



State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

April 3, 2009

VENDOR ALERT 2009-04

TO: ALL WIC VENDORS

SUBJECT: DISCRETIONARY VENDOR PROVISIONS OF THE CHILD NUTRITION AND WIC REAUTHORIZATION ACT OF 2004, P.L. 108-265 – FINAL RULE

Purpose

I am writing to inform you that the United States Department of Agriculture (USDA) Special Supplemental Nutrition Program for Women, Infants and Children (WIC) has amended federal regulations for the WIC Program. The “Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108-265 Final Rule” (Rule) was published in the Federal Register / Vol. 74, No. 3, on January 6, 2009 and became effective on March 9, 2009. You may access an electronic copy of this Rule at:
<http://www.fns.usda.gov/wic/regspublished/discretionaryvendorprovisions-finalrule.htm> .

Background

This Rule amends federal WIC regulations by adding requirements mandated by the Child Nutrition Act concerning WIC-authorized vendors as follows:

1. Notifying vendors of an initial violation in writing (only for violations requiring a pattern of violations in order to impose a sanction) before documenting another violation and imposing a potential adverse administrative action, unless this notification would compromise an investigation. The Rule further establishes that the Program’s determination whether or not to notify a vendor in writing of the initial violation is not subject to appeal or administrative review.
2. Requiring vendors to purchase infant formula sold to participants with food instruments only from authorized suppliers as defined by the Program.
3. Requiring above-50-percent vendors to request and receive approval from the Program to offer incentive items to participants. The allowable incentive items and services are defined by the Program and the incentive items must be of nominal value. The Rule specifies that anything made available in a public area as a complimentary gift which may be consumed or taken away without charge is a prohibited incentive item. Additionally, an above-50% vendor may be sanctioned for providing a prohibited incentive item or service. Finally, the Rule establishes that the validity and appropriateness of the Program’s prohibited incentive items or the Program’s denial of approval for an above-50% vendor to offer an incentive item is not subject to appeal or administrative review.



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4. Adjusting the maximum amount of vendor civil money penalties (CMP) for inflation to \$11,000 for each violation and \$44,000 for the total amount of CMP's for multiple violations occurring during a single investigation. As you may already be aware, CMP's are only imposed when the Program, in its sole discretion, determines that disqualification of a vendor would result in inadequate participant access.
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**Vendor
Implications**

Some of these requirements are not new to the vendor community. While completing their rulemaking process, USDA required WIC Programs to implement several requirements pursuant to USDA policy directives. Provisions concerning written notification by the Program to a vendor of an initial violation before completing another investigation; requiring vendors to purchase infant formula from an authorized wholesaler; and requiring an above-50% vendor to request and receive approval to provide incentive items are not new requirements. Establishing as a prohibited incentive item anything that is made available in a public area as a complimentary gift which may be consumed or taken away without charge; and sanctioning a vendor for providing a prohibited incentive item or service are both new requirements. Adjusting the maximum amount of vendor CMP's is also a new change.

All authorized vendors will be receiving new vendor agreements for signature in the summer of 2009. The new vendor agreement will be effective October 1, 2009 through the vendor's existing contract expiration date. The new vendor agreements will reflect requirements pertaining to this Rule and to changes in the food package. Information concerning these new vendor agreements will be forthcoming.

Questions

Thank you for your cooperation and understanding. If you have any questions, please contact your WIC Vendor Consultant directly or call (916) 928-8705.



David Markell, Chief
Vendor Management Branch
California WIC Program