

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	11/03/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 12/23/2016**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 54 03 03, .04, .07-.11, .13-.16, .18 and .19

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator**

Michele Phinney

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410-767-5623

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**5. Name of Person to Call About this Document**

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**6. Check applicable items:**

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: July 14, 2016.

- Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes - No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Claire Pierson, Assistant Attorney General, (telephone #410-767-6526) on November 2, 2016. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Van T. Mitchell

**Title**

Secretary

**Telephone No.**

410-767-6500

**Date**

November 3, 2016

**Title 10**  
**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
**Subtitle 54 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR**  
**WOMEN, INFANTS, AND CHILDREN (WIC)**

**10.54.03 Retail Food and Pharmacy Vendors**

Authority: Health-General Article, §§2-104(b), 18-107(a), and 18-108, Annotated Code of Maryland

**Notice of Proposed Action**

[]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .03, .04, .07—.11, .14—.16, .18 and .19 and to repeal in its entirety Regulation .13 and adopt new Regulation .13 under COMAR 10.54.03 Retail Food and Pharmacy Vendors.

**Statement of Purpose**

The purpose of this action is to :

- (1) Refine and clarify requirements and practices for vendors authorized by the Maryland WIC program including updates to definitions and vendor application, authorization, and disqualification processes;
- (2) Limit authorization of “pharmacy only” vendors to areas where not authorizing these vendors would create a participant hardship;
- (3) Remove the WIC-authorized foods list from regulations; and
- (4) Amend certain amounts of minimum required stock.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

Reducing the number of “pharmacy only” vendors in the WIC program will help the Maryland WIC program meet USDA food cost containment requirements. The cost of infant formula sold at “pharmacy only” vendors is significant and special formulas are not always available. WIC has negotiated a lower cost with the Community Action Program of Lancaster County, PA (CAP-Lancaster). CAP-Lancaster’s retail markup is approximately two-thirds that of “pharmacy only” vendors. Maryland WIC participants can obtain formula from CAP-Lancaster directly, either by picking it up at the local WIC office or by having it delivered to their residence. If participants choose, they can instead use WIC instruments for formula at an authorized food store/pharmacy combination vendor (such as Safeway or Giant) or a pharmacy only vendor. However, if vendors cannot obtain the prescribed formula through their distributors, participants are referred back to the CAP-Lancaster program to obtain the formula. Any savings realized by

participants using CAP-Lancaster for formula are required to be returned to the USDA at the end of the grant year.

One independently-owned pharmacy and 24 CVS Pharmacy chain stores will be impacted by this change. Combined, these vendors make up only 2.25 percent, or \$13,865.58, of the total special formula sales redeemed by the WIC program.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$13,865.58
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

D. The vendors affected by the amendments include 24 stores in the CVS Pharmacy chain and one independently-owned pharmacy. The cost to these vendors is based on the total annual amount of instruments redeemed for special formula sales by these 25 vendors, which they will no longer be able to redeem as a result of changes to these regulations.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to

dhmmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through January 23, 2017. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2017

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Amendments in this proposal will result in fewer vendors being authorized as “pharmacy only” vendors. “Pharmacy only” vendors are not full service WIC vendors that redeem WIC instruments for all authorized foods, rather they can only accept WIC checks for special formula. There is only one independent pharmacy that will no longer be authorized under these new requirements. This pharmacy redeems less than 0.025 percent of WIC’s total sales of special infant formula. Therefore, the impact of this proposal on small businesses is minimal.

G. Small Business Worksheet:

Attached Document:

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## **Title 10**

# **DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 54 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)**

### **10.54.03 Retail Food and Pharmacy Vendors**

Authority: Health-General Article, §§2-104(b), 18-107(a), and 18-108, Annotated Code of Maryland

