

Vendor #: _____

Class Type: _____

Region: _____

KENTUCKY WIC VENDOR AGREEMENT

THIS AGREEMENT made and entered into this date, _____, by and between the Kentucky WIC Program and:

(Health Department Label Here)

hereinafter referred to as the First Party

(Store Name & Address Label Here)

hereinafter referred to as the Second Party

WHEREAS, the First Party, in the exercise of its lawful duties, has determined upon the necessity of the performance of the following described service, to wit: In relation to the First Party (Special Supplemental Nutrition Program for Women, Infants and Children) to provide food to pregnant, breastfeeding and postpartum women and infants and children (1 to 5 years of age) as authorized on WIC benefits issued by the First Party and;

WHEREAS, the Second Party is available and would be qualified to perform such function, the period within the current State Fiscal Year during which this Agreement is in effect is from, October 1, 2016, through June 30, 2017, provided, however, that this Agreement shall be automatically extended for the period July 1, 2017, through September 30, 2017, unless the Kentucky WIC Program notifies the Vendor, in writing, to the contrary thirty (30) days prior to July 1, 2017.

NOW, THEREFORE, it is hereby and herewith mutually agreed by and between the parties hereto as follows:

1. The Second Party agrees:
 - a) To comply with applicable Federal and State policies, procedures and regulations relating to the WIC Program;
 - b) To continue to meet the criteria to be a WIC vendor as defined in Administrative Regulation 902 KAR 18:050 (Attachment D);
 - c) To stock sufficient quantities of the approved food items at all times as specified in Attachments A and C to this Agreement . **(This does not apply to drug stores);**
 - d) To honor the Approved Foods List as the final authority in identifying WIC approved foods;

- e) To supply only exempt formula or WIC Eligible Nutritionals requested by the First Party within forty-eight (48) hours of the verbal request as listed on Attachment A. Drug Stores are authorized for the sole purpose of providing special formulas (**Applies to Drug Stores or Drug Stores within a retailer only**);
- f) To verify with the First Party any food instrument, which appears to have been altered, defaced or mutilated before dispensing the food items;
- g) To accept WIC food instruments issued by any authorized Kentucky WIC Agency;
- h) To dispense or charge for only approved food items in the quantities and sizes which have been prescribed and are specified on the food instrument to authorized participants, parents or caretakers of infant or child participants or proxies upon presentation of an authorized food instrument;
- i) To correctly identify KY WIC approved foods using only shelf tags approved or provided by the First Party;
- j) To not substitute any foods or allow more than the amount of food specified on food instrument;
- k) To dispense to the participant only the lowest priced brand, type, and size of milk or cheese selected at the time of purchase;
- l) To honor food instruments only within the valid period specified on the food instrument (the period beginning with the "first day to use" and ending with the "last day to use" dates);
- m) To not physically or verbally threaten or abuse agents of the First Party;
- n) To report any price increases to First Party within specified time period of monitoring visit;
- o) To dispense WIC food items to participants, parents or caretakers of an infant or child participants or proxies without requiring other purchases and according such persons the same services given to other store customers;
- p) To not solicit a participant's business or that of a parent, caretaker, or a proxy on the premises of any health department or other authorized WIC agency;
- q) To not provide free merchandise, including but not limited to: diapers, strollers, lottery tickets, etc., to a participant, parent, caretaker or proxy as an incentive to redeem food instruments;
- r) To not provide refunds or permit exchanges for WIC food items. In the event that a WIC food item is defective, spoiled or has exceeded its sell by/use date, etc., an exchange may be made only for the exact brand and size as the original food item returned by the participant;
- s) To not redeem WIC food instruments in whole or in part for cash, unauthorized foods, other items of value, as a credit for past accounts or otherwise violate the WIC Program policies, procedures and regulations;
- t) To allow WIC participants to use store loyalty cards, cents off coupons, buy one get one free promotions and to afford WIC participants the same discounts and benefits as other customers. The total amount of the purchase must reflect the amount of discount/cents off;
- u) To accept and redeem WIC food instruments only within the confines of the store, more specifically within the four (4) walls of the building. Drive up window transactions and home deliveries are prohibited;
- v) To not issue non-food items, due bills, IOU's, rain checks, cash, credit or similar types of instruments in exchange for WIC food instruments;
- w) To not charge the First Party for foods not obtained by the participant, parent, caretaker or proxy;

- x) To not charge for food not authorized on the food instrument;
- y) To scan or manually enter the actual UPC code that is affixed to the item actually being purchased by the WIC participant.
- z) To not scan any UPC code that is not affixed to the actual item being purchased by the WIC participant, or any UPC code as a substitute or replacement.
- aa) To not seek restitution from participants, parents or caretakers of infant or child participants or proxies for WIC benefits which are partially paid or rejected for payment;
- bb) To have prices competitive with the Second Party's peer group. In no event shall the price of a WIC food item exceed the not-to-exceed (NTE) (peer group's average plus two standard deviations), which is applied to every transaction;
- cc) To make available to the First Party all appropriate documents and records pertaining to the WIC Program, including food sales, gross sales, non-taxable food sales, sales and usage tax forms, etc., upon request and within the required time frames;
- dd) To display the prices (shelf prices) of WIC foods on each item or on the display case or shelf where those items are located. Cost Plus 10% stores must post final price as WIC price on the shelf or use signage in the aisle;
- ee) To charge the First Party the current shelf price or less. In no event shall food costs charged exceed the shelf price of the food provided. In the event more than one (1) price is posted for an individual item, the lower price is to be charged;
- ff) To allow the WIC participant to use other forms of payments for purchases in excess of the benefits on the food instrument or in excess of the money limit on the cash value benefit;
- gg) To record, in ink, the actual purchase price and date redeemed on the face of the food instrument prior to obtaining the signature of the participants, parents or caretakers of an infant or child participants or proxies;
- hh) To submit to the First Party the completed food instrument within thirty (30) days of the last valid date ("last day to use") on the food instrument;
- ii) To be solely responsible for any bank return fees for improperly completed food instruments;
- jj) To repay to the First Party any documented overcharges and to refund the First Party any payment previously made on improper or invalid food instrument(s);
- kk) To send appropriate employees (such as the manager or head cashier) to training provided by the First Party and to keep all employees informed of current policies, procedures and regulations pertaining to the WIC Program;
- ll) To be accountable for the actions of employees in the redemption of WIC benefits;
- mm) To maintain and provide access to shelf price records, inventory records and proof of purchase of WIC food items for a period of twelve (12) months and to permit monitoring and inspection of store premises and all documents necessary to ensure compliance with the Agreement and State and Federal WIC Program rules, regulations and policies, as well as to respond to requests for corrective action;
 - 1) An acceptable record of inventory is a purchase invoice from a wholesaler or supplier.
 - 2) Purchase invoices must reflect the name and address of the wholesaler or supplier, date of the purchase, list of the items purchased, size, stock number, quantity, unit price and total dollar amount for the quantity purchased.
 - 3) Itemized cash receipts must include the name and address of the store or a code number by which the store can be identified, the date of purchase, description of the items purchased, unit price and total purchase price. Itemized cash receipts that do not

completely describe the item must have a computer code that can be verified by contacting the store.

