensure that WIC-approved items are sold to participants, parents or caretakers of infant or child participants, or proxies before the product expiration dates;
- q. Provide WIC-approved items at prices that are fair and competitive in comparison with vendors in their peer group;
- r. Be monitored for compliance with WIC program rules;
- s. Provide ready access to redeemed food instruments at the request of the department;
- t. Not charge the department for an amount of a specific WIC-approved food that exceeds the store's documented inventory of that food for a specific period of time;
- u. Not charge the department for WIC-approved foods provided in excess of those listed on the food instrument;
- v. Not require a participant, parent or caretaker of an infant or child participant, or proxy to purchase all items listed on a food instrument if he/she chooses not to;
- w. Not charge the department for foods not received by participants, parents and caretakers of infant and child participants, or proxies;
- x. Not provide cash, change, unapproved foods, or other items in lieu of foods specified on the food instrument;
- y. Submit a WIC vendor price survey every 6 months or upon request by the department;
- z. Notify the department in writing at least 2 weeks in advance of the vendor ceasing operations or changing ownership, name of store, or location, thereby permitting the department to terminate the vendor agreement in accordance with 7 CFR 246.12 (h)(3)(xvii);
- aa. Maintain a copy of the current NH WIC-approved foods list at each cash register or checkout lane;
- ab. Not use manufacturers' shelf tags, promotional materials, or incentive items with the WIC acronym or logo;
- ac. Notify the department when the vendor determines that the redemption date or purchase price on the food instrument is incorrect by attaching original register receipt;
- ad. Not offer incentive items solely to WIC participants and not to other customers in an effort to obtain WIC business;

ae. Allow an alternate form of payment, such as Electronic Benefits Transaction (EBT) card, cash, credit card or check on a fruit and vegetable cash value voucher when the amount purchased exceeds the dollar value of voucher; and

af. Require participants or proxies to provide a valid photo ID and/or a proxy card.

(b) The department shall issue a pharmacy agreement requiring pharmacies to stock, or have the capability to immediately order and provide special infant formula within 48 hours of request to meet participant demands.

(c) Pursuant to changes in federal or state statutes, rules or other requirements, the department shall revise all current agreements, and the amended agreements shall include the original expiration date without prejudice.

(d) Vendors who fail to reapply by signing and returning their new vendor agreement prior to the expiration of their current vendor agreement shall no longer be authorized due to an expired vendor agreement.

(e) Retail food stores shall be issued restricted vendor agreements which shall not allow the provision of infant foods when:

(1) The shelf price of WIC-approved contract infant formula and foods exceeds 120% of the manufacturer's wholesale price;

(2) The retail food store submits a request, orally or in writing, to the department;

(3) The department determines a restricted agreement is required based on cost or inventory concerns; or

(4) The department determines a restricted agreement is required based on a retail food store's infant formula or infant food costs to the department in relation to the store's reported infant formula prices.

He-P 3205.03 Periodic Review of Vendor Qualifications. The department shall conduct reviews at least once during a current vendor's agreement period using the selection criteria as described in He-P 3205.01.

He-P 3205.04 Vendor Training. The department shall provide training to vendors pursuant to 7 CFR 246.12(i) by implementing the following:

(a) The department shall provide vendors with initial face-to-face training;

(b) At least one representative of the vendor shall participate in WIC program training annually as described in (d) below;

(c) Annual training by the department shall communicate changes in pertinent regulations, rules and procedures and keep vendors informed of problems and suggestions to improve food delivery;

(d) Annual training shall be provided by the department in a variety of formats, including newsletters, videos, face-to-face training, or train-the-trainer formats;

(e) At least one alternative date on which to attend face-to-face training shall be provided to vendors;

(f) The department and local agency shall be available for further vendor training and education as requested by the vendor or as deemed necessary as a result of vendor monitoring activities;

(g) The vendor shall notify the department and request additional training if, in the opinion of the owner or manager, vendor staff does not adequately understand WIC procedures; and

(h) Mandatory training shall be deemed necessary by the department as a result of repeated vendor violations or as a result of vendor monitoring activities.

PART He-P 3206 VENDOR MONITORING

He-P 3206.01 Types of Vendor Monitoring.

