

## **SECTION II: RETAILER AUTHORIZATION**

<b>Overview</b>	All full service grocery stores and pharmacies interested in becoming an authorized WIC retailer must complete an application. The selection criteria used by the Department is designed to ensure that retailer participation in the Missouri WIC program will adequately fulfill the needs of the WIC program participants.
<b><u>2.1 WIC Retailer Application</u></b>	
<b>Enrollment</b>	The Department may accept applications anytime during the agreement period. Agreements may be issued throughout the current agreement period with all agreements expiring on the same date. However, the Department reserves the right not to accept any new applications during the last one hundred and twenty (120) days of the current agreement period.
<b>Renewals</b>	The Department will notify all authorized retailers in good standing, prior to the expiration of the current agreement period, and mail each an authorization application. Authorization applications must be returned to the Department in the specified time period. The applicant store is responsible for returning the application in such a manner that the retailer obtains evidence of receipt by the Department.
<b>Incomplete Applications</b>	Incomplete applications will be returned one (1) time only to the applicant for completion. Incomplete applications returned to the applicant must be completed and re-submitted to the Department within thirty (30) days from the postmarked date of the returned application. Applicants who fail to return a completed application will not be considered for authorization.
<b>Complete Applications</b>	All completed applications received by the Department will be reviewed. The Department will notify applicants within sixty (60) days from receipt of the completed application, whether or not the application was approved.
<b>Denied Applications</b>	In the event an application is denied or an applicant fails to submit the required information (an incomplete application) the WIC program requires a 180-calendar day period before the applicant can reapply.
<b>Retailer Responsibilities</b>	All owners, operators and managers of retail grocery stores and pharmacies that are making application to the program must understand how the Missouri WIC program operates. Compliance with all policies, procedures, and regulations of the Missouri WIC program is the responsibility of each authorized retailer.

**Issuing Agreements**

The Department is not required to issue an agreement to an applicant, a previous retailer whose agreement has expired, or an applicant who is purchasing a store that is currently authorized. **It is at the sole discretion of the Department whether an agreement will be issued.** Pharmacies will only be considered for authorization in areas where there is an insufficient number of Full Service Grocery Stores with Pharmacies available to service WIC participant’s needs. This determination is to be made solely by the Department.

**2.2 Authorization Process**

**Authorization Process**

Each retail store applying for WIC authorization must complete a six (6) - phase process.

**Phase One:**

Retailer applicants must complete and submit all the required application forms to the State WIC office. **All information MUST be complete.** Any incomplete and/or unsigned documents will **NOT** be accepted. Please assure required signatures are obtained on all forms and send the completed application to the State WIC office using the address on page 5 of the application packet.

**Phase Two:**

The application will be reviewed for completeness. Applicants will be notified by letter of missing, incomplete or unsigned documents. The State WIC office has **sixty (60) days from receipt of the completed application** (and supporting documentation) to review and determine if the store qualifies for the program.

**Phase Three:**

If all required information meets the selection criteria and the application is approved, the Department then conducts an on-site visit to verify the information provided in the application is accurate. The on-site inspection verifies whether or not the store meets all the selection criteria. If the store does not meet the minimum stocking requirements another on-site visit will be performed to ensure the stocking levels are met. **NO agreement will be awarded prior to the visit and no agreement will be issued until the store meets the required stocking levels.** The Department does not guarantee an agreement will be offered after the on-site visit.

**Phase Four:**

The agreement will be sent for retailer’s signature and returned to the Department for further processing. When the agreement with the retailer’s signature is received it will be processed for Department signatures. **This period may take up to two (2) to three (3) weeks.**

**Phase Five:**

Store owners, store managers, and/or store training staff will be required to attend a new retailer training session. **New retailer training will only be held in Jefferson City, Missouri.** Failure to attend this training will

delay the start of the agreement. **NOTE: Phases four (4) and five (5) may occur simultaneously.**

**Phase Six:** The agreement will be in effect when all signatures have been obtained, training has been received, the store has received the Retailer identification stamps, and the store is notified of the date it may begin to accept WIC checks. The applicant is not allowed to accept WIC checks until a fully executed agreement is in place. Any applicant found to be accepting WIC checks prior to having a fully executed agreement will not receive an agreement.

### **2.3 Selection Criteria**

**General Criteria** The Department has established criteria for the selection of retailer applicants to whom agreements authorizing the transaction and redemption of WIC checks will be awarded. Every authorized retailer must comply with all retailer selection criteria throughout the agreement period.

The Department may reassess an authorized retailer at any time during the agreement period. The Department will terminate the agreement if the retailer fails to comply with the current selection criteria. The Department reserves the right to make exceptions to the selection criteria to address inadequate participant access.

**Defining Who is a Retailer** Retailer applicants must be either a full service grocery store or a pharmacy located within the state of Missouri. Full service grocery stores must stock, at a minimum, all of the following food groups: canned, fresh and frozen fruits and vegetables, fresh and frozen meats and poultry (luncheon meats and deli meats do not qualify), canned fish, dairy products, cereals, breadstuffs and infant foods and formula, in order to qualify.