- 4) Affidavits or oral statements are not acceptable as proof of inventory.
- nn) To retain records of inventory and proof of purchase of WIC food items until all issues have been resolved, if any litigation, claim, negotiation, audit, or other action involving the records has been initiated.
 - oo) To not collect sales tax on WIC food purchases;
 - pp) To ensure compliance with the Agreement and State and Federal WIC Program rules, regulations and policies in the use of self-scanning devices for the redemption of WIC food instruments;
 - qq) To purchase infant formula only from wholesalers, distributors and retailers licensed in Kentucky or infant formula manufacturers registered with the Food and Drug Administration;
 - rr) To be responsible for ensuring the vendor stamp and stand-beside device, which will be issued by the First Party, are used in accordance with governing policies and procedures;
 - ss) To be responsible for safeguarding protected health, confidential and sensitive information of the WIC participants who redeem WIC benefits at the Second Party's location in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - tt) To be responsible for any misuse of the vendor stamp and/or stand-beside device, (until the First Party has been properly notified) which results in a loss to the First Party;
 - uu) To not replicate the vendor stamp;
 - vv) To return the vendor stamp and stand-beside, device upon notification of a disqualification, withdrawal, non-renewal or termination of this Agreement, to the Local Health Department or State WIC Office;
 - ww) To be responsible for obtaining and maintaining the Manual for Contracted WIC Vendors;
 - xx) To maintain a certified automated in store system to accept and process WIC EBT benefits using either stand-beside or integrated solutions that perform online eWIC transactions in accordance with the published rules, policies, specifications, procedures, WIC EBT Operating Rules and WIC EBT Technical Implementation Guide.
 - yy) To update software as required by changes to the WIC EBT Operating Rules and Technical Implementation Guide;
 - zz) To accept liability for any redemption of WIC benefits when an approval has not been received from the First Party or for the incorrect redemption of WIC benefits;
 - aaa) To accept as payment in full for each WIC approved food item redeemed the not-to-exceed (NTE) amount.
 - bbb) To ensure that the most current Approved Product List (APL) is downloaded in the store system and is being used for WIC redemption processing;
 - ccc) To notify the First Party within 72 hours of any equipment failure or malfunction of the eWIC stand-beside point of sale device;
 - ddd) To agree to bear the expense of repairing damage to the stand-beside point of sale device, unless such damage is caused by stand-beside equipment malfunction which did not result from Second Party's improper use of equipment or negligence on the part of the Second Party;
 - eee) To ensure the certified automated eWIC redemption process allows the WIC participant entry of their PIN (personal identification number) in a manner that protects the security of the PIN;

- fff) To not request the participant's confidential PIN (personal identification number) or confiscate the eWIC card at any time;
- ggg) To provide the participant a balance inquiry upon request;
- hhh) To provide the participant with a customer receipt of the transaction which minimally shows the redeemed WIC approved food items and the remaining balance of available benefits;
- iii) To not charge the participant any fee, either directly or indirectly, arising out of or associated with operating, maintaining or processing WIC EBT Program transactions;
- jjj) To provide a bank deposit form for purposes of reimbursement of eWIC transactions. In the event the Second Party changes banking institution, a new completed bank deposit form will be provided to First Party;
- kkk) To acknowledge that the WIC Acronym and the WIC Logo are service marks owned by the United States Department of Agriculture (U.S.D.A.) and that all rights belong exclusively to U.S.D.A.
 - 1) To not infringe on the WIC Service Marks owned by the U.S. Department of Agriculture (USDA) through improper or impermissible use;
 - 2) To not use the WIC service marks in any manner on its goods, containers, packages or on tags or labels affixed thereto;
 - 3) To not use the WIC logo in advertising or promotional literature in any manner;
 - 4) To not use the WIC acronym in advertising or promotional materials in any manner that:
 - i. Is likely to imply that the WIC Program or USDA endorses either the Second Party or its products;
 - ii. Is likely to cause confusion, mistake or deception as to the affiliation or connection of the Second Party to WIC;
 - iii. Associates the Second party with the WIC Program other than as a Vendor authorized to accept WIC benefits; or
 - iv. States or implies any WIC Program sponsorship or approval by the Second Party's goods, service, advertising or commercial activities including nutrition message(s) by the WIC Program, USDA or the Kentucky WIC Program;
 - 5) To not use the WIC acronym except to inform the public that the Second Party is WIC authorized. The proper display of the WIC disclaimer required in this Agreement must accompany all such advertising or promotional materials;
 - 6) To not use the acronym "WIC" or the WIC logo in the title of the store or on the name of the storefront;
 - 7) To not affix stickers or permit such stickers to be affixed on any foods offered for sale to the public containing a WIC service mark;
 - 8) To submit any offering or proposal to use the WIC acronym in brand identification channel strips or shelf talkers containing such product information to the First Party for approval at least thirty (30) days prior to any intended date of use;
 - 9) To only use those signs, stickers or indicators that the First Party has approved in advance and in writing either in a general statement of regulation or individually addressed authorization;
 - 10) To include the following properly displayed statement (disclaimer) when using the WIC acronym to inform the public that the Second Party is WIC authorized: "WIC is a registered service mark of the U.S. Department of Agriculture for USDA's Special Supplemental Nutrition Program for Women, Infants and Children";

- 11) To comply in all respects with the First Party's written determination of appropriate use of the WIC service mark;
 - 12) To not use the WIC service mark, including any close or similar facsimiles thereof, in total or in part, either in the Second Party's official name or in the Second Party's fictitious "doing business as" name;
 - 13) To not place the term "WIC Program" in any advertisement, billboard, poster or store sign or designation; and
 - 14) To not use the letters "W" "I" and "C" in that order next to one another in the Second Party's name or these letters in that order but not next to one another, with the letters made to stand out in some fashion, such as with a different color or size than other letters.
2. For the services as hereinafter set forth, the First Party Agrees:
- a) To comply with applicable Federal and State policies, procedures and regulations relating to the WIC Program;
 - b) To provide to non-integrated participating retailers a stand beside point of sale device at no cost to the retailer. The maximum number of lanes that will be subsidized is determined as follows:
 - \$1 - \$21,999 of WIC sales monthly = one lane; or
 - \$22,000-\$32,999 of WIC sales monthly = two lanes; or
 - \$33,000-\$43,999 of WIC sales monthly = three lanes; or
 - \$44,000 and above of WIC sales monthly = four lanes;
 - c) To provide network and host processing for eWIC online real time transaction approval twenty-four (24) hours a day, seven (7) days a week;
 - d) To make available daily the most current Approved Product List (APL) which contains the current listing of food items that are approved for redemption;
 - e) To authorize reimbursement of all approved eWIC redemptions that are made in accordance with applicable state and federal Regulations, policies and procedures;
 - f) To authorize reimbursement to the Second Party at the Second Party's submitted price minus any adjustment for not-to-exceed (NTE) pricing;
 - g) To monitor the Second Party's performance under this Agreement and to inform the Second Party of the results thereof;
 - h) To provide the Second Party with training and written instructions on the Program's operations.
3. The First Party reserves the right to deny payment for any altered, defaced or mutilated food instrument submitted for payment outside the allowable time frames.
4. In the event a claim is assessed against the Second Party after the food instrument has been paid, then the First Party may offset future payments to the Second Party for the amount of the claim in addition to applying the sanction as indicated in Administrative Regulation 902 KAR 18:061;
5. The First Party will deactivate the Second Party from the WIC Direct System when their acquirers and/or third party processors are found in non-compliance with WIC EBT Operating Rules and WIC EBT Technical Implementation Guide;
6. The parties hereby agree to comply with all appropriate Federal and State Civil Rights Laws and Regulations and state that they do not discriminate against any participant, parent or caretaker of an infant or child participant or proxy for reasons of race, color, national origin, age, sex or disability, Nondiscrimination Regulations of the United States Department of Agriculture (7 C.F.R., Part 15) and Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
7. The Second Party states that he is knowledgeable and aware that a vendor who commits fraud or abuse of the Program is liable for prosecution under the applicable Federal, State or local laws. The Vendor

agrees and understands that, under 7 C.F.R. 246.23, those who have willfully misapplied, stolen or fraudulently obtained Program funds shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.