(a) Food instruments presented for payment shall be audited for the following:

- (1) Food instrument costs in relation to the vendor's reported food prices;
- (2) Timeliness of redemption and submission for payment;
- (3) Appropriate signatures, purchase amount and purchase dates;
- (4) Foods received by a participant, parent or caretaker of an infant or child participant, or proxy;
- (5) Alteration of information recorded on the food instrument;
- (6) Adherence to state and federal regulations and rules; and
- (7) Other such factors as determined by individual circumstances including risk factors as described in (d) below.

(b) Department staff shall annually monitor a representative selection of authorized vendors to survey WIC operations and to take corrective action as needed in accordance with 7 CFR 246.12(j).

(c) Vendors who meet one or more of the risk factors identified in (d) below shall be reviewed for continued authorization or sanctioned in accordance with He-P 3207.03.

(d) Risk factors shall include one or more of the following:

- (1) Recurring written or verbal complaints by participant(s) or local agency representatives;
- (2) Specific written or verbal complaints of category III violations as specified in He-P 3207.03(g) or category IV violations as specified in He-P 3207.03(i) or violations listed under He-P 3207.03(k);

- (3) Food costs that are inconsistent with or above the vendor's most recently reported price survey;
- (4) Vendors whose annual revenue from sales of WIC-approved food meets the "above 50 percent" threshold, as defined in He-P 3201.01(a);
- (5) Appearance of little or no price variation on the purchase amount recorded on 50% or more food instruments that contain the identical quantities and types of food in a 3-month period;
- (6) Changes in patterns of program participation including volume or costs of food instruments redeemed and participant usage;
- (7) Recurring errors in food instruments or recurring difficulty in properly redeeming or billing food instruments as detected through food instrument reconciliation and representative monitoring or department computer reports;
- (8) Designation as a high risk vendor by the US Department of Agriculture, Food and Nutrition Service; and
- (9) Recurring incidence of non-compliance with program rules and federal regulations.

He-P 3206.02 Monitoring Procedures. The department shall tailor monitoring procedures to each vendor's compliance history by including one or more of the following in accordance with past violations to ensure current compliance with He-P 3200:

- (a) Review of vendor participation, billing, and payment records and related correspondence;
 - (b) Overt or covert observation of food instrument redemption procedures;
 - (c) Interviews with vendor staff involved with WIC operations;
 - (d) Review of vendor WIC-approved food shelf or point of display prices including later comparison to food instruments subsequently redeemed;
 - (e) Review of shelf tags or other promotional material with the WIC acronym or logo;
 - (f) Review of gross food sales information or supplier records;
 - (g) Review of physical inventory and inventory records, including comparison to quantities of foods on food instruments presented for payment;
 - (h) Review of redeemed food instruments that have not yet been forwarded for payment;
 - (i) Participant contact to verify purchases;
 - (j) Covert purchases by the department or representatives to verify compliance with WIC procedures;
- and
- (k) Coordination with the US Department of Agriculture, Food and Nutrition Service.

PART He-P 3207 SANCTIONS

He-P 3207.01 Local Agencies. The department shall disqualify a local agency under the criteria specified in 7 CFR 246.5(e).

He-P 3207.02 Participants.

(a) Participant sanctions shall be as follows:

- (1) All periods of suspension, termination, or disqualification shall commence with the next one-month voucher issuance following notice to the participant provided that the food package for that month will be prorated in accordance with these rules should the next set of food instruments be provided during the notice period;
 - (2) If a period of suspension exceeds the expiration of the current certification period, the participant shall be disqualified from reapplication until the period of suspension has been completed;
 - (3) The actions of a participant, a parent or caretaker of an infant or child participant, or a proxy shall be binding on the participant in the determination of violations and imposition of sanctions;
 - (4) Sanctions shall only be imposed on those participants for whom the evidence supports the sanction and not to all participating family members, even though the violations might have been committed with food instruments issued to one member;
 - (5) When more than one violation is involved, the sanction shall be based on the highest category violation;
 - (6) Excluding (j) and (k) below, if a local agency competent professional authority submits a recommendation stating that the imposition of the disqualification would create an extreme nutritional hardship for the participant, the department shall waive a disqualification provided such waiver does not conflict with RSA 132:12-a, II;
 - (7) The competent professional authority's recommendation described in (6) above shall be made in writing to the department;
 - (8) The department shall grant or deny a waiver, requested in accordance with (6) and (7) above, within 15 days; and
 - (9) When a waiver has been requested, sanctions shall not be imposed pending waiver decision.
- (b) The following shall apply if a participant fails to pick up food instruments as scheduled:
- (1) A participant who fails to participate by not picking up food instruments on the first day of the one-month of voucher issuance shall be disqualified from the program following the second consecutive month of failure to participate;
 - (2) On the 22nd day of the one-month voucher issuance, a participant who fails to pick up food instruments shall be determined to be non-participating for that month;

