

**NEW JERSEY  
DEPARTMENT OF HEALTH  
WIC SERVICES**

**POLICY AND PROCEDURE MANUAL**

**Policy & Procedure Number: 1.46  
Effective Date: April 24, 2019**

**Functional Area: I. VENDOR MANAGEMENT**

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**Subject: Vendor Violations and Administrative Reviews**

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**A. POLICY:**

1. A *Vendor violation* means any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement or Federal or State statutes, regulations, policies, or procedures governing the Program.
2. When the State Agency (SA) determines the vendor has committed a vendor violation that affects the payment to the vendor, the SA shall delay payment or establish a claim.
  - a) The SA may delay payment or establish a claim in the amount of the full purchase price of each food instrument or cash-value voucher that contained the vendor overcharge or other error.
  - b) The SA shall provide the vendor with an opportunity to justify or correct a vendor overcharge or other error.
  - c) The vendor must pay any claim assessed by the SA.
  - d) In collecting a claim, the State agency may offset the claim against current and subsequent amounts to be paid to the vendor.
  - e) In addition to denying payment or assessing a claim, the SA may sanction the vendor for vendor overcharges or other errors in accordance with the SA's sanction schedule.
3. The SA must provide **full administrative reviews** to vendors that appeal the following adverse actions:
  - a) Denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods (§246.12(g)(3)(i)), or on a determination that the vendor is attempting to circumvent a sanction (§246.12(g)(6))
  - b) Termination of an agreement for cause
  - c) Disqualification
  - d) Imposition of a fine or a civil money penalty in lieu of disqualification

4. The SA must provide **abbreviated administrative reviews** to vendors that appeal the following adverse actions, unless the State agency decides to provide full administrative reviews for any of these types of adverse actions:
  - a) Denial of authorization based on the vendor selection criteria for business integrity or for a current SNAP disqualification or civil money penalty for hardship (§246.12(g)(3)(ii) and (g)(3)(iii));
  - b) Denial of authorization based on the application of the vendor selection criteria for competitive price (§246.12(g)(4));
  - c) The application of the State agency's vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
  - d) Denial of authorization based on a State agency-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification;
  - e) Denial of authorization based on the State agency's vendor limiting criteria (§246.12(g)(2));
  - f) Denial of authorization because a vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under §246.12(g)(8);
  - g) Termination of an agreement because of a change in ownership or location or cessation of operations (§246.12(h)(3)(xvii));
  - h) Disqualification based on a trafficking conviction (§246.12(l)(1)(i));
  - i) Disqualification based on the imposition of a SNAP civil money penalty for hardship (§246.12(l)(2)(ii)); and
  - j) Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency (§246.12(l)(2)(iii)).
  - k) A civil money penalty imposed in lieu of disqualification based on a SNAP disqualification under §246.12(l)(1)(vii) and,
  - l) Denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.
  
5. The SA shall **not provide administrative reviews** pursuant to this section to vendors that appeal the following actions:
  - a. The validity or appropriateness of the State agency's vendor limiting criteria (§246.12(g)(2)) or vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current Supplemental Nutrition Assistance Program disqualification or civil money penalty for hardship (§246.12(g)(3))
  - b. The validity or appropriateness of the State agency's selection criteria for competitive price (§246.12(g)(4)), including, but not limited to, vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
  - c. The validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations;

- d. The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to §246.12(g)(11);
- e. The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to §246.12(h)(8);
- f. The State agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction, pursuant to §246.12(1)(3)
- g. The State agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation (§246.12(1)(1)(i)(B))
- h. Denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency
- i. The expiration of a vendor's agreement
- j. Disputes regarding food instrument or cash-value voucher payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by §246.12(k)(3)
- k. Disqualification of a vendor as a result of disqualification from SNAP (§246.12(1)(1)(vii)).

**B. PROCEDURE:**

1. The SA shall make denials of authorization and disqualifications imposed under §246.12(1)(1)(i) effective on the date of receipt of the notice of adverse action. The State agency must make all other adverse actions effective no earlier than 15 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the vendor receives the review decision.
2. Administrative Reviews shall be conducted by a Grant Appeal Board (GAB) at the State Health Department Level.
3. The SA case may be presented by a WIC staff person or WIC SA Vendor Manager during a full administrative review.