8. The Second Party agrees and understands that it is not the intent of either this Agreement or Administrative Regulation 902 KAR 18:061 to differentiate between intentional and unintentional overcharging or other Program violations and that, in addition to any sanctions imposed by the Cabinet under Administrative Regulation 902 KAR 18:061, the second party will repay to the First Party any documented overcharges and to refund to the First Party any payment previously made on improper or invalid WIC benefits, whether overcharging is intentional or unintentional. The First Party does not have to provide the second party with prior warning that violations were occurring before imposing sanctions.
9. Either party shall have the right to terminate this Agreement at any time upon thirty (30) days advance written notice served upon the other party by registered or certified mail; provided, however, that the First Party may terminate this Agreement immediately for cause upon fifteen (15) days written notice served upon the Second Party by registered or certified mail with return receipt requested. The First Party may disqualify a vendor or impose a civil money penalty in lieu of disqualification, for reasons of program abuse in accordance with Administrative Regulation KAR 18:071. Civil money penalties will only be imposed for reasons of inadequate participant access. The First Party may agree to the use installment plans for the collection of civil money penalties. If the Second Party does not pay, only partially pays or fails to timely pay a civil money penalty assessed in lieu of disqualification, the First Party shall disqualify the Second Party for the length of disqualification corresponding to the violation for which the civil money penalty was assessed.
10. The Second Party has a right to appeal a decision pertaining to denial of application to participate, vendor disqualification or other adverse action which affects participation during the Agreement performance period in accordance with Administrative Regulation 902 KAR 18:081. In accordance with 902 KAR 18:081, certain adverse actions are not subject to review, such as, expiration or non-renewal of an Agreement with a vendor, disqualification of a vendor as a result of disqualification from the SNAP Program and the State WIC Agency's determination regarding participant access is not subject to review. If the disqualification of the Vendor is reversed through administrative or judicial review, the First Party shall not be liable for the value of sales lost during the disqualification period.
11. In the event of a disqualification, withdrawal or an assessment of a civil money penalty of a vendor by the SNAP Program or any other United States Department of Agriculture (U.S.D.A.) Food and Nutrition Service (FNS) Program, the Vendor shall be disqualified from the WIC Program upon written notice by registered or certified mail with return receipt requested. The Second Party states that he is knowledgeable that disqualification from the WIC Program may result in disqualification from the SNAP Program. Such disqualification may not be subject to administrative or judicial review under the SNAP Program; however, a WIC Program disqualification as a result of a SNAP Program civil money penalty for hardship is subject to administrative review.
12. This Section shall be applicable only to Military Commissaries:
 - a) In view of Federal immunity from State claims or review, the First Party may not conduct on-site monitoring review of Military Commissaries (except upon written invitation by the constituted military authority) or require claims to be paid;
 - b) If the First Party identifies a possible problem, it shall write the commanding officer of the installation or his designee requesting repayment or to initiate an investigation;
 - c) If the First Party wishes to further pursue problem resolution, it will refer the case to the United States Department of Agriculture (U.S.D.A.). The Food and Nutrition Services (FNS) Program in conjunction with the Department of Defense may conduct on-site monitoring reviews and submit claims to Military Commissaries for the WIC Program;

- d) Military Commissaries will be reimbursed, based upon the standard commissary price system of procurement costs plus a percentage surcharge; and
 - e) Military Commissaries are only obligated to serve qualified active or retired military personnel and their Dependents.
13. In the event the Second Party, intentionally or unintentionally, fails to continue to meet the vendor authorization criteria as specified in Administrative Regulation 902 KAR 18:050, during the term of the Agreement, the First Party will upon notice to the Second Party terminate or not renew this Agreement in accordance with 902 KAR 18:061.
 14. In the event the Second Party intentionally or unintentionally fails to meet any of the terms of the Vendor Agreement, the First Party will upon notice to the Second Party terminate or not renew this Agreement in accordance with 902 KAR 18:061.
 15. The First Party reserves the right to modify this Agreement at any time upon written notice to the Vendor.
 16. Neither the First Party nor the Second Party has an obligation to renew this Vendor Agreement. Expiration or nonrenewal of an Agreement is not subject to review in accordance with 902 KAR 18:081.
 17. Renewal of this Agreement does not relieve the Second Party of any previous violations from any prior Agreements with the First Party or the Department for Public Health, which were in effect on or after October 1, 1999.
 18. The First Party will terminate this Agreement if they identify a conflict of interest, as defined by applicable State laws, regulations and policies, between the Second Party and the First Party or its local agencies.
 19. The First Party will immediately terminate this Agreement if any authorized vendor is found to meet the more than fifty percent (50%) criterion, (the First Party derives more than 50% of their annual food sales revenue from the sale of food items purchased).
 20. The First Party may release for general information a vendor's name, address, authorization status, phone number, website, email address and store type (e.g., grocery store, chain store, independently owned store). All additional information will remain confidential for release only for specific individuals directly connected with the administration or enforcement of local, Federal and State laws and ordinances.
 21. The First Party's regular business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, Eastern Standard Time (EST), excluding holidays.
 22. This Agreement does not constitute a license or property interest and is non-transferable and shall become void upon change of ownership. The Second Party shall notify the First Party at least ten (10) days prior to the sale of the business, change of ownership, ceasing operation, relocating, or leasing the operation of the business.
 23. This Agreement shall not become effective until approved by the Department for Public Health.

ATTACHMENT A-1

Drug Store

FORMULAS

A drug store and a drug store within the confines of the store must be able to supply within 48 hours of verbal request by State or Local Agency staff any of, but not limited to, the following products:

- Boost
- Boost Glucose Control
- Boost Kid Essentials 1.0 CAL
- Boost Kid Essentials 1.5 CAL
- Boost Kid Essentials w/ Fiber 1.5 CAL
- Boost Plus
- Bright Beginnings Soy Pediatric Drink
- EleCare for Infants
- EleCare Junior
- Enfamil EnfaCare
- Enfamil Nutramigen
- Enfamil Premature 20
- Enfamil Premature 24
- Enfamil Premature 30
- Ensure
- Ensure High Protein
- Ensure Plus
- Good Start Premature 24
- Neocate Infant with DHA & ARA
- Neocate Junior
- Nutren Junior
- Nutren Junior with Fiber
- Osmolite 1 cal
- PediaSure
- PediaSure 1.5
- PediaSure 1.5 with Fiber
- PediaSure Peptide
- PediaSure with Fiber
- Peptamen
- Peptamen Junior
- Peptamen Junior with Fiber
- Peptamen Junior with Prebio
- Portagen
- Similac Expert Care Alimentum
- Similac Expert Care™ Neosure
- Similac PM 60/40
- Similac Special Care 24 with Iron
- Similac Special Care 30 with Iron
- Tolerex
- Vital HN
- Vivonex Pediatric
- Vivonex Plus
- Vivonex T.E.N.

NOTE: This list of approved food items is subject to change.
The Kentucky WIC Program shall forward notification of such changes, in writing.

ATTACHMENT A-2 Retail Grocery Only

Only the following food items are approved for the WIC Program in Kentucky:

FORMULAS:

Milk or Soy Based Iron Fortified Formulas - Contract Brand
Non-Standard Iron Fortified Formulas
WIC Eligible Nutritionals

- NO** Whole, low fat, skim, evaporated or goat's milk
- NO** Organic formula
- NO** Oral rehydration fluids or electrolyte solutions, such as Pedialyte

INFANT CEREALS: (8.0 ounce container - dry only)

Beechnut
Gerber

- NO** Organic
- NO** Additives such as fruit, formula, sugar, yogurt, or DHA & ARA
- NO** Cereals in jars or pouches

INFANT FRUITS AND VEGETABLES: (4.0 ounce containers only)

Beechnut
Gerber

- YES** Plain fruit or vegetable combinations such as peas and carrots, apples and banana, or sweet potato and apple
- NO** Additives such as DHA & ARA, sugars, starches, salt/sodium or yogurt
- NO** Organic
- NO** Dinners, desserts, "delights" or puddings
- NO** Pouches

INFANT MEATS: (2.5 ounce containers only)

Beechnut
Gerber

- YES** Plain meats with gravy
- NO** Chicken sticks, turkey sticks or meat sticks
- NO** Gerber Graduates Lil' Meals, Lil' Sides or Lil' Entrees
- NO** "Dinners"
- NO** Pouches
- NO** Organic
- NO** Additives such as fruit, vegetable or DHA & ARA
- NO** Oil, sugar, onion or garlic

MILK: (Lowest priced brand of the type and size specified and selected)

Whole
Low fat (1%)
Reduced fat
Fat free/skim
Any brand nonfat dry in 9.6 oz. container only

Acidophilus &/or bifidum (A/B), lactose free and powdered milks are allowed if shown on EBT shopping list

YES Added calcium, fat free, low fat or reduced fat

NO Flavored milk, goat's milk, buttermilk, Vitamite 100, rice, almond, or evaporated milk

NO Organic milk

NO Added plant sterols, sterols, DHA, ARA, &/or Omega 3

NO Shelf stable liquid milk

SOY MILK: (Half Gallon Container or size specified on shopping list)

8th Continent Original
Silk Soy Original
Pacific Ultra Soy Original in 9.6 oz. container only

NO other soy milk

TOFU: (8 or 14 to 16 ounce container)

Nasoya – lite silken, silken, soft, lite firm, firm, extra firm, super firm cubed
House Foods – extra firm, firm, regular
Azumaya – Firm
Simple Truth – Firm

YES Prepared with calcium/magnesium salts

NO Added fats, sugars, oils or sodium

CHEESE: (Block, crumbled, cubed, sliced, shredded or string - 8 or 16 ounce packages; only – lowest price brand)

Brick	Monterey Jack	Provolone
Cheddar	Mozzarella	Swiss
Colby	Muenster	

YES Variety packs/blends, low cholesterol, low or reduced fat, nonfat, fat free, added calcium and low sodium

NO Deli cheese of any type

NO American cheese

NO Cheese food, cheese product, cheese spread, pasteurized processed cheese or imitation cheese

NO Added pepper, pimento, added herbs, spices, seasonings or flavorings (wine or smoked)

NO Organic Cheese

NO Added probiotics (e.g., Liv Active, etc.)