*10.54.03.03 (July 14, 2016)*

**.03 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
- (1) (text unchanged)
- [(2)] (2) "Authorization" means approval by the State agency for a food store, pharmacy, food store/pharmacy combination, or a military commissary to redeem WIC food instruments.]
- (2) "Accounting records" means:
- (a) Legible records that show actual numbers of eligible food sales from the vendor and not an estimated number or percentage of eligible food sales; and
- (b) Actual WIC sales for each individual day.
- (3) "Authorization" means approval by the State agency for a food store, pharmacy only, food store/pharmacy combination, or a military commissary to redeem WIC food instruments as a vendor.
- [(3)] (4)—[(9)] (10) (text unchanged)
- [(10)] (11) "Food instrument" means a voucher, check, coupon, electronic benefits [transfer] issuance card [(EBT)] (eWIC), or other document that is used to obtain supplemental foods.
- [(11)] (12) "Food instrument type" means a food instrument designation based on the type and amount of WIC food items specified on the food instrument.]
- (12) (text unchanged)
- (13) "Food sales" means sales of all SNAP eligible foods intended for home preparation and consumption, as set forth in [7 C.F.R. §246.2] 7 CFR §246.2.
- (14)—(16) (text unchanged)
- (17) "Inventory audit" means an audit conducted over a specific period of time in order to determine whether a vendor's claimed reimbursement for the sale of an amount of a specific food item exceeds the vendor's documented inventory of that item.
- (18) "Inventory invoices" mean sales receipts for WIC food purchased by the vendor for resale by the vendor, from a supplier which can be a wholesaler, distributor, manufacturer, or other retailer.
- [(17)] (19)—[(19)] (21) (text unchanged)
- (22) "Monitoring" means assessing vendor compliance with program requirements.
- [(20-1)] (23)—[(23)] (26) (text unchanged)
- [(24)] (27) Peer Group. "Peer group" means a breakdown of stores by size within regions as follows:
- (a) (text unchanged)
- (b) Peer group 2, region 1, medium stores, [4 — 7] 4—7 check-out lanes;
- (c) Peer group 3, region 1, small stores, [1 — 3] 1—3 check-out lanes;
- (d) (text unchanged)
- (e) Peer group 5, region 2, medium stores, [4 — 7] 4—7 check-out lanes;
- (f) Peer group 6, region 2, small stores, [1 — 3] 1—3 check-out lanes;
- (g) (text unchanged)
- (h) Peer group 8, region 3, medium stores, [4 — 7] 4—7 check-out lanes;
- (i) Peer group 9, region 3, small stores, [1 — 3] 1—3 check-out lanes;
- (j) (text unchanged)
- (k) Peer group 11, region 4, medium stores, [4 — 7] 4—7 check-out lanes;
- (l) Peer group 12, region 4, small stores, [1 — 3] 1—3 check-out lanes;
- (m) (text unchanged)
- (n) Peer group 14, region 5, medium stores, [4 — 7] 4—7 check-out lanes;
- (o) Peer group 15, region 5, small stores, [1 — 3] 1—3 check-out lanes;
- (p) (text unchanged)
- (q) Peer group 17, region 6, medium stores, [4 — 7] 4—7 check-out lanes;
- (r) Peer group 18, region 6, small stores, [1 — 3] 1—3 check-out lanes; and
- (s) (text unchanged)
- [(25)] (28) (text unchanged)
- [(26)] (29) "Pharmacy only" means an establishment that:
- (a) Has been issued a permit to operate by the State Board of Pharmacy [and];
- (b) Does not have a food store under the same ownership on its premises; and
- (c) Once authorized, can only accept WIC food instruments that prescribe infant formula and WIC eligible medical foods.
- [(27)] (30)—[(29)] (32) (text unchanged)
- [(30)] (33) "Region" means a designated area of the State, as set forth in [§B(31)—(36)] §B(34)—(39) of this regulation, for administration of the WIC Program including vendor selection and peer group designation.
- [(31)] (34)—[(39)] (42) (text unchanged)
- [(40)] (43) (text unchanged)
- [(41)] (44)—[(47)] (51) (text unchanged)
- (52) "WIC-authorized foods list" means a list of foods authorized by the Maryland WIC program for purchase by Maryland WIC participants.

[49] (53) (text unchanged)

#### 10.54.03.04

##### **.04 Authorization Requirements.**

A.—B. (text unchanged)

C. In order to receive authorization from the State agency, a vendor shall:

(1) Submit a completed vendor application to the State agency [;] *that includes:*

(a) *Two signed vendor agreements; and*

(b) *A signed vendor tax release form;*

(2)—(6) (text unchanged)

[(7) Successfully complete an on-site review pursuant to Regulation .08 of this chapter;

(8) Be accessible to persons with disabilities;

(9) Upon receipt of the vendor agreement from the State agency, which will be sent to the vendor applicant when it is in compliance with the other provisions of this regulation:

(a) Complete and sign the vendor agreement; and

(b) Submit the vendor agreement to the State agency; and]