(3) The local agency shall mail a notice of appointment for the next regularly scheduled voucher appointment and a notice of disqualification if the participant fails to participate for that month; and

(4) On the 22nd day of the second one-month voucher issuance, the participant shall be determined to be non-participating for that month and disqualified from the program in accordance with (2) above.

(c) Category I violations shall include actions related to misuse of program benefits or disruptive participant behavior such as:

- (1) Failure to follow proper redemption procedures;
- (2) Failure to follow proxy procedures;
- (3) Selection or purchase of unapproved foods within a WIC-approved food category;
- (4) Selection or purchase of unapproved quantities of WIC-approved foods; and
- (5) Behavior within a store or WIC clinic that is disruptive but not abusive or threatening.

(d) Category I violations shall be subject to the following sanctions:

- (1) Written warning for the first occurrence within a 12-month period, unless a violation of Category II (e)(1) or (e)(2) for abusive behavior has been issued within a 12-month period, then (d)(2) below shall be implemented;
- (2) A one-month suspension for the second occurrence within a 12-month period following warning;
- (3) A 3-month disqualification for the third occurrence within a 12-month period following a one-month suspension for the second occurrence; and
- (4) A participant disqualified for a Category I violation but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.

(e) Category II violations shall include actions related to more serious misuse of program benefits or abusive participant behavior such as:

- (1) Abusive behavior within a store or WIC clinic such as swearing, hitting, or threatening department, local agency or vendor staff or other participants;
- (2) Abusive behavior over the phone such as swearing or threatening department, local agency or vendor staff;
- (3) Redeeming food instruments prior to the valid date or after the expiration date printed on the food instrument;
- (4) Redeeming food instruments which have been altered; and

- (5) Purchasing non-WIC-approved foods.
- (f) Category II violations shall be subject to the following sanctions:
- (1) Written warning for the first actual or attempted occurrence;
 - (2) A 3-month disqualification for any subsequent actual or attempted occurrence within a 12-month period following warning; and
 - (3) A participant disqualified for a Category II violation, but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.
- (g) Category III violations shall include actions related to fraud or abuse of the WIC program such as:
- (1) Misrepresentation of eligibility for program benefits;
 - (2) Purchase of non-food items;
 - (3) Purchase of alcohol or tobacco products;
 - (4) Exchange of food instruments for cash or credit from retail vendors;
 - (5) Sale or attempted sale of WIC foods, infant formula, infant food or food instruments;
 - (6) Receipt from retail vendors of cash or credit toward purchase of unapproved foods or other items in exchange for food instruments or for foods purchased with food instruments;
 - (7) Redeeming both the food instrument reported lost or stolen and the replacement food instrument, resulting in over issuance of benefits;
 - (8) Returning WIC foods to a WIC vendor or other non-authorized retail store for cash or store credit;
 - (9) Returning WIC foods to a WIC vendor or another retail store for credit toward unapproved items; and
 - (10) Any return or attempt to return or sell infant formula by or on behalf of a participant or payee for cash or store credit if the specific brand of infant formula is the same as that included in the food package issued to the participant or payee.
- (h) Category III violations shall be subject to a 3-month disqualification for any subsequent actual or attempted occurrence.
- (i) A participant disqualified for a Category III violation, but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above, shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.

(j) Except as allowed by (l) below, the department shall disqualify a participant for one year in accordance with 7 CFR 246.12(u)(2) when:

- (1) The department determines that program benefits have been obtained or disposed of improperly as described in (g) above, and these benefits total more than \$100.00; or
 - (2) There is a second or subsequent demand for repayment of any amount.
- (k) The department shall collect improperly obtained benefits when they exceed \$100.00 as follows:
- (1) In accordance with 7 CFR 246.23(c)(1), the department shall demand repayment, in writing, from the participant or parent or caretaker of an infant or child participant equal to the full value of these benefits;
 - (2) The department shall issue a second demand for repayment if full restitution is not made or a repayment schedule is not agreed upon within 30 days of receipt of the demand for repayment as described in (1) above; and
 - (3) If no written or oral response has been received from the participant or parent or caretaker of an infant or child participant after the second demand for repayment as described in (2) above, the department shall refer the matter to the New Hampshire department of justice.