UNSWEETENED 100% FRUIT/VEGETABLE JUICE:

100% Frozen Fruit Juice in 12 ounce container

Any brand - grapefruit or orange
Seneca - apple
Old Orchard - any flavor

Can OR Plastic 100% Fruit Juice in 48 or 64 ounce container

Any brand - grapefruit or orange
Apple - Lucky Leaf, Musselman's, Seneca, Mott's
Pineapple - Del Monte, Libby's
Juicy Juice - Any Flavor
Old Orchard 100% Juice - Any Flavor

100% Vegetable Juice - Can OR Plastic in 64 ounce container

Tomato Juice - Campbell's, Campbell's Low Sodium
Vegetable Juice - V-8, V-8 Low Sodium

YES Juices with added calcium

NO 46 ounce juice
NO 11.50 ounce juice
NO Other juices or fruit drinks
NO V8 Lite, Splash or Fusion
NO DHA, prebiotics, or artificial sweeteners
NO Organic juice
NO Cocktails

EGGS: (Grade A – White – Dozen Only – Size: Small, Medium or Large)

NO Organic, cage free, free range, low cholesterol, antibiotic free, vegetarian fed hen, multigrain diet fed or growth hormone eggs
NO Added Omega 3 or other fatty acids
NO Brown eggs

CEREAL (10 ounce box or larger of the following)

B & G Foods Instant Cream of Wheat
B & G Foods Cream of Wheat Whole Grain
B & G Foods Cream of Wheat 2 ½ Minute
B & G Foods Cream of Rice Instant
General Mills Cheerios Ancient Grains
General Mills Multigrain Cheerios#
General Mills Toasted Grain Oat Cheerios
General Mills Corn, Rice or Wheat# Chex
General Mills Kix#, Honey Kix#, or Berry Berry Kix#
General Mills Wheaties#
General Mills Dora the Explorer#
General Mills Total#
General Mills Fiber One Honey Clusters#
Kellogg's All Bran Complete Wheat Flakes#
Kellogg's Corn Flakes

Kellogg's Frosted Mini-Wheats Original#
Kellogg's Frosted Mini-Wheats Little Bites#
Kellogg's Unfrosted Mini-Wheats#
Post Alpha-Bits#
Post Bran Flakes#
Post Grape Nuts# or Grape Nuts Flakes#
Post Honey Roasted Honey Bunches of Oats
Post Honey Bunches of Oats with Vanilla Bunches#
Post Honey Bunches of Oats Whole Grain Honey Crunch#
Quaker Original Instant Oatmeal#
Quaker King Vitaman
Quaker Life Original#
Quaker Oatmeal Squares Golden Maple#
Quaker Oatmeal Squares Brown Sugar#
Malt O Meal Crispy Rice
Malt O Meal Frosted Mini Spooners#
Malt O Meal Oat Blenders with Honey
Malt O Meal Original Hot Wheat Cereal
Sunbelt Bakery Simple Granola#

#Denotes Whole Grain Cereal

NO Organic cereals
NO Cereals not listed

DRIED BEANS OR DRIED PEAS (16 ounce bag or 15 to 16 ounce canned)

Any brand

Any plain bean or pea; some examples include:

Black	Great Northern	Navy
Black-eyed peas	Lentils	Pinto
Garbanzo	Kidney	Red
Mixed	Speckled	

YES Mixed beans (pinto and great northern, etc.)

YES Regular or low sodium

NO Added meats, flavorings, sauces, seasoning, fats, sugars or oils

NO Organic or baked

NO Canned green beans, green peas or waxed beans

CANNED BAKED BEANS (Canned - 15 to 16 ounce)

Bush's Honey Baked Beans

Bush's Vegetarian Baked Beans

NO Added meats, fats or oils

PEANUT BUTTER (Any brand – 16 to 18 ounce only)

YES Chunky, creamy, crunchy or extra crunchy

YES Low sodium and low sugar

YES Natural

NO Low carb

NO Jelly, honey, chocolate, marshmallow, artificial sweeteners or flavors added

NO Tubes, slices or "To Go" containers

- NO** Organic peanut butter
- NO** Reduced fat
- NO** Whips
- NO** Omega 3, flaxseed, or plus

FRESH FRUITS AND VEGETABLES (All varieties)

- YES** whole or cut
- YES** Organic
- NO** Ornamental fruits or vegetables such as painted pumpkins or pepper on a string
- NO** Party trays or fruit baskets
- NO** Muffins or baked goods
- NO** Items from the salad bar
- NO** Herbs or spices
- NO** Sprouts
- NO** Fruit/nut mixtures
- NO** Dried fruit or vegetables
- NO** Frozen, canned or pouches
- NO** Added dressings, croutons, herbs, spices, marinades, etc.

FROZEN FRUITS AND VEGETABLES (All varieties)

- YES** Whole, cut or mixed
- YES** Organic
- YES** with or without salt
- NO** added sugar, syrup, artificial sweeteners, fat, oil, meat, pasta, potatoes, rice, or sauce
- NO** breaded or battered vegetables

CANNED FISH (Any brand – Packed in oil or water)

- Pink Salmon - 6 & 7.5 ounce cans only
- Sardines - 3.75 & 15 ounce cans only
- Tuna Fish - 5 & 6 ounce cans only

- YES** Regular or low sodium
- NO** White or albacore tuna
- NO** Organic fish
- NO** Foil containers
- NO** Added seasonings, flavors or dressings

WHOLE GRAIN PRODUCTS (Whole Grain Breads/Buns – 16 ounce only)

- Aunt Millie's Healthy Goodness 100% Whole Wheat
- Best Choice 100% Whole Wheat
- Bimbo 100% Whole Wheat
- Bunny 100% Whole Wheat
- Essential Everyday 100% Whole Wheat
- Food Lion 100% Wheat
- Healthy Life 100% Whole Wheat (Sugar Free)
- IGA 100% Whole Wheat
- Kern's 100% Whole Wheat
- Kroger 100% Whole Wheat
- Meijer 100% Whole Wheat
- Nature's Own 100% Whole Grain (Sugar Free)
- Pepperidge Farm Light Style Soft Wheat

Pepperidge Farm Stoneground 100% Whole Wheat
Pepperidge Farm Very Thin Soft 100% Whole Wheat
Pepperidge Farm Whole Grain Seeded Rye
Roman Meal Sungrain 100% Whole Wheat
Sara Lee 100% Whole Wheat
Schwebel's 100% Whole Wheat
Wonder 100% Whole Wheat
Healthy Life 100% Whole Wheat Hot Dog Buns
Healthy Life 100% Whole Wheat Sandwich Buns

NO Additives such as herbs, spices, peppers, cheese, tomatoes or raisins
NO White bread
NO Organic

100% WHOLE WHEAT PASTA (16 ounce size only – Any brand)

YES Any shape (for example whole wheat rotini, penne, spaghetti, elbows, or linguine)
NO Egg noodles
NO Added cheese, vegetables, sugars, fats, oils, salt (sodium), or other flavorings

WHOLE GRAIN - BROWN RICE (14 or 16 ounce package – Any brand)

YES Instant, quick or regular
NO Additives such as herbs, spices, peppers, cheese or tomatoes

WHOLE GRAIN - TORTILLAS (16 ounce package as specified)

WHOLE WHEAT

Best Choice
Carlita
Celas
Dan Pancho
Essential Everyday
Food Club
Food Lion
IGA
Kroger
La Banderita
Meijer
Miscasa 100%
Mission 8"
Ortega
Tio Santo

CORN

Best Choice
Carlita
Celas
Dan Pancho
Essential Everyday
La Banderita
Guerrero
La Burrita
Meijer
Mission

NO Additives such as herbs, spices, peppers, cheese, spinach or tomatoes

YOGURT (32 ounce tubs only)