(7) *Be accessible to persons with disabilities;*

(8) *Successfully complete an on-site review pursuant to Regulation .08 of this chapter; and*

[(10)] (9) (text unchanged)

D. (text unchanged)

E. [In order to receive authorization from the State agency as a pharmacy vendor only, a pharmacy shall] *Pursuant to Regulation .19 of this chapter, if the State agency determines that a participant hardship exists, where access to special infant formula and WIC eligible medical foods are not available through a food/pharmacy combination store, the State agency, at its sole discretion, may authorize a pharmacy only vendor that shall:*

(1) Adhere to the requirements set forth in [§C(1), (3), (5)—(6), and (8)—(10)] *§C(1), (3), (5)—(7), and (9) of this regulation;*

(2) (text unchanged)

(3) *Only accept WIC food instruments prescribing infant formula and WIC eligible medical foods.*

F. Except for a pharmacy *only* or military commissary, a vendor applicant shall have actual highest current shelf prices that are less than or equal to 125 percent of the peer group average in the vendor applicant's region during the month of application, as determined by the State agency for each of the food packages set forth in Regulation .06A of this chapter.

G.—K. (text unchanged)

#### 10.54.03.07

##### **.07 Vendor Application Packet and Dates.**

A. (text unchanged)

B. The application packet shall consist of the following:

(1)—(2) (text unchanged)

(3) The [authorized foods list] *WIC-authorized foods list;*

(4) (text unchanged)

(5) Instructions for completing the application *for vendor authorization;* [and]

[(6) An application form.]

(6) *An application for vendor authorization;*

(7) *The vendor tax release form; and*

(8) *Two vendor agreements.*

C. A vendor applicant denied authorization three times in [a calendar year] *a 12 month period* may not reapply until [1 year] after [the last denial date] *12 months have passed since the last denial date.*

#### 10.54.03.08

##### **.08 On-Site Review of Vendor Applicants.**

A. (text unchanged)

B. Except as provided in §A of this regulation, the State agency shall conduct an unscheduled on-site review of a vendor applicant's store within 60 days of receipt of an application to ensure that the store meets the requirements for authorization as set forth in Regulation [.04C and D] *.04C(1)—(7) and D* of this chapter.

#### 10.54.03.09

##### **.09 Grant, Retention, and Denial of Authorization.**

A.—B. (text unchanged)

C. Authorization Retained. A vendor retains its authorization until the:

(1) Vendor's authorization is [suspended] *terminated* as a sanction for a Program violation in accordance with this chapter;

(2)—(5) (text unchanged)

D.—E. (text unchanged)

#### 10.54.03.10

##### **.10 Food Package Prices After Authorization.**

A. After authorization, a vendor, other than a pharmacy *only* or military commissary, shall maintain prices for each of the food packages set forth in Regulation .06A of this chapter that are less than or equal to 125 percent of the peer group average for each food package.

B. (text unchanged)

C. The State agency shall notify a vendor, other than a pharmacy *only* or a military commissary, that fails to submit its prices on the vendor price list form or through the State agency's online submission system when requested to do so that, if the price list form or online price submission is not received by the Program within 10 business days of the State agency's request, the vendor's authorization shall be [suspended] *disqualified* for [1 year] *12 months from the date of disqualification*.

D. If a vendor, other than a [pharmacy or a] military commissary, submits prices on the vendor price list form that make its food package price more than 125 percent of the peer group average for that food package, or the food package prices are determined by the WIC Management Information System calculation to exceed 125 percent of the peer group average, the State agency shall notify the vendor that:

(1) (text unchanged)

(2) It [may] *shall* lower its actual highest shelf prices for the WIC foods [or] *and* resubmit the vendor price list form or online price submission to the State agency within 10 days following the notification; and

(3) If the vendor's resubmitted prices indicate that a food package will cost the Program more than 125 percent of the peer group average for that food package, the State agency may disqualify the vendor for [1 year] *12 months from the date of disqualification*.

E. If, at any time, a vendor, other than a [pharmacy or a] military commissary, has actual highest shelf prices that make any food package price more than 125 percent of the peer group average, the State agency shall notify the vendor that:

(1) The vendor [may] *shall* lower its actual highest shelf prices for the WIC foods within 10 days; and

(2) If the vendor's prices remain so that a food package will cost the Program more than 125 percent of the peer group average, the [State agency] *vendor's authorization* shall [disqualify the vendor] *be disqualified* for [1 year] *12 months from the date of disqualification*.