(l) The department shall permit the participant to continue participation in lieu of a mandatory disqualification when:

- (1) Full restitution is made within 30 days;
 - (2) A payment plan is agreed to within 30 days of receipt of the letter demanding repayment; or
 - (3) For participants under the age of 18 and infant and child participants, the department approves proxies.
- (m) If full restitution is made or a repayment schedule is agreed upon before the end of a mandatory disqualification period as described in (j) above, the department shall allow a disqualified participant to reapply for the program.
- (n) Failure to make full and timely payment, as agreed upon in (l) or (m) above, shall result in disqualification for the remaining disqualification period established in the original disqualification notice.

He-P 3207.03 Vendors.

(a) Vendor investigations shall include the following:

- (1) In accordance with 7 CFR 246.12(l)(1)(xii), if the department is investigating an allegation that a vendor has committed at least one violation as described in (k) below, and if during that investigation the department verifies that the vendor has committed a less serious violation or violations set forth in (b)–(j) below, the department shall:

- a. Not provide the vendor with warning or impose sanction points for the less serious violation or violations listed in (b)–(j) below prior to the completion of the single investigation;
 - b. Include in the notice of proposed disqualification all violations found in the course of the single investigation and the vendor’s opportunity to request an administrative hearing; and
 - c. Include in the notice of proposed disqualification that the vendor shall be disqualified for the most serious federally mandated violation if at the conclusion of the single investigation the department determines that the vendor has committed a violation set forth in (k) below;
- (2) Violations alleged and sanction points issued by the department shall be subject to appeal by the vendor in accordance with He-P 3208, He-C 200 and 7 CFR 246.18;
- (3) The department shall provide written notice of warning of initial violation for violations requiring a pattern of occurrences in order to impose a sanction prior to documenting another violation unless the department determines that notifying the vendor will compromise an investigation as described in (1) above;
- (4) Except for those violations committed in accordance with (1) above, the department shall:
- a. Issue sanction points in accordance with violations listed in (b)–(j) below; and
 - b. Notify the vendor in writing of the imposition of sanctions or the assignment of sanction points and the specific violation(s) for which they were assigned;
- (5) Except for violations as listed in (k)–(m) below the department shall apply the period of vendor disqualification in accordance with violation category description in (e)–(j) below to apply sanction points and retention of these points;
- (6) When a vendor has been assigned sanction points, the following shall apply:
- a. When a vendor has accumulated 6 or more sanction points, the department shall disqualify that vendor from participation as a WIC vendor;
 - b. Sanction points shall be assigned for each Category II, III, and IV violation;
 - c. Sanction points shall be cumulative regardless of the category;
 - d. The department shall disqualify a vendor from participation as a WIC vendor for a period of one calendar month for each sanction point as stated in a. above; and
 - e. The sanction points shall be retained on the vendor’s record in accordance with (b)–(j) below;
- (7) Vendors may appeal or request an administrative hearing in accordance with He-P 3208, He-C 200 and 7 CFR 246.18;

- (8) In accordance with 7 CFR 246.12(l)(1)(viii), the department shall not accept voluntary termination of the vendor agreement or use non-renewal of the vendor agreement in lieu of disqualification, but shall enter the disqualification on the record;
- (9) Disqualification shall include terminating any current vendor agreement;
- (10) Vendors who are disqualified for any reason shall be required to reapply in writing;
- (11) A previously disqualified vendor who is reauthorized within one year of the end of the period of disqualification shall be assigned 3 sanction points to be retained for a period of 12 months following the date of reauthorization;
- (12) Prior to imposing a disqualification, the department shall determine whether the disqualification would result in inadequate participant access;
- (13) With the exception of (14) below, when the department determines, in accordance with (12) above, that a disqualification of a vendor would result in inadequate participant access, the department shall impose a civil money penalty in lieu of disqualification as allowed by 7 CFR 246.12(l)(vii);
- (14) A civil money penalty shall not be imposed by the department in lieu of disqualification when the vendor has violated (k)(1) below, or violated (k)(2)–(k)(4) for a pattern of 3 incidences or more within a 12 month period;
- (15) In accordance with 7 CFR 246.12(l)(1)(x), the amount of a civil money penalty shall equal 10% of the average monthly WIC redemptions for the most recent 6 month period multiplied by the number of months for which the vendor would have been disqualified;
- (16) The civil money penalty issued in accordance with (15) above shall not exceed \$11,000 for each violation;
- (17) In accordance with 7 CFR 246.12(l)(1)(x)(C), if multiple violations are revealed by a single investigation, the department shall impose a civil money penalty, not to exceed \$49,000, if disqualification would result in inadequate participant access;
- (18) If a vendor does not fully pay a civil money penalty or an unauthorized costs claim within 30 days of the notice, the vendor shall be disqualified:
- a. For the length of the disqualification corresponding to the violation for which the civil money penalty was assessed; or
 - b. For a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation;
- (19) When a vendor, who had previously been assessed a sanction based on a violation as listed in (k)(2)–(k)(4) below, receives another sanction based on having committed the same or other violation as listed in the same section, the department shall double the sanction for the second violation;