As a WIC authorized full service grocery store the retailer is not allowed to set aside a section or a room within the authorized store for the sole purpose of selling WIC Only foods. The authorized retailer shall not have any registers set up solely to perform WIC transactions nor charge prices for WIC approved foods that exceed the prices paid by other non-WIC shoppers. Any violation of this provision will result in the immediate termination of the retailer's agreement.

Retailer applicants may only be authorized to accept WIC checks in Missouri. A retailer with authorized stores in Missouri may not be co-authorized by other WIC programs outside of Missouri borders. Missouri requires total jurisdictional authority with its retailers. Other states' WIC

agreements with Missouri WIC authorized retailers are in conflict with the above requirement.

Pharmacies shall provide only special non-contract formulas. Any stores that stock and sell only WIC approved foods are not eligible for authorization as an approved Missouri WIC Retailer.

**Minimum  
Quantity  
For Food Groups**

To be considered a full service grocery store in Missouri a retail store must meet the following stocking requirements:

1. **\*\*Fresh Vegetables:** Minimum of at least five (5) varieties of vegetables listed. Choices **may** include bell peppers, broccoli, cabbage, carrots, cauliflower, celery, corn, cucumbers, eggplant, green beans, lettuce, mushrooms, onions, potatoes, radishes, squash, sweet potatoes, tomatoes, turnips, or zucchini.
2. **\*\*Fresh Fruits:** Minimum of at least five (5) varieties of fruits. Choices **may** include apples, apricots, bananas, berries, cantaloupe, lemons, limes, melons, oranges, pears, peaches, plums, pineapple, grapes or grapefruits.
3. **\*\*Frozen Vegetables:** Minimum of at least three (3) varieties of frozen vegetables. Choices **may** include broccoli, brussel sprouts, carrots, cauliflower, corn, green beans, mixed vegetables, onions, peas, peppers or spinach.
4. **\*\*Frozen Fruits:** Minimum of two (2) varieties of frozen fruits. Choices **may** include strawberries (sliced or whole), peaches, blueberries, mixed fruit, blackberries, raspberries, pineapple, fruit medley or mixed berries.
5. **Fresh and Frozen Meats and Poultry:** Minimum of three (3) varieties each of beef, poultry, pork or lamb. Beef, poultry, pork or lamb may be a combination of fresh and frozen. Deli style meats and sausages do not apply.
6. **Canned Fruits:** Minimum of three (3) varieties of canned fruits. Choices **may** include peaches, pears, pineapple, mixed fruit or fruit cocktail.
7. **Canned Vegetables:** Minimum of three (3) varieties of canned vegetables. Choices **may** include asparagus, beets, carrots, corn, peas, green beans, mixed vegetables, spinach or other beans.
8. **\*\*Canned Fish:** Minimum of two (2) varieties of fish. Choices include salmon, sardines or tuna.

9. **\*\*Breadstuffs:** Minimum of at least two (2) varieties and/or brands of bread.
10. **\*\*Dairy products, cheese, cereals, juices, infant formula, and other WIC approved foods must meet minimums required in Section VI of the WIC Retailer Manual.**

**\*\*The minimum stocking requirements for WIC approved foods are located on Section VI of this manual.**

**Business Hours**

The retailer must be open a minimum of six (6) days per week between 9:00 a.m. and 6:00 p.m. daily. Store hours must be posted.

**Business Integrity**

The Department will consider business integrity when determining eligibility for selection as a retailer. The Department will not have an agreement with any retailer /applicant if during the last six (6) years they have been disqualified from an USDA Food and Nutrition Services (FNS) program or if any of the retailer applicant's current owners, officers, or managers have had civil judgment entered against them for, or have been convicted of any activity indicating a lack of business integrity. The Department shall determine which offenses apply. Activities indicating a lack of business integrity include, but are not limited to the following:

- Fraud;
- Antitrust violation;
- Embezzlement, theft, or forgery;
- Bribery;
- Falsification or destruction of records;
- Making false statements or claims;
- Receiving stolen property;
- Obstruction of justice;
- Other evidence reflecting on the business integrity and reputation of the applicant;
- Arson;
- Conspiracy;
- Official records of removal from any federal, state or local programs
- Current or former employment in a position of responsibility with a previously or currently authorized retailer determined to be a high-risk retailer by the Department; or
- Other evidence reflecting on the business integrity and reputation of the applicant.

The retailer must have and maintain a positive compliance history with any and all FNS programs, if currently or formerly a retailer for those programs. Upon request by the Department, the applicant must submit an original Highway Patrol Background Check to verify criminal record history. The cost for a background check is \$9.00 to \$20.00 and the

retailer applicant is responsible for paying the fee. The applicant may be required to be fingerprinted in order to complete the background check. The original Highway Patrol Background check is to have been processed within the past sixty (60) days to be considered valid.