F. If, in 2 consecutive reporting months, a vendor, other than a pharmacy *only* [store] or a military commissary, is determined by the WIC Management Information System calculation to have food package prices that exceed 125 percent of the peer group average, the [State agency may disqualify the vendor] *vendor's authorization shall be disqualified* for [1 year] *12 months from the date of disqualification*.

G. The State agency may request that a vendor, other than a pharmacy *only* or a military commissary, submit semi-annual price lists at the State agency's sole discretion and may use these price lists and the WIC Management Information System for calculation of excess charges if it is determined that excess charges have occurred.

H.—I. (text unchanged)

J. For the purpose of cost containment, the State agency:

(1) Shall use [only use] the methodology provided by the U.S. Department of Agriculture, Food Nutrition Service to ascertain whether or not the vendor derives more than 50 percent of the vendor's eligible food sales revenue from the redemption of WIC food instruments; and

(2) (text unchanged)

#### 10.54.03.11

##### **.11 Maximum Reimbursement to Vendors.**

A. Food Store, Food Store/Pharmacy Combination, and Pharmacy *Only* Vendors. The State agency shall establish a maximum price payable for each food instrument, which shall be calculated as follows:

(1)—(3) (text unchanged)

B.—C. (text unchanged)

#### 10.54.03.13

##### **.13 WIC-Authorized Foods.**

A. The State agency shall:

(1) *Maintain the WIC-authorized foods list; and*

(2) *Make the list available to all participants and authorized WIC vendors.*

B. A vendor shall keep a copy of the Program's current WIC-authorized foods list at:

(1) *Each cash register where WIC transactions are handled; and*

(2) Onsite at the authorized vendor location along with the vendor manual.

C. The WIC-authorized foods list shall be used in conjunction with the WIC food instrument to identify foods items that are eligible for purchase using WIC food instruments.

D. Food instruments may require that program participants purchase specific manufacturers or brands that are not included in the WIC-authorized foods list.

E. Authorized vendors shall sell WIC-designated brands for food categories identified in the WIC-authorized foods list.

10.54.03.14

**.14 Minimum Required Stock.**

A. A food store or food store/pharmacy combination vendor shall maintain in the store during regular business hours the following minimum stock:

(1) Fluid milk:

- (a) (text unchanged)
- (b) 10 gallons 1-percent or [10 gallons] fat-free;

(2) (text unchanged)

(3) Domestic cheese:

- (a)—(b) (text unchanged)
- (c) 8 or 16-ounce packages only; and
- (d) (text unchanged)

(4) (text unchanged)

(5) Frozen concentrate 100-percent juice:

- [(a) Two brands;]
- [(b)] (a) (text unchanged)
- [(c) Nine 11.5-ounce to 12-ounce]
- (b) Six 11.5—12-ounce cans;

(6) Thirty-two total infant fruits *and vegetables*:

- (a) Two varieties *of each*;
- (b) 16 [3.5-ounce to] 4-ounce containers *of each*; and
- (c) Plain [or], a combination of [fruit ingredients] *fruits, a combination of vegetables, or a combination of*

*fruits and vegetables*;

[(7) Infant vegetables:

- (a) Two varieties;
- (b) 16 3.5-ounce to 4-ounce containers; and
- (c) Plain or, a combination of vegetable ingredients;]

[(8)] (7) Infant [meat] *meats*:

- (a)—(b) (text unchanged)

[(9)] (8) Dry cereal:

- (a) Corn, wheat, oats, or rice:
  - (i) Six 12-ounce or larger boxes; and
  - (ii) Two varieties; [and]
- (b) Whole grain wheat or oats:
  - (i) Six 12-ounce or larger boxes; and
  - (ii) (text unchanged)
- (c) At least one hot cereal *in an 11.8-ounce container or larger*;

[(10) Six 8-ounce or 16-ounce boxes dry infant cereal as specified by the WIC infant cereal rebate contract:]

(9) *Infant cereal*:

- (a) Six 8-ounce or 16-ounce containers dry;
- [(a)] (b)—[(b)] (c) (text unchanged)

[(11)] (10) Peanut butter:

- (a) (text unchanged)
- (b) Six [16-ounce to 18-ounce] 16—18-ounce containers;

[(12)] (11) [Dry and water-packed canned beans] *Beans*:

- (a) (text unchanged)
- (b) 12 [15-ounce to 16-ounce] 15—16-ounce packed in water cans in three varieties;

[(13) 30 ounces, two varieties canned tuna, salmon, and sardines packed in water:

- (a) Chunk light tuna in 5-ounce to 6-ounce cans;
- (b) Pink salmon in 5-ounce to 7.5-ounce cans; or
- (c) Sardines in 3.75-ounce cans;

(14) Vegetables and fruits in two varieties and a total value of \$32:

- (a) Fresh, whole or cut;
- (b) Frozen or canned; and

- (c) Loose or pre-packaged;
- (15) 100-percent whole grain bread and rolls, brown rice, soft corn tortillas, or whole wheat tortillas in two varieties and a total of 4 pounds:
  - (a) 15-ounce to 16-ounce packages for rolls;
  - (b) 16-ounce packages for bread;
  - (c) 16-ounce packages for tortillas; and
  - (d) 16-ounce packages for brown rice; and]
- (12) *Canned fish:*
  - (a) *30-ounces total and packed in water; and*
  - (b) *Two varieties of:*
    - (i) *Canned chunk light tuna in 5—6-ounce cans;*
    - (ii) *Pink salmon in 5—7.5-ounce cans; and*
    - (iii) *Sardines in 3.75-ounce cans;*
- (13) *Fruits and vegetables:*
  - (a) *A total value of \$32;*
  - (b) *Two varieties of fruits, fresh, whole or cut, loose or prepackaged, frozen or canned; and*
  - (c) *Two varieties of vegetables, fresh, whole or cut, loose or prepackaged, frozen or canned;*
- (14) *Bread, rolls, tortillas, and rice in two varieties and a total of 4 pounds:*
  - (a) *100 percent whole grain or whole wheat bread, 16-ounce packages;*
  - (b) *100 percent whole grain or whole wheat rolls, 15—16-ounce packages;*
  - (c) *Dry, plain brown rice, 16-ounce packages; or*
  - (d) *Soft corn or whole wheat tortillas, 16-ounce packages; and*
- [(16)] (15) *Infant formula:*
  - (a) [16] *17 13-ounce [cans, or cans] containers, or containers of [current can] the currently authorized size, of liquid concentrate infant formula [containing DHA/RHA] as specified by the WIC infant formula rebate contract;*
  - (b) [24] *27 12.4-ounce [cans, or cans] containers, or containers of [current can] the currently authorized size, of powdered infant formula [containing DHA/RHA] as specified by the WIC infant formula rebate contract;*
  - (c) [18 13-ounce cans, or cans] *19 12.1-ounce containers, or containers of [current can] the currently authorized size, of soy-based liquid concentrate infant formula [containing DHA/RHA] as specified by the WIC infant formula rebate contract; and*
  - (d) [Six] *10 12.9-ounce [cans, or cans] containers, or containers of [current can] the currently authorized size, of soy-based powdered infant formula [containing DHA/RHA] as specified by the WIC infant formula rebate contract.*

B. A pharmacy *only* or food store/pharmacy combination vendor shall provide special formulas, *or WIC eligible medical foods* within 48 hours, excluding weekends and holidays, for a request by a participant or the Program.

10.54.03.15

**.15 Required Vendor Practices.**

- A. The State agency or its representative shall conduct [monitoring and] *inventory audits*, compliance buys, *and monitoring* to ensure that authorized vendors comply with required vendor practices.
- B. General Requirements.
  - (1) A vendor shall:
    - (a)—(c) (text unchanged)
    - (d) Display a current food service facility license, issued by the local health department or department of environment, *or if a pharmacy only or a food store/pharmacy combination, a pharmacy permit* issued by the State Board of Pharmacy, in a location visible to Program representatives;
    - (e)—(h) (text unchanged)
      - [(i) Accept training from the WIC Program as required by the Program;]
      - (i) *Attend a WIC training that has been required by the Program for a vendor with a high rate of:*
        - (i) *Errors;*
        - (ii) *Rejected checks;*
        - (iii) *Complaints; or*
        - (iv) *Other minor violations;*
    - (j) (text unchanged)
    - (k) If a pharmacy *only* or a food store/pharmacy combination [store]:
      - (i) Provide special formulas *and WIC eligible medical foods* within 48 hours of a request by a participant or the Program;
      - (ii) (text unchanged)
      - (iii) If a pharmacy *only* vendor, only accept food instruments prescribing infant formula *and WIC eligible medical foods*;
      - (l) Maintain accounting records *that are* relevant to the vendor's performance under the vendor agreement for 3 years, for review at reasonable times by State agency representatives or other authorized State or federal officials[.];
      - (m)—(p) (text unchanged)