- (20) Civil money penalties shall only be doubled up to \$11,000 and \$49,000 as limited by (15) through (18) above;
- (21) When a vendor, who had previously been assessed 2 sanctions based on violations as listed in (k)(2)–(k)(4) below, receives another sanction based on having committed the same or other violations as listed in (k)(2)–(k)(4) below, the department shall double the sanction for the third violation;
- (22) In accordance with 7 CFR 246.12(l)(1)(vi), the department shall not impose a civil money penalty in lieu of disqualification for committing a third violation even if inadequate participant access would result;
- (23) The department shall treat a fourth or subsequent violation in the same manner as the third except that the sanction shall be doubled; and
- (24) Money received by the department as a result of civil money penalties assessed against a vendor shall be considered program income in accordance with 7 CFR 246.15(b).
- (b) Category I violations shall be considered vendor errors when uncovered by the department during the payment reconciliation processing of food instruments and shall be considered in the authorization process as stated in He-P 3205.01(b)(3)b.
- (c) Category I violations shall consist of the following:
- (1) Failure to obtain the participant's signature on a redeemed food instrument;
 - (2) Acceptance of a food instrument prior to the valid date or after the expiration date printed on the food instrument;
 - (3) Submitting a food instrument for payment more than 30 days after the food instrument redemption date;
 - (4) Acceptance of food instrument with alterations which could be detected by the store; and
 - (5) Requiring or allowing participants to sign a food instrument on which the purchase amount or redemption date has not been entered.
- (d) Category I violations shall result in non-payment of the food instrument for which the violation occurred.
- (e) Category II violations shall consist of the following:
- (1) Failure to submit inventory and price information requested by the department within 30 days;
 - (2) Requiring participants to purchase a specific brand of an approved food when more than one approved brand is available;

- (3) Failure to provide promotional specials or accept manufacturer or store coupons for WIC purchases, except that cash-only promotions may be denied to participants if denied to other non-cash paying customers;
 - (4) Failure to make staff available for training in program rules and procedures;
 - (5) Failure to clearly indicate the retail price of all WIC-approved items, either individually on each item or at the shelf or point of display;
 - (6) Providing WIC-approved food during a WIC transaction that is beyond the expiration or last sell date imprinted on the product packaging by the product's manufacturer;
 - (7) Failure to train all employees who handle WIC transactions and to ensure their knowledge regarding WIC program procedures set forth in training materials and manuals provided by the department; and
 - (8) Issuing rain checks for the specific WIC-approved food types, brands, or quantities listed on the food instrument not available or not received by the participant at the time a food instrument is redeemed.
- (f) Category II violations shall accrue 2 points per violation to be retained for 12 months.
- (g) Category III violations shall consist of the following:
- (1) Contacting participants in an attempt to have them return to the store to fix a vendor error or to seek reimbursement for food costs not paid by the department;
 - (2) Accepting the return of items purchased with a WIC food instrument for cash or credit towards other purchases;
 - (3) Requiring participants to use special checkout lanes, except that participants may be limited from cash-only, maximum item, or self checkout lanes if other customers are also so limited;
 - (4) Altering issuance or redemption information on food instruments after the WIC transaction is complete;
 - (5) Failure to allow department or local agency representatives to complete on-site monitoring; and
 - (6) Failure to maintain the minimum stock of WIC-approved foods.
- (h) Category III violations shall accrue 3 points per violation to be retained for 12 months.
- (i) Category IV violations shall consist of the following:
- (1) Entering a participant's signature or representation of a signature in an effort to obtain payment;
 - (2) Failure to provide access to redeemed food instruments or store inventory records upon request;

- (3) Failure to pay claims for unauthorized costs assessed by the department;
- (4) Providing false or misleading information on the WIC vendor application or agreement;
- (5) Providing false or misleading food price information to the department; and
- (6) Providing false or misleading information regarding ownership or eligibility under the selection criteria.