### **Conflict of Interest**

The retailer applicant must be free of any conflict of interest, as defined by applicable State laws, regulations and policies, between the store and the Department or its contracted providers. Conflict of interest includes any activities which would tend to influence a decision, create a bias or prejudice which would favor one side or the other in conflict with the Department or contracted local WIC providers employee's duties, or which conflict with the accomplishment of the Department's mission or goals.

Local WIC Providers may not serve as approved retailers for participants. They may not lease out building space to a prospective WIC authorized retailer. This would be considered allowing a retailer preferential treatment and restricting freedom of choice.

Examples of conflict of interest are as follows:

- Solicitation or other influence for personal reasons or benefits.
- Personal relationships, either of an intimate or financial nature.
- Ownership or significant financial interest in a private business, including family member(s) within the fourth degree.
- Membership in or serve as a board member of any association or corporation participating in a program regulated or operated by the Department, such as a member of a county board of health.

The Department will terminate the WIC Retailer Agreement if the Department identifies a conflict of interest, as defined by applicable State laws, regulations, and policies, between the retailer and the Department or local WIC providers.

### **Business Stability**

The retailer must be an established business, open to the public for at least one (1) year in the current location under the new ownership or must own and operate at least one (1) currently authorized WIC retail store that is in good standing in Missouri. The Department can waive this condition for a current retailer in good standing that is adding an additional location. **Please note that the purchase of an existing authorized store does not negate this requirement. All new owner(s) and retailer applicants must meet this criterion.**

The store name on the application must be the same name as registered with the Secretary of State or the owner's full name must appear in the store's name, i.e. John Doe's Grocery. Stores using fictitious names or names other than the owner's full name must be registered with the

Secretary of State's office. If registered as a foreign corporation (incorporated in a state other than Missouri) the owner must identify the state in which the corporation is registered.

Retailer applicants are required to submit their previous work history to identify any previous grocery experience. All ownership in previous grocery operations must include the address(s) of the stores owned or where employed and whether the store(s) were authorized to accept WIC and/or Supplemental Nutrition Assistance Program (SNAP), formerly the food stamp program.

Ownership and/or management of grocery operations within Missouri or other states may be given consideration in meeting this criterion. For the purpose of this criterion ownership is defined as a person who holds at least ten (10) percent interest, which may be stock or other forms of security, in the grocery operation that includes, but is not limited to, the inventory, equipment property, building and/or responsibility for leasing equipment, property and building in order to maintain the full service grocery operation.

For situations where the corporation is selling the stock of a store to the employees, the Department will consider the work history, relating to the grocery industry, of the new ownership in determining whether the business stability criterion has been met. The agreement authorization is at the sole discretion of the Department.

On a case by case basis WICNS will review the following circumstance: An existing store is sold to a new ownership and those owners do not have any current or previous grocery experience. Consideration may be given if the previous owners or management have agreed to continue to work with/or for the new ownership and have a signed agreement to continue to assist in operating the store for a period of not less than six (6) months. The previous experience of the owners and/or management will be considered. However, if the store and the previous ownership or management has a history of non-compliance then no consideration will be given.

In the event the Department determines an agreement will be issued it will be for a one (1) year probationary period. This is at the sole discretion of the Department. This probationary agreement may be renewed at the discretion of the Department for an additional one-year period. The Department is not under any requirement to renew this probationary agreement when it expires.

During this probationary agreement period the store will be subject to at least quarterly unannounced on-site monitoring, covert buys and receipt audits to ensure the store is in compliance. The Department at its

discretion may perform additional monitoring visits. If the new ownership and store are found to be out of compliance during two (2) of the monitoring reviews the agreement will be terminated in writing.

## **Pricing**

The pricing peer group shall be used for purposes of determining whether a retailer applicant meets the pricing requirements of the program and whether current retailers are exceeding the state price for the peer group they are in. The retail prices for WIC approved foods must not be greater than the Department's allowable variance from the statewide average prices. Prices of all WIC approved foods must be posted on the shelves or on the products.

**Current Retailers:** Current retailers will be placed in the pricing peer groups indicated below. Each retailer will, on a quarterly basis, have their prices reviewed using the average WIC food prices established for each peer group. The average WIC food prices will be calculated based on the prices submitted by the retailers on the Quarterly Food Price Survey. Current retailers are informed of the peer group criteria and which peer group they are assigned to annually.

Any retailer with WIC food prices that are more than ten (10) percent over the average price for the peer group food will be placed on the high-risk retailer list. Immediate action will be taken in the form of an on-site monitoring to confirm food prices and to check for any additional areas of non-compliance. Retailers will be required to reduce prices to conform with peer group pricing within thirty (30) days of notification or may be removed from the program.