CHILDREN 12 – 24 MONTHS: WHOLE MILK YOGURT:

Dannon – Whole Milk Plain
Meijer – Whole Milk Plain

WOMEN AND CHILDREN 2 YEARS AND OLDER: LOW FAT OR FAT FREE YOGURT:

Coburn Farms – Low Fat Plain, Low Fat Vanilla
Dannon – Nonfat Plain, Strawberry Nonfat, Strawberry Banana Nonfat, Lowfat Plain, Lowfat Vanilla, Whole Milk Plain
Essential Everyday – Fat Free Plain, Plain Low Fat, Strawberry Banana Lowfat, Peach Low Fat, Strawberry Low Fat, Vanilla Low Fat
Food Club – Fat Free Plain, Lowfat Vanilla, Strawberry Lowfat
Food Lion – Plain Nonfat, Vanilla Lowfat
Great Value – Nonfat Plain, Lowfat Vanilla, Lowfat Strawberry Banana, Lowfat Strawberry, Low Fat Peach
Kroger – Fat Free Plain, Blended Lowfat Plain, Blended Lowfat Vanilla
Meijer – Plain Nonfat, Plain Lowfat, Lowfat Strawberry Banana, Lowfat Strawberry, Lowfat Vanilla, Whole Milk Plain
Our Family – Nonfat Plain, Nonfat Vanilla, Nonfat Strawberry
Yoplait – Plain Nonfat, Original Vanilla Low Fat, Original Strawberry Banana Low Fat, Original Strawberry Low Fat, Original Harvest Peach Low Fat

- NO** Organic
- NO** Greek or strained yogurt
- NO** Artificial sweeteners (NO Light & Fit, Carb Master)
- NO** Multipacks
- NO** Drinkable yogurt or frozen yogurt
- NO** Mix-in ingredients such as granola, candy pieces, honey, or nuts

NOTE: This list of approved food items is subject to change.
The Kentucky WIC Program shall forward notification of such changes, in writing.

ATTACHMENT B

When the Second Party is obligating more than one outlet, then all outlets shall be specified in the Agreement. When more than one outlet is specified in the Agreement, an individual outlet may be added or deleted without affecting the remainder of outlets.

NAME

ADDRESS

MANAGER

VENDOR NUMBER

ATTACHMENT B (cont.)

ATTACHMENT C

Quantified Minimum Inventory Requirements

Retail Grocer only

All food items must be WIC approved, meeting the requirements of Attachment A – 2 of the Kentucky WIC Vendor Agreement and must be within the manufacturer's expiration date.

Food Item	Inventory Specifications	Quantities Required in Stock
Milk	2 Types Required: Whole and 1% (or less) milk in gallon containers Must supply ½ gallons and quarts upon request	4 gallons whole milk and 6 gallons 1% milk or less
Cheese	1 Type Required: No deli cheese of any type	4 pounds total 8 or 16 ounce packages
Eggs	Grade A (Large or smaller)	5 dozen
Cereal	Three (3) Products Required: (2 of the 3 products must be whole grain)	9 boxes
Juice	Two (2) flavors required in 64 ounce containers Two (2) flavors required in 48 ounce or 12 ounce frozen concentrate containers (reconstitute to 48 ounces) Must be 100% fruit or vegetable juice, unsweetened	Combined quantities to equal 14 containers
Beans or peas	1 type dry beans or peas 1 type canned beans or peas	4 - one (1) pound packages and 16 - 15 to 16 ounce cans
Fish	1 type required	45 ounces
Peanut butter	1 type required	4 – 16 to 18 ounce containers

ATTACHMENT C

Quantified Minimum Inventory Requirements (Continued)

Food Item	Food Item	Food Item
Whole wheat products	1 type required	4 - 16 ounce loaves of bread, tortillas, or 14-16 ounce packages of rice
Fresh or frozen fruits and vegetables	2 types fresh or frozen fruits 2 types fresh or frozen vegetables	10 pounds total
Infant formula	1 type of contract brand powder required: *Gerber Good Start Gentle, Good Start Soy, Good Start Soothe	11 cans total In either 12.4, 12.7 or 12.9 ounce cans
Infant cereal	1 type required	3 containers total 8 ounce containers
Infant fruits and vegetables	2 types infant fruits and 2 types infant vegetables	16 – 4 ounce 2-packs or 32 - 4 ounce containers

*Contract brand and container size subject to change. Written notification will be provided.

ATTACHMENT D

902 KAR 18:011. Definitions for 902 KAR Chapter 18.

RELATES TO: KRS 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 18.

Section 1. Definitions. (1) "Above-50-percent vendor" means a vendor that receives or is expected to receive more than fifty (50) percent of its annual food sales revenue from WIC benefits.

(2) "Alcohol" is defined by KRS 241.010(1).

(3) "Alcoholic beverage" is defined by KRS 241.010(2).

(4) "Approved product listing" or "APL" means an electronic list or file identifying the food items approved by the state WIC agency for purchase with WIC food instruments by food category and subcategory.

(5) "Authorized supplemental food" means a supplemental food authorized by the state or a local agency for issuance to a particular participant.

(6) "Cash value voucher" is defined by 7 C.F.R. 246.2.

(7) "Certifying professional authority" means a person authorized to determine eligibility and certify persons for the WIC program.

(8) "Class" means food sale classification.

(9) "Compliance buy" means a covert, on-site investigation.

(10) "Contract price" means the price for a WIC food item negotiated between the state WIC agency and the vendor.

(11) "Dual participation" means simultaneous participation in the WIC Program and in:

(a) One (1) or more WIC clinics; or

(b) The Commodity Supplemental Food Program.

(12) "Electronic WIC benefits" or "eWIC" means a Web-based technology that allows WIC participants to obtain food benefits by using a plastic debit-type card with a personal identification number (PIN) at authorized participating WIC retailers.

(13) "Exempt infant formula" is defined by 7 C.F.R. 246.2.

(14) "FNS" means Food and Nutrition Services.

(15) "Food instrument" is defined by 7 C.F.R. 246.2.

(16) "Good letter with exceptions" means a written notification letter that:

(a) A compliance buy has been conducted in the store;

(b) A violation occurred; and

(c) No sanction was applied due to lack of pattern of incidence.

(17) "High risk vendor" means a vendor having a high probability of noncompliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(18) "Integrated" means a commercial system that fully incorporates eWIC functionality into an existing cash register (ECR) system.

(19) "Inventory audit" means an examination of food invoices or other proof of purchase to determine if a vendor has purchased sufficient quantities of authorized supplemental food to provide to participants the quantities of food items redeemed by the vendor during a given period of time.

(20) "Investigation" means a method used by the state WIC agency to detect a WIC program violation.

(21) "Local agency" means an applying or participating WIC agency.

(22) "Low variance" means the redemption of the same type of food item at the same price or within a narrow price range.

(23) "Medical foods" means enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition when the use of conventional foods is precluded, restricted, or inadequate.

(24) "Not to exceed" or "NTE" means:

(a) FNS-approved cost containment methodology whereby WIC authorized vendors are subject to price limitations; and

(b) the maximum amount that Kentucky will pay for a specific food item identified by its UPC code.

(25) "Participant" means:

(a) A pregnant, breastfeeding, or postpartum woman or an infant or child who is receiving supplemental food or food instruments;

(b) The breastfed infant of a breastfeeding woman who is receiving WIC program benefits;

(c) The parent or caretaker of an infant or child receiving a WIC benefit; and

(d) The proxy for a person identified in paragraphs (a), (b), or (c) of this subsection.

(26) "Participant violation" means an intentional, knowing act of a participant that violates KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(27) "Peer Groups" means categories into which vendors are assigned based upon sales volume and region.

(28) "PIN" means a unique four (4) digit personal identification number designated by the WIC participant.

(29) "Point of sale" or "POS" means the system supporting WIC/eWIC food transactions in a store checkout lane.

(30) "POS device" means a physical electronic cash register or dedicated point of sale hardware or terminal that is used for WIC processing.

(31) "Positive buy" means a compliance buy, on-site review, or on-line WIC transaction review that provides evidence that a violation of the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 has occurred.

(32) "Price look up" or "PLU" means a four (4) or five (5) digit identifier used to identify individual and bulk produce.

(33) "Proxy" means a person designated by a female participant or by a parent or caretaker of an infant or child participant to obtain and transact a food instrument or cash value voucher to obtain a supplemental food or foods on behalf of a participant.