(j) Category IV violations shall accrue 12 points per violation and result in a one-year disqualification.

(k) Federally mandated sanctions shall include:

- (1) A vendor convicted in court for the crime of trafficking in food instruments or for 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 food instruments shall be permanently disqualified from program participation, effective on the date of receipt of the notice of disqualification;
- (2) A vendor shall be disqualified from program participation for 6 years for a single incidence of buying or selling food instruments for cash trafficking or a single 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 food instruments;
- (3) A vendor shall be disqualified for 3 years for:
 - a. A single incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments; or
 - b. A pattern of 3 or more incidences within a 12-month period of:
 - 1. Claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the vendor's documented inventory;
 - 2. Charging the department more for an approved supplemental food than non-WIC customers or charging the department more than the current shelf price permitted under the vendor agreement;
 - 3. Receiving, transacting or redeeming food instruments outside authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - 4. Charging the department for supplemental food not received by the participant; or
 - 5. Providing credit or non-food items, other than those listed in (1), (2) and (3)a. above, in exchange for food instruments;

(4) A vendor shall be disqualified for one year for a pattern of 3 or more incidences within a 12 month period of providing unapproved food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;

(5) In accordance with 7 CFR 276.12(1)(1)(vii) a vendor who has been disqualified from the food stamp program shall:

- a. Be disqualified from WIC program participation for the same length of time as the food stamp program disqualification; and
- b. Not appeal the WIC program disqualification to federal administrative or judicial tribunals;

(6) A vendor who has been assessed a food stamp program civil money penalty for hardship in lieu of disqualification from the food stamp program shall be disqualified from WIC program participation, the length of which shall correspond to the period for which the vendor would otherwise have been disqualified in the food stamp program; and

(7) In accordance with 7 CFR 246.12(1)(2)(ii)B., if the department determines that disqualification of the vendor for (6) above would result in inadequate participant access, the vendor shall not be disqualified and a civil money penalty shall not be imposed.

(l) Failure to meet rules or standards of another state agency or local health agency which results in suspension of license shall result in a disqualification period not to exceed the federal limit as cited in 7 CFR 246.12(1)(2)(iii) of one year in length and remain in effect until such rules or standards are met and license reinstated.

(m) A vendor who is disqualified from participation in another program administered by the state shall be disqualified for a period not exceeding one year from program participation for an equal number of months as the other program disqualification.

PART He-P 3208 NOTICES AND APPEAL

He-P 3208.01 Local Agencies.

(a) The administrative appeal process shall comply with 7 CFR 246.18 and the administrative appeal process as described in He-C 200.

(b) In accordance with 7 CFR 246.18(a)(1)(i), a full administrative appeal shall be provided for the following, if an appeal is requested:

- (1) The denial of an application for authorization;
- (2) A disqualification during the course of a contract period; and
- (3) Any other adverse action taken by the department in relation to an agency's authorization, with the exception of the provisions found in (c) below.

(c) In accordance with 7 CFR 246.18(a)(3)(ii), the following shall not be subject to administrative appeal:

(1) Expiration of the local agency agreement; and

(2) Denial of a local agency's application if the department's local agency selection is subject to the procurement procedures applicable to the department.

(d) In accordance with 7 CFR 246.18(a)(3)(iii), the department shall make denials of local agency applications effective immediately.

(e) Except as described in (f) below, the local agency shall have 30 days from receipt of written notification from the department to request an administrative appeal on a proposed adverse action.

(f) The local agency shall have 60 days from receipt of written notification from the department to request an administrative appeal on a proposed disqualification.

(g) Except as allowed by (d) above, the department shall make adverse actions effective:

(1) No earlier than 60 days and no later than 90 days after date of notice of adverse action; or

(2) When the local agency has requested an administrative appeal in accordance with (e) and (f) above, on the date the local agency receives the written administrative appeal decision.