**Retailer Applicants:** For retailer applicants, each applicant's food prices will be used in the pricing peer group process. The retailer applicant will initially be placed within Peer Group Class II, unless the new applicant is a member of a grocery store chain or a discount grocer, in which case they will be placed into Peer Group Class III or IV. The new retailer will remain in this peer group for the first six (6) months. After six (6) months, the retailer would have its peer grouping status re-evaluated. Using an extrapolation of the monthly average of the retailer's WIC sales, WICNS will determine whether the retailer's current peer grouping needed to be changed.

If the retailer applicant's store prices for WIC foods are more than ten (10) percent over the average price for the peer group or the State's maximum food price limit for the identified food packages, the application will not be approved. The applicant will be informed that they have failed to meet the program's selection criteria. The retailer applicant may then adjust their pricing and reapply after one hundred and eighty (180) days.

Peer Group I and II stores are defined as: A retail store ownership that is a sole proprietorship, franchise supported, a partnership, or a L.L.C. or a corporation. If the ownership is a L.L.C. or a corporation, the number of stores in operation is one (1) or more stores that are located in Missouri or are not considered to be a major chain store.

**Pricing Peer Groups**

- **Peer I:** Stores with annual WIC sales of \$85,000 or below.
- **Peer II:** Stores with annual WIC sales of \$85,001 and above.
- **Peer III:** Major chains stores, e.g., Dierbergs, Dillon’s/Gerbes, Hy-Vee, Kroger, Price Chopper, Price Cutter, Ramey, Shop ‘N Save and Schnucks.
- **Peer IV:** Discount groceries and hyper-marts, e.g., Wal-Mart.

**Minimum Store Square Footage**

The retailer’s store must have a minimum of 1,000 square feet of space allocated solely for food products, including both WIC and non-WIC foods. This square footage does not include non-food areas such as storage areas, meat cutting areas, beer and soda coolers, walk-in coolers or freezers. Non-food includes but is not limited to the following types of items: hair care products, skin care products, detergents, soaps, other cleaning products, bleaches, paper products, plastic products, hardware, kitchenware, light bulbs, pet foods, soft drinks, alcohol and tobacco.

**Minimum Stock of WIC Approved Foods**

The store’s inventory must meet the minimum stock of WIC approved foods as defined in Section VI of this manual. The store must have adequate inventory to supply WIC customers with enough approved foods to fully transact all WIC checks presented. This includes before, during, and after a heavy volume of WIC redemption activity.

Pharmacies and grocery stores with pharmacies authorized to supply medically prescribed formula do not have stocking requirements for such formulas, but must provide all such formulas within seventy-two (72) hours of presentation of a WIC check by a participant or advance notification of need by a local WIC provider or by the state agency.

**Percentage of Food Sales**

Retailer applicants must submit to the Department written sales or financial statements, reports, tax forms or other records sufficient for establishing gross sales, food sales, and SNAP sales information upon request. Failure to submit requested documents or providing false information will result in the application being denied. Additionally, all sales of alcohol, tobacco and SNAP sales must be reported.

The retailer applicant must be operating a full service grocery store at the location identified in the application, which has gross food sales of at least seventy (70) percent of total gross grocery receipts, excluding alcohol and

tobacco. If either alcohol or tobacco product sales individually or in aggregate comprise thirty (30) percent or more of total gross grocery receipts, an agreement will not be offered. Pharmacies are exempted from this requirement due to their WIC approved item limitations.

Upon request from the Department the retailer applicant must supply the following information:

1. The percentage of anticipated food sales by type of payment, i.e., cash, SNAP, WIC and credit/debit.
2. If the retailer applicant store is already open for business, the total food sales during the last year. To the extent possible, validate the information on the percentage of anticipated food sales by the type of payment and/or the total food sales against other data sources.

If the retailer applicant (i.e. ownership entity) was previously authorized by the state agency, and the state agency has the necessary historical data (e.g. annual WIC and SNAP redemptions, a total food sales amount, documentation that the store was a WIC-only store) a review of that information will be performed to determine whether the previously authorized store location(s) was an above fifty (50) percent retailer.

**Percentage of Store Sales**

The Department will not authorize a new retailer that is expected to derive more than fifty (50) percent of its annual revenue from the sale of food items for WIC checks. This includes any ownership entity that currently has a WIC authorized store, as well as an entirely new retailer applicant.

**Above 50 Percent Retailers**

Missouri will not authorize any retailers who derive more than fifty (50) percent of their store's sales on the sale of WIC foods after December 30, 2005. Any retailer who is found to meet this criteria will be notified that their WIC Retailer Agreement will be terminated unless it is determined that this retailer is needed due to inadequate participant access.

Any retailer or applicant that is denied authorization because the State agency determines that they are expected to derive more than fifty (50) percent of their store's sales from WIC food items, is eligible for an abbreviated administrative review. The validity and appropriateness of the state agency's criteria for determining whether a retailer applicant is expected to be above fifty (50) percent retailer are not subject to administrative review, as stated in Code of Federal Regulations 246.12(a)(1)(iii)(B). In addition, the state agency's participant access determination is not subject to administrative review as stated in section 246.18(a)(1)(iii)(C) of the WIC regulations. The administrative review is solely to determine if the state agency properly applied the criteria based on the documentation provided by the retailer applicant.