(34) "Routine monitoring" means overt, on-site monitoring during which representatives of the WIC program identify themselves to vendor personnel.

(35) "Rural" means any area not defined as urban.

(36) "Shelf price" means the price displayed on the food item, shelf, or display case where the food item is stored.

(37) "SNAP" means the Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program.

(38) "Standard bar code" means a printed series of lines of varying width on a container or product that can be read by an optical scanner to determine product classification and price.

(39) "Staple food items" means meat, poultry, fish, bread, breadstuff, cereals, vegetables, fruit, vegetable and fruit juices, and dairy products, excluding items such as coffee, tea, cocoa, carbonated and uncarbonated beverages, condiments, and spices.

(40) "State WIC agency" means the Cabinet for Health and Family Services or its designated representative.

(41) "Systematic review" means a review of electronic WIC transactions by the state WIC agency or its representatives to monitor systematic violations of the program.

(42) "Trafficking" means the redemption or exchange of WIC food instruments for cash, a firearm, ammunition, an explosive, or a controlled substance as defined in 21 U.S.C. 802.

(43) "Unauthorized food" means foods not authorized by the state or local agency for issuance to a particular participant.

(44) "Unique customer" means the number of unduplicated individuals that have one (1) or more transactions at the sanctioned vendor during the specified time period.

(45) "UPC" means a barcode consisting of twelve (12) digits used for tracking trade items in retail stores.

(46) "Urban" means a metropolitan area as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 13-01.

(47) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one (1) or more stores by providing authorized supplemental foods to participants under a retail food delivery system.

(48) "Vendor authorization" means the process by which the state WIC agency assesses, selects, and enters into an agreement or contract with a store that applies or subsequently reapplies to be authorized as a vendor.

(49) "Vendor overcharge" is defined by 7 C.F.R. 246.2.

(50) "Vendor violation" means an intentional or unintentional act of a vendor's current owner, officers, agent, or employee, with or without the knowledge of management, that violates the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(51) "WIC agency" means a local health department or agency contracted with the state to deliver WIC services.

(52) "WIC benefits" means a voucher, check, electronic benefits transfer card (EBT), coupon, or document that is used by a participant to obtain supplemental foods.

(53) "WIC program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786, and administered pursuant to 42 U.S.C. 1786 and 7 C.F.R. Part 246. (40 Ky.R. 493; 827; eff. 10-16-2013.)

902 KAR 18:050. Vendor Authorization Criteria.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor authorization criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Vendor Authorization Criteria. (1) Only a vendor authorized by the state WIC agency shall redeem a food instrument.

(2) Each store operated by a business entity shall be authorized separately from other stores operated by the business entity.

(3) Each store shall have a single, fixed location and redeem the WIC food instruments and provide the WIC foods within the four (4) walls of the establishment.

(4) A retailer authorized as a pharmacy shall only redeem food instruments for exempt infant formulas and medical foods.

(5) Food vendors shall be authorized in sufficient numbers and with distribution adequate to ensure:

(a) Participant convenience and access; and

(b) Effective management of vendor review by the cabinet and the local agency.

(6) In order to be an authorized WIC vendor, a vendor shall:

(a) Complete the application process, meet authorization criteria, and be approved by the state agency in accordance with the Kentucky WIC Manual for Applying Retailers;

(b) Provide information required by the WIC Manual, including sales volume and an updated application, requested by the state WIC agency;

(c) Stock, at all times, minimum inventory in accordance with the Quantified Minimum Inventory Requirements outlined in the Kentucky WIC Manual for Applying Retailers:

1. The stock shall be in the store or in the store's stockroom;

2. Expired foods shall not count towards meeting the minimum inventory requirement; and

3. A pharmacy shall supply exempt formula or medical foods within forty-eight (48) hours of the state WIC agency request;

(d) Obtain infant formula only from the listing of Kentucky WIC Program Authorized Suppliers of WIC Approved Infant Formulas, <http://chfs.ky.gov/dph/mch/Vendor+Management.htm>;

(e) Except for a pharmacy, be in compliance with the Kentucky Food Code, 902 KAR 45:005, and have a valid retail food establishment or retail food store permit in the current owner's name;

(f) Except for a pharmacy, be an authorized SNAP retailer;

(g) Have competitive prices with other authorized WIC vendors in the area, compared according to the policy outlined in the WIC Manual for Applying Retailers and the Manual for Contracted WIC Vendors;

(h) Display the prices of WIC approved food items on each item or on the shelf or display case where the items are located. A cost plus ten (10) percent store shall post the final price (WIC price) on the shelf or on the signage in aisle;

(i) Be in compliance with the other Food and Nutrition Service programs or the Medicaid program, including:

1. Not be disqualified or withdrawn by the United States Department of Agriculture from participation in another Food Nutrition Service program or the Medicaid program;

2. Not be denied application to participate in SNAP or Medicaid;

3. Not be currently paying a civil money penalty to SNAP or Medicaid; or

4. Not have been assessed a civil money penalty by SNAP or Medicaid, and the disqualification period that would otherwise have been imposed has not expired;

(j) Request authorization for a business whose primary purpose is to be a retail grocery.

1. A direct distribution outlet or wholesale food establishment shall not be eligible.

2. A vendor who derives more than fifty (50) percent of annual food sales revenue from the sale of food items that are purchased with WIC food instruments shall not be eligible.

3. A retail grocery shall:

a. Have a separate and distinct grocery department in a stationary location which stocks staple food items in addition to WIC approved foods; and

b. Have fifteen (15) percent of gross sales in nontaxable food sales, excluding specialty items such as bakery goods for a bakery or produce for a fruit and vegetable stand.

4. A dairy or home delivery grocery shall not be approved if it operates solely as a mobile operation.

5. The use of drive-up windows shall not be approved;

(k) Be registered with the Secretary of State and be in good standing, if a corporation or partnership;

(l) Be open for business year round at least eight (8) hours per day, six (6) days per week;

(m) Be accessible to monitoring by state and federal officials without prior notice;

(n) Not be indebted to the WIC program for an unpaid claim or a civil money penalty against a store owned or previously owned by the applying owners; and

(o) Have the capability to accept WIC program benefits electronically. A store shall have the use of an internet cable or a currently Food and Nutrition Services certified system to accept online WIC EBT.

(7) The WIC program shall not authorize a vendor applicant if, during the last six (6) years, an applicant current owner, officer, or manager has been convicted of or had a civil judgment for:

(a) Fraud;

(b) Antitrust violation;

(c) Embezzlement, theft, or forgery;

(d) Bribery;

(e) Falsification or destruction of records;

(f) Making false statements or claims;

(g) Receiving stolen property;

(h) Obstruction of justice; or

(i) Another act reflecting on the business integrity and reputation of the applicant, such as removal from other federal or state programs.

(8) The WIC program shall not authorize a store that has attempted to circumvent a period of disqualification from the program, including a store that has undergone a sale or changes of operation if the transaction involved the following parties:

(a) The seller or transferor is an owner, operator, or manager currently suspended, sanctioned, or disqualified from WIC, SNAP, or Medicaid; and

(b) The buyer or transferee is related to the seller by marriage or consanguinity within the fourth degree, or was a manager or employee of the seller when the sanction, suspension, or disqualification was issued or the violation occurred.

(9) A contract shall not be entered into with a vendor if the contract would cause a conflict of interest, real or apparent.

(10) The WIC program shall terminate a vendor contract if it determines the vendor or vendor's employee provided false information in connection with the vendor application.

(11) An authorized WIC vendor shall send appropriate employees (owner, manager or head cashier) to attend state WIC agency required training.

(12) If an applying retailer does not meet the criteria upon review by either the local or state WIC agency:

(a) The applying retailer shall be notified in writing;

(b) After two (2) reviews, the applying retailer shall not apply for the program for sixty (60) days from the date of denial;

(c) After three (3) reviews, the applying retailer shall not apply for 120 days from the date of the denial;

(d) Each subsequent denial shall result in an additional sixty (60) day denial.

(13) A person aggrieved by a decision of the cabinet may file a written request for a hearing with the cabinet within fifteen (15) days after receipt of notice of the adverse action. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Procedures for Authorized Vendors. Authorized vendors shall comply with the Manual for Contracted WIC Vendors.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky WIC Manual for Applying Retailers", October 2013; and

(b) "Manual for Contracted WIC Vendors", October 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (40 Ky.R. 501; 832; eff. 10-16-2013.)