(q) For the food packages set forth in Regulation .06A of this chapter, maintain prices that are less than or equal to 125 percent of the peer group average as determined by the WIC Management Information System calculation for each food package; [and]

(r) Have a representative attend and participate in at least one State or local agency interactive training session each calendar year, if the State agency:

(i) Gives the vendor 14 days notice of a scheduled training session[.]; and

(ii) Holds the training session in the vendor's region[.]; and

(s) *If more than 30 days are needed to reopen the vendor's business, reapply for authorization and be approved as a WIC vendor in order to obtain authorization to operate as a WIC Vendor.*

(2) A vendor may not:

(a)—(c) (text unchanged)

(d) Except for a pharmacy *only* or military commissary, redeem less than 25 food instruments in a consecutive [3-] 3 month period;

(e)—(h) (text unchanged)

(3) (text unchanged)

(4) *Accounting Records. Accounting records shall include, but are not limited to:*

(a) *Sales and use tax returns;*

(b) *U.S. individual or business tax returns;*

(c) *Daily sales journals or daily ledgers;*

(d) *Sales receipts or register tape;*

(e) *Inventory invoices; and*

(f) *A breakdown of sales between SNAP eligible foods and non-eligible foods.*

(5) *Inventory Invoices.*

(a) *Inventory invoices shall include the:*

(i) *Name and address of the supplier;*

(ii) *Date of purchase;*

(iii) *Description of the exact items purchased, including size, stock number, and UPC code if available;*

(iv) *Unit price of the items;*

(v) *Total quantity purchased; and*

(vi) *If inventory invoices do not completely describe the actual item, verifiable computer codes for the item.*

(b) *Inventory invoices for infant formula shall only be accepted from those wholesalers, distributors, and retailers listed on Maryland's Infant Formula Directory.*

C. Transactional Requirements.

(1) A vendor shall:

(a)—(e) (text unchanged)

(f) At the time of purchase, give a participant a receipt indicating the store *name*, date of *transaction*, and total dollar amount for items purchased with a food instrument and that the sale was a WIC transaction;

(g)—(n) (text unchanged)

(o) Obtain infant formula from only the following manufacturer, distributor, wholesaler, and retailer sources:

(i) (text unchanged)

[(ii) Associated Wholesalers, Inc.;

(iii) AWI;]

[(iv)] (ii) (text unchanged)

[(v)] (iii) [Bill's] Bell's Wholesale Grocery, Inc.;

[(vi)] (iv)—[(vii)] (v) (text unchanged)

[(viii)] (vi) [C&S] C & S Wholesale Grocers;

[(ix) Cho Wholesaler, Inc.;

(vii) Delhaize;

[(x) Economy Wholesale Co.;

(xi) Food Lion Distribution;

(xii) George J. Falter;]

[(xiii)] (viii) (text unchanged)

(ix) Lancaster Distribution Center;

[(xiv) Maryland Cash & Carry;]

(x) McKesson Corporation;

[(xv)] (xi) (text unchanged)

[(xvi)] (xii) Moran Foods, Inc./Save-a-Lot Distribution Center;

[(xvii)] (xiii)—[(xviii)] (xiv) (text unchanged)

(xv) Nutricia North America;

[(xix) PBM Nutritionals]

(xvi) Rite Aid Corporation;

(xvii) Solus Products, LLC;

[(xx)] (xviii) (text unchanged)

(xix) *Toys R Us, Inc.*

[(xxi) Any other lawful wholesaler, distributor, manufacturer, or retail source of infant formula, provided that the WIC vendor notifies the Program that the vendor is using the source to obtain infant formula.]