**Restrictions on  
Retailer  
Incentive  
Items**

The state agency is prohibited from authorizing or making payments to retailers that provide incentive items or other free merchandise, except food or merchandise of nominal value to program participants unless the retailer provides to the state agency proof that the retailer obtained the incentive items or merchandise at no cost.

This incentive item and free merchandise restriction applies to for-profit retailers:

- For which more than fifty (50) percent of the annual revenue of the retailer from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with WIC checks; or
- Who are new applicants likely to meet the criteria listed above.

Retailers (regular or above-50-percent) are prohibited from offering incentive items solely to WIC participants in an effort to encourage participants to redeem their WIC food instruments at those stores. Section 246.12(h)(3)(iii) of the Federal WIC regulations requires retailers to offer Program participants the same courtesies that are offered to non-WIC customers. Therefore, a WIC-authorized retailer may not treat WIC customers differently by offering incentive items that are not offered to non-WIC customers. This is a violation of Federal WIC regulations, thereby constituting a retailer violation.

State agencies shall inform all WIC authorized retailers that offering incentive items solely to WIC participants is prohibited by Federal WIC regulations. Further, State agencies should review their current WIC Retailer Agreement to ensure it includes the provision of equitable treatment of WIC participants, and revise current as well as future WIC Retailer Agreement specifically, to ensure that incentive items are not offered solely to WIC participants by any WIC authorized retailer.

**WIC Sales  
Revenue**

The retailer must have a minimum of \$300.00 monthly in WIC sales revenue in order to remain in the WIC program. Any retailer who fails to maintain this monthly level may be removed from the program and cannot reapply for an authorization agreement for a period of one (1) year from the date of the agreement termination. Note: Pharmacies are exempt from this requirement.

**WIC Sales  
Inactivity**

Any retailer who fails to have any WIC sales activity for a period of sixty (60) days may be removed from the program. Any retailer removed from the WIC program due to WIC sales inactivity cannot reapply for an authorization agreement for a period of one (1) year from the date of the agreement termination. Note: Pharmacies are exempt from this requirement.

**Special Ordered  
Formula Pricing  
Limitations**

WIC authorized retailers and pharmacies are only allowed to mark up the special ordered formula no more than ten (10) percent over the retailer's wholesale price. In the event that the formula has special shipping costs an additional five (5) percent of the case price may be added to the case price of the special formula. The shipping price is then distributed evenly among the number of units ordered.

**Pharmacy Only  
Retailers**

Pharmacy Only retailers are authorized to provide special ordered non-contract formulas. They are not authorized to sell any other types of WIC food items or Primary Contract Formulas. The Primary Contract Formulas are the infant formulas, which Missouri has contracted with the formula manufacturer to provide to WIC participants. These Primary Contract Formulas are identified in Section VI of the WIC Retailer Manual and page 18 of the WIC Retailer Application Packet.

**Purchasing  
Formula**

Authorized retailers must obtain their infant formula from an approved source found on the WIC State Agency formula listing. This list is found on the WIC retailer website. This list includes authorized retailers, formula wholesalers, distributors and manufacturers. No other sources may be used to obtain infant formula.

**Sanitation**

The retailer must have and maintain a positive sanitation history as evaluated using the Department's current food establishment regulations (Missouri Food Code). A negative sanitation history includes, but is not limited to:

- Temporary closings due to unsanitary conditions.
- Documented non-compliance in correcting unsanitary conditions.
- Current or unmet work orders for corrective action.
- On the most current sanitation inspection, non-compliance with the current food establishment regulations in five (5) or more critical control points.
- During the WIC pre-contract on-site store inspection the following specific items are checked:
  - a. Floors are clean, in good repair, swept free of dirt, grime, filth, and/or excess rubbish.
  - b. Garbage or refuse within the store premises is stored (covered) so that it is inaccessible to insects and/or rodents.
  - c. No evidence of outdated milk, eggs, cheese, or infant formula.
  - d. No areas that may create an unsafe environment for customers.

**Exceptions**

The Department reserves the right to make exceptions to (waive) the selection criteria to address inadequate participant access. However, pricing and minimum WIC approved food stocking requirements are not waivable, per federal regulations.

## 2.4 WIC Retailer Agreement

**Overview** The WIC Retailer Agreement is between a named retailer and the State of Missouri, Department of Health and Senior Services (DHSS). The agreement authorizes a retailer’s participation in the Missouri WIC program under State and Federal regulations (USDA Regulations 7 CFR Part 246.12).

**Agreement Period** Agreements begin October 1<sup>st</sup> (the start of the Federal Fiscal Year). Unless otherwise notified by the Department, all agreements expire at midnight on September 30<sup>th</sup> (the end of the Federal Fiscal Year) of the agreement period. New retailers that join the program between these dates will be given an agreement for the remainder of the current agreement period.

