

NEW JERSEY DEPARTMENT OF HEALTH
WIC SERVICES

POLICY AND PROCEDURE MANUAL

Policy & Procedure Number: 1.44
Effective Date: 3/29/191/30/18 DRAFT

Functional Area: I. VENDOR MANAGEMENT
Subject: Above 50-Percent Vendors

A. POLICY:

1. Vendors that derive more than 50-percent of their annual food sales revenue from WIC Food Instruments (FI) and Cash-Value Vouchers (CVV) are defined as above 50-percent vendors.
2. New Vendor applicants expected to derive more than 50-percent of their annual food sales revenue from FI's and CVV's are defined as above 50-percent vendors. (Referenced in 7 CFR 246.12, Definitions).
3. The SA shall prohibit above 50-percent vendors from participating as WIC vendors.
4. The SA shall deny new Vendor applicants who state that they expect to derive more than 50-percent of their annual revenue from the sale of WIC food items. (Attachment 1.31M Denial, Failure of Vendor Applicant to Meet Vendor Selection Criteria *in process*)
5. The SA shall reassess the status of new vendors within six months after authorization to determine whether the vendors are above 50-percent vendors.
6. ~~The SA shall reassess the status of all authorized WIC vendors annually to identify whether the vendors are above 50-percent vendors. In March of each year, the SA shall require vendors identified on the Federal USDA database (insert name) to submit tax information to determine their above 50-percent status.~~
7. The SA shall notify all identified vendors of their above 50-percent status and request ~~their~~ tax documentation.

B. PROCEDURE:

1. New vendors are required to submit tax information ~~after the for the~~ first full quarter ~~of their after~~ WIC authorization. ~~The tax information for new vendors is requested for the first full quarter after the Vendor was authorized to participate as a WIC Vendor.~~
2. ~~All Vendors who have been identified as potential above 50-percent status via the Federal USDA database (insert name), must submit In March of each year, the SA will require vendors identified on the Federal USDA database (insert name)~~

Commented [TAM1]: (i) Vendors that meet the above-50-percent criterion. Vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS, are defined as above-50-percent vendors. Each State agency annually must implement procedures approved by FNS to identify authorized vendors and vendor applicants as either above-50-percent vendors or regular vendors, in accordance with paragraphs (g)(4)(i)(E) and (g)(4)(i)(F) of this section. The State agency must receive FNS certification of its vendor cost containment system under section 246.12(g)(4)(vi) prior to authorizing any above-50-percent vendors. The State agency that chooses to authorize any above-50-percent vendors:

(A) Must distinguish these vendors from other authorized vendors in its peer group system or its alternative cost containment system approved by FNS by establishing separate peer groups for above-50-percent vendors or by placing above-50-percent vendors in peer groups with other vendors and establishing distinct competitive price selection criteria and allowable reimbursement levels for the above-50-percent vendors;

(B) Must reassess the status of new vendors within six months after authorization to determine whether or not the vendors are above-50-percent vendors, and must take necessary follow-up action, such as terminating vendor agreements or reassigning vendors to the appropriate peer group;

(C) Must compare above-50-percent vendors' prices against the prices of vendors that do not meet the above-50-percent criterion in determining whether the above-50-percent vendors have competitive prices and in establishing allowable reimbursement levels for such vendors; and

(D) Must ensure that the prices of above-50-percent vendors do not inflate the competitive price criteria and allowable reimbursement levels for the peer groups or result in higher total food costs if program participants transact their food instruments at above-50-percent vendors rather than at other vendors that do not meet the above-50-percent criterion. To comply with this requirement, the State agency must compare the average cost of each type of food instrument redeemed by above-50-percent vendors against the average cost of the same type of food instrument redeemed by regular vendors. The average cost per food instrument may be weighted to reflect the relative proportion of food instruments redeemed by each category of vendors in the peer group system. The State agency must compute statewide average costs per food instrument at least quarterly to monitor compliance with this requirement. If average payments per food instrument for above-50-percent vendors exceed average payments per food instrument to regular vendors, then the State agency must take necessary action to ensure compliance, such as adjusting payment levels. Where EBT systems are in use, it may be more appropriate to compare prices of individual WIC food items to ensure that average payments to above-50-percent vendors do not exceed average payments for the same food item to comparable vendors. If FNS determines that a State agency has failed to ensure that above-50-percent vendors do not result in higher costs to the program than if participants transact their food instruments at regular vendors, FNS will establish a claim against the State agency to recover excess food funds expended and will require remedial action. A State agency may exclude partially-redeemed food instruments from a quarterly cost neutrality assessment based on an empirical methodology approved by FNS. A State agency may not exclude food instruments from the quarterly cost neutrality assessment based on (...)