(h) In accordance with 7 CFR 246.18(b)(4), local agencies shall have at least one opportunity to reschedule a previously scheduled hearing. In doing so, the local agency shall waive the time limits outlined in (g) above.

(i) Requesting an administrative appeal for any proposed adverse action shall not relieve the local agency from the responsibility for continuing compliance with the terms of the written agreement with the department.

He-P 3208.02 Participants.

(a) Administrative appeal procedures shall comply with 7 CFR 246.9 and He-C 200.

(b) Participants shall have 60 days from the date the department mails or personally serves the notice of proposed adverse action to request an administrative appeal.

(c) The adverse action shall become final after 60 days if the participant fails to request an appeal.

(d) Notice of proposed adverse action shall be sent to or made at the most recent address provided by the participant.

He-P 3208.03 Vendors.

(a) Administrative appeal procedures shall comply with the administrative review process as described in 7 CFR 246.18 and the administrative appeal process as described in He-C 200.

(b) In accordance with 7 CFR 246.18(a)(2), except for disqualifications based on violations described in He-P 3207.03(k)(1) which shall become effective within 15 days of receipt of the notice of adverse action, the vendor shall be provided 15 days to request an administrative appeal after receipt of the notice.

(c) Disqualification of a vendor from the food stamp program in accordance with 7 CFR 246.12(l)(vii) shall result in disqualification from the WIC program.

(d) Disqualification from the WIC program, in accordance with (c) above, shall not be subject to federal administrative or judicial appeal under WIC program rules in accordance with 7 CFR 246.12(l)(1)(vii).

(e) In accordance with 7 CFR 246.18(b)(4), vendors shall have at least one opportunity to reschedule a previously scheduled hearing. In doing so, the vendor shall waive the right to a decision pursuant to the timeline in (f) below.

(f) Within 90 days of receiving the vendor request for an administrative appeal, the department shall provide the vendor with a written notification of the appeal decision.

(g) In accordance with 7 CFR 246.18(a)(2) and (e), the sanctions shall be effective on the date the vendor receives written notification of the appeal decision if the adverse action has not previously taken effect.

(h) The department shall not be responsible for losses incurred by the vendor as a result of adverse action taken by the department.

(i) A full administrative appeal shall be provided for the following, if an appeal is requested:

(1) Denial of authorization based on failure to meet federal or department established vendor selection criteria as described in He-P 3205.01;

(2) Termination of an agreement for noncompliance or cause;

(3) Any disqualification of a vendor by the department, including:

a. Disqualification based on the imposition of a food stamp program civil money penalty for hardship;

b. Disqualification based on a mandatory sanction imposed by another WIC agency in another state; and

c. Disqualification based on He-P 3207.03(k)(1); and

(4) Imposition of a civil money penalty in lieu of disqualification by the department.

(j) In accordance with 7 CFR 246.18(a)(1)(iii), the following shall not be subject to administrative appeals:

(1) The department's determination of whether or not a vendor had an effective policy and program in effect to prevent trafficking and whether the vendor was aware had approved of, or was involved in the violation;

(2) The validity or appropriateness of the department's vendor selection criteria listed in He-P 3205.01;

- (3) The validity or appropriateness of the department’s criteria for determining whether an applicant vendor or authorized vendor’s annual revenue from sales of WIC-approved food meets the “above 50 percent” threshold, as defined in He-P 3201.01(a);
- (4) The validity or appropriateness of the department’s participant access criteria and the department’s participant access determinations as defined in He-P 3201.01(u) and He-P 3205.01(b)(19);
- (5) WIC disqualification based on a food stamp disqualification;
- (6) Expiration of the vendor agreement; or
- (7) Disputes regarding food instrument payments and claims.

APPENDIX

RULE	STATUTE
He-P 3201	7 CFR 246.2 and 246.7
He-P 3202	7 CFR 246.7
He-P 3203	7 CFR 246.10
He-P 3204	7 CFR 246.5 and 246.6
He-P 3205	7 CFR 246.12 and RSA 132:10-b, I
He-P 3206	7 CFR 246.12
He-P 3207	7 CFR 246.5, 246.12, 246.15 and 246.23
He-P 3208	7 CFR 246.9, 246.12, 246.18 and 278.6