**No retailer shall accept WIC checks for redemption prior to the date specified on the WIC Retailer Agreement, or after the expiration date of the WIC Retailer Agreement.**

**Agreement Category** The Agreement categories are based on the types of foods for which retailer is authorized to redeem WIC checks. The Department will determine the category of agreement offered to a retailer.

Category	Description
1	All WIC approved foods, Primary Contract Formulas and all special infant formulas. (Full Service Grocery Stores <b>with</b> Pharmacies)
2	All WIC approved foods, Primary Contract Formulas and the option of providing additional special infant formulas available through the retailer’s grocery wholesaler. (Full Service Grocery Stores <b>without</b> Pharmacies.)
3	Special Formula Only. This type of agreement is reserved for <b>Pharmacies Only</b> . <b>Note: Primary Contract Formulas are not allowed for redemption with this type of contract.</b>
4	This category identifies the headquarters for a group of stores of varying size, which are owned by a single entity (i.e., sole proprietorship, partnership, “S” corporations, limited liability company, regular corporation). Each store is evaluated separately with the selection criteria and assigned one of the agreement categories above.

**Agreement Category Change** The WIC Retailer Agreement specifies the agreement category of the store and it is not transferable. **Any change to the current agreement category makes the Agreement null and void. A new WIC Retailer Application must be submitted to the state WIC office at least sixty**

**(60) days in advance of the change.** This will allow adequate time to process the Agreement application due to the new agreement category.

**Store Name Change**

The WIC Retailer Agreement specifies the name of the store and is not transferable. **Any change of the store name makes the agreement null and void. This includes the addition of or removal of an owner, a change in the ownership/corporation name and a change of address for the ownership/corporation.**

**Store Location**

The WIC Retailer Agreement specifies the location of the store. All Missouri WIC authorized retailers must be stationary buildings, fixed in one location at all times. **Any change of the location of a store makes the Agreement null and void.**

**Change of Ownership**

A retailer must give sixty (60) days advance notice to the Department of ownership changes. This will allow adequate time to process the agreement application for the new owner. A new retailer number will be required. **Any change of store ownership makes the Agreement null and void.**

**Note: Authorized retailers need to be aware that their current WIC Retailer Agreement cannot be used as an enticement or incentive in order to sell their business. The volume of WIC sales is not guaranteed. WIC sales volume is dependent upon the stocking levels maintained by the store, their customer service and the desire of the participants to shop at that store. Additionally, WIC Retailer Agreements are not guaranteed to the new ownership.**

**New owners MUST meet ALL the selection criteria requirements in order to receive an agreement. The determination to issue a WIC Retailer Agreement to a retailer applicant will be made solely by the Department.**

**Chain Store**

**Chain stores are not automatically entitled to have all locations approved.** Each location must be evaluated against all selection criteria as if it were a single, independent entity and will be individually listed on the agreement attachment for the corporation agreement.

By signing the WIC Retailer Agreement, a retailer with stores in multiple locations has accepted responsibility for program operations of all participating locations, which are listed on an agreement Attachment B. Notwithstanding, all stores will be assessed, categorized and treated individually and not as one (1) unit.

Additions or deletions of individual store locations may be requested by retailers, shall be subject to the same review procedures as single location applicants, and shall be effective upon a signed agreement amendment by

the Department. The Department will determine termination or disqualification of individual stores, with a fifteen (15) day written notice, unless required to be immediate by the Federal Regulations.

**Expectations**

Before signing the WIC Retailer Agreement, the owner, operator, manager, or other person(s) authorized to sign the agreement should carefully read it.

**It is extremely important that retailers review the entire agreement and understand all expectations set forth by the Department before signing.**

The retailer must comply with the provisions of the agreement and must remain in compliance with all federal and state laws, statutes, policies, procedures, manuals, and regulations of the WIC program, including any changes made during the agreement period. Failure to do so will result in agreement termination. This agreement is not a license or property interest.

**Termination**

A WIC Retailer Agreement may be terminated by either party, for cause, by giving at least thirty (30) days advance notice to the other party.

**Ceasing Operations**

A retailer must give sixty (60) days advance written notice to the Department when ceasing operations.

**Renewal**

If the retailer wishes to continue to be authorized beyond the period of the current agreement, or if terminated or disqualified, the retailer must reapply for authorization. Neither the Department nor the retailer is under any obligation to renew a WIC Retailer Agreement. Expiration of the agreement is not subject to appeal.

**Retailer's Rights**

The retailer has the right of appeal when an application to participate is denied, when during the course of the agreement a retailer is terminated or disqualified, or when another adverse action, which affects the retailer's participation in the WIC program, is taken by the Department, with the following exceptions:

- The expiration of an agreement and the Department's determination regarding participant access shall not be subject to administrative review.
- Disqualification of a retailer as a result of disqualification from the Supplemental Nutrition Assistance Program shall not be subject to administrative or judicial review.