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~~to submit tax information to determine their above 50 percent status. Tax information requested will be for the ffour quarters of the previous calendar year upon request.~~

~~2.~~ (Attachment: 1.44A Initial Request for Documentation of total Annual Food Sales).

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3. The SA shall request the following quarterly or monthly tax documents ~~to the State Agency~~ for review:

a. Sales and Use Tax Return (ST-50) form

b. Combined State Sales Use Tax/Urban Enterprise Zones Tax Return (UZ)

~~b.c.~~ other food sales documents as requested.

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4. Annual Food Sales: ~~The total revenue that a vendor derives from the sales of its food products, regardless of payment type, in a twelve-month period. Insert How Food Sales are determined. (Source)?~~

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5. ~~Definition of total Annual WIC Sales: Insert The total revenue that a vendor derives from the redemptions of WIC Food Instruments (FIs) in twelve-month period. How WIC Food Sales are determined (Source)?~~

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6. An above 50-percent Vendor is determined by dividing the total annual WIC sales into the total annual Food Sales.

7. To assess above 50-percent status, the SA shall compare the tax documentation (food sales) with the vendors' total annual WIC sales to determine the status of the vendor.

a. Vendors must provide SA with a documented annual gross sales amount, even if the vendor is unable to provide a distinct food sales amount which is the sale of all Supplemental Nutrition Assistance Program (SNAP) eligible foods intended for home preparation and consumption, including meat, fish, and poultry: bread and cereal products; dairy products; fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and noncarbonated drinks may be included in foods sales when offered for sale along with food in the categories identified above.

8. Vendors that are identified as having WIC sales that exceed 50-percent of their annual food sales must attend a mandatory in person meeting with the SA to review submitted tax documents and assess vendor status.

(Attachment 1.XX Above 50-Percent meeting notification letter)

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9. Vendors who inform the SA that the information on the tax documents is correct and continue to be above 50-percent vendors based on the tax documents that are

submitted to the SA and the Division of Taxation shall receive a letter terminating the vendor agreement (Attachment 1.XX Above 50-Percent Vendor Termination Letter).

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10. Vendors who inform the SA that the information on the tax documents is incorrect must provide an amended copy of their tax documents to the SA and the Division of Taxation.

a. The SA has a Memorandum of Agreement (See Attachment 1.XX) with the New Jersey Division of Taxation. Vendors must sign a waiver form which permits the Division of Taxation to provide tax information to the WIC Program. Vendors who submit amended tax documents to the WIC program are reviewed and forwarded to the Division of Taxation for verification. The Division of Taxation notifies the SA of the status of the amended tax documents.

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b. The SA shall notify the vendors of their WIC status once the Division of Taxation has reviewed the information and notified the SA that they have accepted the amended tax documents.

c. Vendors who are not above 50-percent vendors based on the amended tax documents that are submitted to the SA and the Division of Taxation shall continue participating as authorized vendors.

d. Vendors who continue to be above 50-percent vendors based on the amended tax documents that are submitted to the SA and the Division of Taxation shall receive a letter terminating the vendor agreement (See 1.XX).

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Attachment(s):

Memorandum of Agreement with NJ Department of Taxation

Attachment 1.31M Denial, Failure of Vendor Applicant to Meet Vendor Selection Criteria *in process*

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1.44A Initial Request for Documentation of Total Annual Food Sales

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1.44B Final Request for Documentation of Total Annual Food Sales

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1.44C Above 50-Percent meeting notification letter

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1.44D Above 50-Percent Vendor Training Agenda and Signature

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1.44E -GAB Conditional Provisions Pending Compliance with the above 50 percent rule

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1.46I Above 50-Percent Vendor Termination Letter

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