(2)—(4) (text unchanged)

D. Post-Transactional Requirements.

(1) A vendor shall:

(a)—(d) (text unchanged)

(e) In the case of a food instrument not paid by the bank used by the Program, seek reimbursement from the State agency only; [and]

(f) Reimburse the Program for the loss sustained by the Program due to theft, fraud, or improper handling of food instruments by vendor personnel or agents; *and*

(g) *Surrender improperly handled food instruments to WIC representatives upon request.*

(2) A vendor may not:

(a) (text unchanged)

(b) Permit the return of food purchased with a food instrument in exchange for cash or another item; [or]

(c) Claim reimbursement for the sale of an amount of a specific food item that exceeds the vendor's documented inventory of that item for a specific period of time; *or*

(d) *Claim reimbursement for vendor bank fees.*

(3) (text unchanged)

10.54.03.16

#### **.16 Vendor Sanctions.**

A. The Program may sanction a vendor that fails to comply with a required practice in Regulation .15B(1)(a)—(k) and (q), (2)(b) and (f)—(h), C(1)(a)—(g) and (h)—(n), (2)(a)—(c) and (e)—(f), (3), and D(1)(a)—(b) and (e), and (2)(a) of this chapter as follows:

(1) (text unchanged)

(2) Disqualification for 1 year for a pattern of violations of the same provisions within a [1-year] *12 month* period; and

(3) Disqualification for 1 year for a combination of six violations within a [1-year] *12 month* period.

B.—E. (text unchanged)

F. The Program shall sanction a vendor that fails to comply with a required practice in Regulation .15B(2)(a), C(2)(d) and (g), and D(1)(c)—(d) and (2)(c) of this chapter by:

(1) A written warning if one violation is detected in any [6-month] *12 month* period; or

(2) Disqualifying the vendor for 3 years for two or more violations in any [6-month] *12 month* period.

G. (text unchanged)

H. [The Program shall:] *Disqualification.*

(1) [Disqualify] *Except in circumstances described in §H(2) of this regulation, the Program shall disqualify a vendor that has been disqualified [or assessed a money penalty by the SNAP in violation of Regulation .15B(1)(m) of this chapter for the same length of time as the SNAP disqualification; or] by SNAP in violation of Regulation .15B(1)(m) of this chapter for the same length of time as the SNAP disqualification.*

(2) If [the State agency determines that disqualification would result in inadequate participant access, impose a civil money penalty under the formula set forth in 7 CFR §246.12(1)(1)(x)] *disqualification of the vendor will result in inadequate participant access in accordance with Regulation .19 of this chapter, the State agency shall impose a civil money penalty in lieu of disqualification.*

(3) *Except in circumstances described in §H(4) of this regulation, the Program shall disqualify a vendor that has been assessed a civil money penalty for hardship by SNAP instead of disqualification by SNAP in violation of Regulation .15B(1)(m) of this chapter, for the same period for which the vendor would otherwise have been disqualified by SNAP.*

(4) *If disqualification of a vendor that has been assessed a civil money penalty for hardship by SNAP instead of disqualification by SNAP would result in inadequate participant access in accordance with Regulation .19 of this chapter, the Department may not:*

(a) *Disqualify the vendor; or*

(b) *Impose a civil money penalty in lieu of disqualification.*

I.—J. (text unchanged)

K. The State agency shall notify the USDA of a disqualification or money penalty:

(1)—(2) (text unchanged)

L.—P. (text unchanged)

10.54.03.18

#### **.18 Vendor Appeals.**

A.—B. (text unchanged)

C. Request for Hearing.

(1) A vendor or vendor applicant shall preserve the right to a hearing, if a hearing is desired, by filing a written request for a hearing with the Director of the Program within 10 days of the receipt of the notice of proposed [suspension] *disqualification* or denial.

(2) (text unchanged)

D. (text unchanged)

E. A vendor may not appeal the following actions:

(1)—(4) (text unchanged)

(5) The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an [above-50-percent] *above 50 percent* vendor's request to provide an incentive item;

(6) (text unchanged)

(7) The validity or appropriateness of the State agency's vendor peer group criteria and the criteria used to identify vendors that are [above-50-percent] *above 50 percent* vendors or comparable to [above-50-percent] *above 50 percent* vendors;

(8)—(10) (text unchanged)

*10.54.03.19*

**.19 Participant Hardship.**

A. Except for the sanction prescribed in Regulation .16E of this chapter, the State agency may determine that a participant hardship would exist if a vendor is disqualified and one of the following conditions would result:

(1)—(2) (text unchanged)

(3) Ten or more participants can only be served properly by a particular vendor because of a language barrier [or], religious dietary needs, *access to exempt infant formula*, or *access to WIC eligible medical foods*.

B.—G. (text unchanged)

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**