**Retailer Confidentiality**

Confidential retailer information is any information about a retailer (whether it is obtained from the retailer or another source) that individually identifies the retailer. Information that is not considered

confidential is retailer's name, address, telephone number, website, email address, store type and authorization status.

## **2.5 Appeals Process**

### **Appeals Process**

The state agency will use a uniform appeal process to evaluate and respond to all appeal requests from authorized retailers or applicants. The retailer or applicant has the right to appeal the following adverse actions:

1. Denial of authorization.
2. Termination for cause.
3. Disqualification.
4. Fines.
5. Imposition of a Civil Money Penalty (CMP) in lieu of disqualification.

### **Retailer Request Hearing**

The retailer or applicant must provide the state agency with a written request for a hearing within fifteen (15) days of the receipt of the notice of denial or adverse action. The written request shall describe the action being appealed.

In order to appeal a decision the following information must be contained within the appeal letter:

- Have the name and address of your business.
- Clearly identify the actions that are being appealed, the basis of the appeal, and the remedy sought.
- Have written information to support the appeal.
- Contain the date of the letter from MDHSS, which notified the institution of the action.
- State the name and title of the MDHSS official who signed the letter.
- Appeal letter must be signed by the authorized representative of the business and have the name and title of the person who signed the request, if other than the authorized representative.

The state agency will provide full administrative reviews for all denials of retailer applications and for imposed adverse actions. A retailer or applicant must fully comply with all appeal processes or forfeit appeal rights.

The retailer may submit a written request for an abbreviated administrative review when the state agency has terminated the WIC Retailer Agreement because of a change in the retailer ownership. The request must be received by the state agency within fifteen (15) days of the receipt of notice by the retailer.

**Retailer May Not Appeal**

The retailer or applicant does not have the right to appeal the following actions:

1. Expiration of the WIC Retailer Agreement.
2. Disqualification of a retailer as a result of disqualification from the Supplemental Nutrition Assistance Program.
3. Validity of the state agency's participant access criteria and determinations.
4. The state agency's determination of whether or not a retailer had an effective policy to prevent trafficking and the state agency's determination whether or not the ownership was not aware of, did not approve of, and was not involved in the violation.
5. Denial of authorization based on state procurement procedures.
6. Disputes regarding WIC check payments and retailer claims.
7. The validity and appropriateness of the State Agency's retailer limiting and selection criteria or retailer selection criteria for minimum variety and quantity of supplemental foods, business integrity and current SNAP disqualification or CMP for hardship
8. The State Agency's determination to notify a retailer in writing when an investigation reveals and initial violation for which a pattern of violations must be established in order to impose a sanction.
9. The State Agency's determination to include or exclude an formula manufacturer, wholesaler, distributor or retailer from their list of approved formula sources.
10. The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent retailer's request to provide an incentive item.
11. The validity or appropriateness of the State agency's selection criteria for competitive price, including, but not limited to, retailer peer group criteria and the criteria used to identify retailers that are above-50-percent retailers or comparable to above- 50-percent retailers.

**Written Notice**

The state agency shall provide a retailer with written notification of an adverse action at least fifteen (15) days prior to the effective date of the action. The written notice will include:

1. The cause or causes for the action.
2. The effective date of the action.
3. The right to appeal the adverse action.

When the state agency sends a notice of an adverse action as a result of a conviction for trafficking in food instruments, including selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, the effective date of the adverse action is the date the notice is received by the retailer.

The state agency may postpone, at its discretion, the effective date of an adverse action until the decision of a hearing is rendered. Appealing an adverse action does not relieve a retailer permitted to continue participating in the program while an appeal is pending from the obligation of continued compliance with the terms of all written agreements or contracts with the state agency.

### **Appeal Information**

The state agency will provide the retailer the following information pertinent to the appeal:

1. No less than ten (10) days advance notice of the time and place for the hearing.
2. The opportunity to reschedule the hearing one (1) time.
3. The opportunity to review all written case records prior to the hearing which relate to the denial of authorization or adverse action, within the limits of 7 CFR 246.26(e).
4. The opportunity to be represented by counsel if desired.
5. The opportunity to call witnesses.
6. The opportunity to confront and cross-examine adverse witnesses. When it is necessary to protect the identity of State agency staff or contractors, such examination shall be conducted behind a protective screen or other device.

The state agency will provide an impartial decision-maker who will preside over an administrative hearing and submit a written decision to the state agency. The decision will be based solely on whether the State agency has correctly applied federal and state statutes, regulations, rules, policies, and procedures governing the WIC program according to the evidence presented at the hearing.

### **Abbreviated Review**

For an abbreviated administrative review, a decision-maker will render a written decision based solely on whether the state agency has correctly applied federal and state statutes, regulations, rules, policies, and procedures governing the program according to the evidence presented at the hearing. The decision-maker will be someone other than the person who rendered the initial decision on the action.