902 KAR 18:061. Vendor violations and sanctions.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Vendor Violations and Sanctions. (1) In addition to any criminal penalty imposed pursuant to KRS 194A.990, the cabinet shall impose one (1) or more of the following civil sanctions for designated violations committed by a vendor, his employee, or agent:

(a) Failure of a vendor to meet the authorization criteria in 902 KAR 18:050:

1. First occurrence: a sixty (60) day disqualification or non-renewal;
2. Second occurrence: a ninety (90) day disqualification or non-renewal; or
3. Third and subsequent occurrences: a 120 day disqualification or non-renewal;

(b) Failure of a vendor to pay a claim. The state WIC agency shall request payment as follows:

1. Mail a letter to the vendor requesting payment by a specified date;
2. If payment is not received, the state WIC agency shall contact the vendor by either email or telephone, reminding vendor of payment due;
3. If payment is not received, the state WIC agency shall send a second letter by certified mail, return receipt requested, of past due claim; and
4. If payment is not received by the deadline specified in the second letter, then the following disqualification shall be issued:
 - a. First occurrence: a six (6) month disqualification; or
 - b. Second occurrence and subsequent occurrences: a one (1) year disqualification from the WIC program;

(c) Failure of a vendor to return the WIC vendor authorization stamp and XAC device (if applicable). The state WIC agency shall request receipt of stamp and XAC device (if applicable) as follows:

1. Mail a certified letter to the vendor requesting return of the vendor stamp and XAC device (if applicable) within seven (7) days of disqualification or termination;
2. If the vendor stamp and XAC device (if applicable) are not received, the state WIC agency shall contact the vendor by either email or telephone, reminding the vendor of the vendor stamp and XAC device (if applicable) being due; and
3. If the stamp and XAC device (if applicable) are not returned within seven (7) days of the effective date of termination or disqualification, then an additional six (6) month disqualification shall be issued;

(d) Store personnel requesting the PIN: two (2) positive buys out of three (3) shall result in a one (1) year disqualification;

(e) Using the integrated or WIC XAC device Cash Value Benefits (CVB) functionality to provide non-produce food item(s): two (2) positive buys out of three (3) shall result in a one (1) year disqualification from the WIC program;

(f) Providing free merchandise exclusively to WIC participants as an incentive to redeem WIC benefits: one (1) positive buy out of three (3) shall result in a six (6) month disqualification;

(g) Public notice by a WIC vendor of providing free merchandise exclusively to participants as an incentive to redeem WIC benefits: one (1) occurrence shall result in a six (6) month disqualification;

(h) Conviction of trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a permanent disqualification;

(i) Trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a six (6) year disqualification;

(j) Sale of alcohol or alcoholic beverage or tobacco product in exchange for a food instrument: one (1) positive buy shall result in a three (3) year disqualification;

(k) Claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the vendor's documented inventory of that supplemental food item for a specific period of time:

1. An inventory audit for a thirty (30) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification; or

2. An inventory audit for a ninety (90) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification;

(l) Charging a participant more for supplemental food than a non-WIC customer is charged or the current shelf price:

1. Two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification if:

a. The vendor has exhibited a prior pattern of overcharging based upon routine monitoring visits which have resulted in two (2) letters for price discrepancies; or

b. The vendor has exhibited a pattern of two (2) out of four (4) quarters of low variance in the prior federal fiscal year;

2. The state WIC agency shall:

a. Require a vendor who has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state WIC agency; and

b. Notify a vendor who exhibits a pattern of low variance for two (2) or more quarters during the federal fiscal year; and

3. Three (3) positive compliance buys out of three (3) shall result in a three (3) year disqualification for a vendor who does not meet the conditions in subparagraph 1. of this paragraph;

(m) Receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or unauthorized person: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(n) Charging for supplemental food not received by the participant, such as charging for one (1) food item or more listed on the WIC benefits but not purchased by the WIC participant: three (3) positive buys out of three (3) shall result in a three (3) year disqualification;

(o) Providing credit, an IOU, a rain check, a due bill, or a store credit, or providing a nonfood item other than cash, alcohol, tobacco, firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802, in exchange for food benefits shall result in the following disqualification: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(p) Providing an unauthorized food item or items in exchange for a food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(q) Charging for supplemental food provided in excess of those listed on the food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(r) A vendor who has been disqualified from the SNAP shall be disqualified from the WIC program for the same length of time as the SNAP disqualification; or

(s) A vendor who has been assessed a civil money penalty by SNAP, as provided under 7 C.F.R. 278.6, shall be disqualified from the WIC program for the same length of time for which the vendor would have been disqualified from SNAP unless the WIC program determines that disqualification would result in inadequate participant access, in which case a penalty shall not be assessed.

(2) If multiple vendor violations are found during an investigation, the length of the disqualification shall be determined by the most serious violation.

(3) A vendor who has previously received two (2) or more of the mandatory sanctions designated in subsection (1)(h) through (q) of this section, and who receives another sanction for a violation designated in subsection (1)(h) through (q) of this section, shall have the third and all subsequent sanctions be doubled. A civil monetary penalty shall not be assessed for a third or subsequent sanction.

(4) Disqualified vendors, even if the decision is later overturned, shall not be entitled to receive compensation for revenues lost as a result of a disqualification.

Section 2. Vendor Notification (1) Except for violations identified in Section 1(1)(a) through (c), (f) through (j), (r), and (s) of this administrative regulation, the state WIC agency shall notify a vendor in writing if an investigation reveals a potential initial violation.

(2) The vendor shall be notified before another violation is documented unless the state WIC agency determines that notifying the vendor would compromise the investigation.

(a) The notification determination shall be made on a case by case basis.

(b) A notification of a potential initial violation shall not be issued if:

1. The vendor is identified as a high-risk vendor in accordance with 902 KAR 18:090;

2. One (1) or more of the same type of violation occurred within the same federal fiscal year or prior federal fiscal year and the vendor has received prior notification; and

3. Sending a notification letter would divulge the identity of the investigator. (40 Ky.R. 503; 832; eff. 10-16-2013.)

902 KAR 18:071. Participant access determination and civil money penalty.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes procedures for WIC vendor disqualification including the participant access determination and civil money penalty.

Section 1. Participant Access Determination. (1) Except for a violation specified in 902 KAR 18:061, Section 1(1)(h) and (i), prior to disqualifying a vendor for a violation specified in 902 KAR 18:061, the state WIC agency shall determine if disqualification of the vendor will result in inadequate participant access.

(2) Mileage shall be measured by automobile odometer or geomapping.

(3) The determination and documentation of adequate participant access shall be made using the following criteria:

(a) The sanctioned vendor is located within:

1. A metropolitan area, as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 13-01, and there is another authorized vendor located within two (2) miles of the sanctioned vendor; or

2. A nonmetropolitan area and there is another authorized vendor located within seven (7) miles of the sanctioned vendor;

(b) The sanctioned vendor has redeemed food instruments for medical foods or exempt infant formula within thirty (30) days preceding the date of the letter issuing the notice of disqualification, and there is another authorized vendor within the designated mileage as defined in paragraph (a) of this subsection who can supply the products which were previously redeemed; and

(c) The sanctioned vendor has redeemed food instruments from a minimum number of unique customers within thirty (30) days preceding the date of the letter issuing the notice of disqualification.

1. The following shall be the minimum number of customers according to the vendor's peer group:

a. Class 1: forty (40) or more unique customers;

b. Class 2: seventy-five (75) or more unique customers;

c. Class 3: 100 or more unique customers;

d. Class 4: 200 or more unique customers; or

e. Class 5: 400 or more unique customers.

2. If a sanctioned vendor meets the criteria for unique customers, then the local agency WIC coordinator or designee shall be consulted to determine if:

a. Conditions exist which would allow travel using public transportation to another authorized WIC vendor within the designated mileage in paragraph (a)1. of this subsection;

b. Crosswalks exist across multilane highways or railroad tracks if another authorized WIC vendor is located in a metropolitan area; or

c. Impassable mountain or an unbridged river would prevent travel if another authorized WIC vendor is located in a non-metropolitan area.

(4) If the WIC program determines there is adequate participant access, retailers shall be afforded the opportunity to submit written documentation providing evidence of the impact of the adverse action on WIC participants.