1. Denial of authorization based on the retailer selection criteria for business integrity or for a current Supplemental Nutrition Assistance

- Program disqualification or civil money penalty for hardship (Sec. 246.12(g)(3)(ii) and (g)(3)(iii));
2. Denial of authorization based on a State agency-established retailer selection criterion if the basis of the denial is a WIC retailer sanction or a Supplemental Nutrition Assistance Program withdrawal of authorization or disqualification;
  3. Denial of authorization based on the State agency's retailer limiting criteria (Sec. 246.12(g)(2));
  4. Denial of authorization because a retailer submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under (Sec. 246.12(g)(8));
  5. Termination of an agreement because of a change in ownership or location or cessation of operations (Sec. 246.12(h)(3)(xvii));
  6. Disqualification based on a trafficking conviction (Sec. 246.12(l)(1)(i));
  7. Disqualification based on the imposition of a Supplemental Nutrition Assistance Program civil money penalty for hardship (Sec. 246.12(l)(2)(ii));
  8. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency (Sec. 246.12(l)(2)(iii));
  9. A civil money penalty imposed in lieu of disqualification based on a Supplemental Nutrition Assistance Program disqualification (Sec. 246.12(12)(l)(1)(vii)); and
  10. Denial of an application based on a determination of whether an applicant retailer is currently authorized by the Supplemental Nutrition Assistance Program.
  11. The application of the peer group criteria and above-50-percent status determinations, when the application of this criteria is the basis for adverse action (denial of authorization or termination of agreement for cause).

### **Final Decision**

The state agency will provide the retailer or applicant with a written notification of the final decision within ninety (90) days from the date of receipt of the retailer's or applicant's request for a hearing. The timeframe is only an administrative requirement for the state agency and does not provide a basis for overturning the state agency's adverse action if a decision is not made within the specified timeframe.

The state agency is not responsible for losses incurred by the retailer as a result of disqualification and/or denial of an application to participate. If

the administrative hearing results in a final decision adverse to the retailer, the appellant may seek judicial review of the decision to the extent authorized by law.

**Failure to Appeal** The retailer who fails to appeal or does not appeal within the fifteen (15) day period may not contest the subsequent sanctions taken by the Department.

## **2.6 Quarterly Food Price Survey**

**Policy** By signing the WIC Retailer Agreement, the retailer agrees to submit to the Department, on the appropriate form, current shelf prices for WIC approved foods quarterly or as requested. The retailer is responsible for completing the Quarterly Food Price Survey in its entirety and returning it to the Department or its designee within the timeframes given.

**Use** The information obtained from the Quarterly Food Price Survey is used to calculate statewide average prices, which in turn are used:

1. To determine each store's WIC food prices. Retailers that are found to be above the allowed variance from the peer group's average prices and/or the statewide average prices are notified. Retailers whose WIC food prices are more than the allowed variance of the peer group's average prices and/or statewide average prices and fail to reduce them to the acceptable level, are subject to agreement termination.
2. To set WIC maximum check price limits.
3. To compare to the retailer's charges/billings on WIC checks.
4. To determine appropriate billings during Department WIC check review.
5. To project program food expenditures for budgeting purposes.

The information is also used to determine the availability of a nutritionally qualified food being considered for Missouri WIC approval. This is why retailers may notice that not all of the foods on the Quarterly Food Price Survey are currently WIC approved. The retailer must not use the Quarterly Food Price Survey as a WIC approved food list.

## **2.7 Inadequate Participant Access**

**Overview** At the Department's discretion, a retailer may be authorized outside of the normal authorization process when a situation of inadequate participant access arises. This may include instances in which a previously authorized retailer sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership.

Participant access determinations shall be made by, and are solely at the discretion of, the Department.

If the Department determines that WIC program disqualification of a retailer due to Supplemental Nutrition Assistance Program (SNAP) disqualification would result in inadequate WIC program participant access to WIC foods, the Department will assess a Civil Money Penalty (CMP) in lieu of disqualification. A CMP will not be issued in lieu of disqualification for a third or subsequent sanction. This disqualification is not subject to administrative or judicial review under the WIC program.

Situations causing inadequate participant access may be the result of, but are not limited to:

- The disqualification of an authorized retailer.
- Change of ownership or location of an authorized retailer.
- Disaster or other cause for the loss of, or access to, an authorized retailer.

In urban areas, where public transportation is available, participant access may be considered inadequate if any of the following conditions apply:

- A retailer density of less than one (1) per 500 participants.
- Participants must travel more than one (1) mile to a retailer.
- Other conditions exist which makes a retailer within one (1) mile difficult for participants to access.

In rural areas (non-class one (1) counties), participant access may be considered inadequate if any of the following conditions apply:

- There are less than two (2) authorized retailers in the county.
- Participants must travel more than fifteen (15) miles to a retailer.
- Other conditions exist which makes a retailer within fifteen (15) miles difficult for participants to access.

The Department may declare a situation of inadequate participant access to:

- Accommodate special populations (e.g., migrant workers and their families).
- Respond to sudden or unexpected population changes to meet the public health mission of the Department and the WIC program.

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End of Section II: Retailer Authorization