(5) If inadequate participant access is determined pursuant to subsection (3) of this section, a civil money penalty shall be assessed for a violation listed in 902 KAR 18:061. The civil money penalty shall be calculated in accordance with the procedures outlined in the Manual for Contracted WIC Vendors incorporated by reference in 902 KAR 18:050.

(6) The written documentation shall be received by the state WIC agency within fifteen (15) days from the date of receipt of the state WIC agency notification of disqualification. If the written documentation is not received within fifteen (15) days, further consideration shall not be given to participant access.

(7) Upon receipt and the review of the documentation, the WIC program shall send, within thirty (30) days, a written summary of the participant access review to the vendor. The vendor may then request a hearing in accordance with 902 KAR 18:081.

Section 2. Civil Money Penalty. (1) The WIC program may negotiate an installment plan for the collection of a civil money penalty if requested by the vendor in writing prior to the payment due date.

(2) A vendor that fails to pay, partially pay, or timely pay a civil money penalty within the required time frame shall be disqualified for the length of time corresponding to the most serious violation. (40 Ky.R. 505; 834; eff. 10-16-2013.)

902 KAR 18:081. Local agency and vendor hearing process and administrative appeal process.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the local agency's and vendor's rights to a hearing in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Local Agency. (1) A local agency may request a hearing for the following adverse actions:

- (a) Denial of a local agency's application;
- (b) Disqualification of a local agency; and
- (c) Any other adverse action that affects a local agency's participation.

(2) The following state WIC agency actions shall not be subject to administrative review:

- (a) Expiration of the local agency's agreement; and
- (b) Denial of a local agency's application if the state WIC agency has issued a request for bid and followed finance procurement procedures.

(3) The following shall be the effective dates of adverse actions against local agencies:

- (a) Denial of local agency applications shall be effective immediately;
- (b) Adverse actions in subsection (1)(b) and (c) of this section shall be effective no later than sixty (60) days after the date of the notice of adverse action is served by hand delivery or certified mail receipt; and
- (c) Adverse actions that are appealed shall be effective the date that the local agency receives the hearing decision.

Section 2. Vendor Right to a Hearing or Administrative Review. (1) In accordance with 7 C.F.R. 246.18, a vendor aggrieved by a qualifying adverse action may request a hearing for the following:

(a) Denial of authorization based on the vendor authorization criteria found in 902 KAR 18:050;

- (b) Termination of an agreement;
- (c) Disqualification in accordance with 902 KAR 18:061; and
- (d) Imposition of a fine or civil money penalty in lieu of a disqualification in accordance with 902 KAR 18:071.

(2) In accordance with 7 C.F.R. 246.18, the following state WIC agency actions shall not be subject to administrative review under this section:

- (a) The validity or appropriateness of the vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;

(b) The validity or appropriateness of the selection criteria for competitive price, including vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors;

(c) The validity or appropriateness of the participant access criteria and the state WIC agency's participant access determinations;

(d) The determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list of entities where infant formula can be purchased;

(e) The validity or appropriateness of the prohibition of incentive items;

(f) The determination not 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;

(g) The determination that a vendor did not have a 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;

(h) The expiration or non-renewal of a vendor's agreement;

(i) Disputes regarding food instrument payments and vendor claims; or

(j) Disqualification of a vendor as a result of disqualification from the SNAP.

Section 3. Hearing or Administrative Appeal. (1) A vendor or local agency may file a written request by hand delivery or certified mail with the state WIC agency within fifteen (15) days after receipt of notice of the adverse action.

(2) The hearing shall be conducted in accordance with KRS Chapter 13B.

(3) Within fifteen (15) days of a request for a hearing, the cabinet shall issue a date of hearing.

(4) The state WIC agency may dismiss a request for hearing if:

(a) The request is not received within the time limit set by this administrative regulation;

(b) The request is withdrawn in writing by the appellant or a representative of the appellant; or

(c) The appellant or representative fails, without good cause, to appear at the scheduled hearing.

(5) To protect the identity of the state WIC agency investigators, cross examinations of these witnesses shall be conducted behind a protective screen or other device in accordance with 7 C.F.R. 246.18.

(6)(a) In accordance with 7 C.F.R. 246.18, the hearing officer shall issue a written recommended order no later than ninety (90) days after the cabinet receives the request for the hearing which shall include:

1. The findings of fact;

2. Conclusions of law; and

3. Recommended disposition, including recommended penalties, if any, in accordance with KRS 13B.110.

(b) In accordance with 7 C.F.R. 246.18, decisions of the hearing official shall be based on KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18, and the facts of the case as established in the official record of the hearing as defined in KRS 13B.130.

(c) A hearing officer shall not reduce or modify sanctions that are prescribed by KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(7) Exceptions to the hearing officer's recommended order shall be filed with or mailed to Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.

(8) Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order, as provided in KRS 13B.110.

(9) A party may file a response to an opposing party's exceptions within twenty-five (25) days from the date the recommended order is mailed.

(10) Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

(11) Appealing an action shall not relieve an appellant from the responsibility of continued compliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(12) The final order shall be issued in accordance with KRS 13B.120.

(13) In accordance with 7 C.F.R. 246.18, the state WIC agency shall make denials of authorization and disqualifications imposed under 902 KAR 18:061 effective on the date of receipt of the notice of adverse action.

Section 4. In accordance with KRS 13B.140, any party aggrieved by the final order may seek judicial review of the decision by filing a petition within thirty (30) days of receipt of final order notice in the Franklin Circuit Court or the circuit court of the county in which the party resides or operates a business. (40 Ky.R. 507; 834; eff. 10-16-13.)

902 KAR 18:090. High Risk Criteria.

RELATES TO: KRS 194A.050, 194A.505, 194A.990, 205.231, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the high risk criteria for contracted retailers with the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. High Risk Criteria. In accordance with 7 C.F.R.. 246.12, high-risk vendors shall be identified at least once each federal fiscal year. The criteria and points established in this section shall be assessed.

(1) A vendor with low variance, as defined by 902 KAR 18:011, Section 1, shall be assessed five (5) points per quarter.

(2) A vendor who has greater than or equal to twenty (20) percent but less than fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed five (5) points per quarter. The transactions shall not include produce and formula.

(3) A vendor who has greater than or equal to fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed ten (10) points per quarter. The transactions shall not include produce and formula.

(4) A vendor in which six (6) or more gallons of milk were redeemed in a single transaction, occurring in thirty (30) or more transactions a quarter, shall be assessed five (5) points per quarter.

(5) A vendor with full package redemptions in one (1) transaction occurring in twenty (20) or more transactions per quarter shall be assessed five (5) points per quarter.

(6) A vendor shall be assessed ten (10) points for every overcharge letter unless the overcharge is justified in writing and accepted by the state WIC agency.

(7) A vendor with a lack of inventory, as outlined in the Kentucky WIC Manual for Applying Retailers, incorporated by reference in 902 KAR 18:050, shall be assessed five (5) points per occurrence during a monitoring visit.

(8) A vendor whose prices for transactions are greater than or equal to ninety (90) percent above the NTE shall be assessed five (5) points per quarter.

(9) A vendor whose percentage of WIC sales to food sales is greater than twenty (20) percent shall be assessed five (5) points for every ten (10) percent increment per federal fiscal year.

(10) A vendor who has redeemed more than \$2,000 in transactions per federal fiscal year from out of its contracted agency shall receive one (1) point per federal fiscal year.

(11) A vendor who received a Good Letter with Exceptions shall be assessed five (5) points per letter.

Section 2. High Risk Referrals. A vendor who is assessed thirty (30) points or more per federal fiscal year shall be referred to a federal, state, or local law enforcement agency for a compliance investigation. (40 Ky.R. 509; 835; eff. 10-16-2013.)

KENTUCKY WIC PROGRAM VENDOR AGREEMENT

The undersigned represents that he/she is an owner or has other legal authority to obligate the Second Party.

SECOND PARTY

_____ Business Name (Print Legibly)	_____ Vendor Number
_____ Name of Authorized Official (Print Legibly)	_____ Signature of Authorized Official
_____ Date Signed	

FIRST PARTY

_____ Agency Name (Print)	_____ Signature of Authorized Official
_____ Date Signed	

APPROVED BY

_____ Signature of Authorized Official Kentucky WIC Program Department for Public Health Cabinet for Health and Family Services	_____ Date Signed
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