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Effective April 1, 2015

Policy No. WV:01.0

Vendor Agreement/Policy Violations

Purpose

To describe state agency (SA) procedures for monitoring compliance by vendors with the Vendor Agreement and WIC Program policies and to inform vendors of sanctions which will be imposed by the SA for non-compliance.

Authority

7 CFR Part 246 and WIC Vendor Agreement

Policy

Vendors who fail to comply, either intentionally or unintentionally, with the Vendor Agreement and/or policies of the WIC Program shall be sanctioned. The SA and/or representatives of the SA shall document the circumstances of a vendor's noncompliance. Sanctions shall be imposed consistently among vendors and shall be fully documented.

Procedure

- I. The SA and/or representatives of the SA shall routinely monitor the operations of authorized WIC vendors during the term of their Vendor Agreements.
 - A. Monitoring techniques employed shall include but are not limited to:
 1. Routine on-site store reviews by SA staff or their designee;
 2. On-site inspections by a city, county, district or state health authority;
 3. Covert in-store compliance buys by representatives of the SA;
 4. Invoice and EBT claim audits; and/or
 5. Periodic reviews of vendor redemption reports.

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- B. Criteria used by the SA and/or representatives of the SA to initiate an invoice audit and/or compliance buy shall include but are not limited to:
 - 1. Price differences identified as a result of the on-site store review or compliance buy;
 - 2. Apparent discrepancy in vendor's in-store stock compared to the volume of WIC redemptions; or
 - 3. Indicators that the vendor is "high risk".

- C. "High risk" vendors

High risk vendors are those that the SA has determined pose the highest risk of non-compliance with the Vendor Agreement and/or policies.

- II. Monitoring by routine on-site store reviews may be conducted by the State Agency and/or a SA representative.

- A. During the on-site store review, the SA representative shall identify him/herself to store personnel and assess the store. The store assessment may include, but is not limited to, the following procedures:

- 1. Collect shelf prices and verify that prices are prominently displayed for authorized WIC products.
- 2. Examine the adequacy of stock to determine if an invoice audit is appropriate.
- 3. Examine expiration dates on WIC food items.
- 4. Examine WIC signage at the store.
- 5. Examine for compliance with the requirements for declared traditionally "Least Expensive Brands."
- 6. Examine adherence to restriction on vendor incentive items in accordance with WIC Policy WV:09.0.
- 7. A SA representative may also test for other violations of policies and the Vendor Agreement and/or addenda.

- B. The SA representative shall compare the prices obtained during the review to at least one recently submitted claim. All identified overcharges from the prices obtained during the review shall be

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recovered and a written warning on more serious sanctions, if appropriate, shall be transmitted to the vendor.

- C. The vendor will be notified by letter of the results within 60 days of the date of the on-site review.
- D. If there is a warning and/or violation, the letter will be mailed via certified and regular mail service. If the certified letter is returned by the post office as unclaimed mail and the letter sent via regular mail service is not returned, then four days from the date of the letter will be considered the date of receipt by the vendor.

III. Monitoring by On-Site Inspections by a Health Authority

- A. The vendor may receive an on-site inspection by a public health authority for compliance with the Health and Safety Code. Violations may result in a disqualification from the WIC Program in addition to any other penalties as a result of non-compliance with the Health and Safety Code.
- B. If it is determined by inspection or other means, such as a compliance buy or on-site review, that an authorized WIC vendor purchased infant formula and/or other WIC food items from a wholesale distributor not licensed in Texas in accordance with the Texas Health and Safety Code Chapter 431 and Texas Administrative Code Chapter 229, or from a food manufacturer not registered with the U.S. Food and Drug Administration, or from a retail store not holding a permit in accordance with the Texas Health and Safety Code Chapter 437, or from an entity not on the list provided by WIC of approved formula sources:
 - 1. A warning shall not be issued.
 - 2. One incident shall result in the disqualification of the vendor for one year.
 - 3. The SA shall not accept a CMP in lieu of disqualification.
 - 4. If the vendor receives a second sanction for this violation, the vendor shall be disqualified for one year.

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IV. Monitoring by Invoice Audit

- A. The SA or State Agency Representative may request up to 12 months purchase invoices from a vendor for analysis to determine that all claims submitted by the vendor are supported by invoices.
1. The vendor shall be given 60 days from receipt of the written request to submit purchase invoices to the SA, as time is of the essence. The letter will be mailed via certified and regular mail service. If the certified letter is returned by the post office as unclaimed mail and the letter sent via regular mail service is not returned, then four days from the date of the letter will be considered the date of receipt by the vendor.
 2. The 60-day period to submit purchase invoices is considered an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3) of WIC Program regulations.
 3. The vendor's failure to supply purchase invoices to the SA within the 60 day period shall result in disqualification from participation in the WIC Program. The disqualification date for failure to submit purchase invoices within the 60 day period will be included in the written purchase invoice request.
 4. Additional purchase invoices/records shall not be accepted by the SA and/or the SA representative after expiration of the 60 day period unless directed to do so by the WIC Program Director or the Office of Inspector General (OIG).
- B. Required components of an acceptable purchase invoice:
1. The purchase invoice shall reflect the name and address of the wholesaler, food manufacturer or retail food store, a customer number and/or the name and address of the vendor (or any other identifier that specifically identifies the vendor to whom the items were sold), date of the purchase, list of the items purchased (that adequately describes the purchased items, such as a stock number or UPC), size, quantity, unit price, and dollar extension for the quantity purchased.
 2. Retail cash tickets shall include the name and address of the store or a code number by which the store location can be

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identified, the date of purchase, description of the exact items purchased, the unit price of the items purchased and the total amount purchased.

- a. Cash tickets, which do not completely describe the actual item, shall have a computer code, which can be verified by contacting the store at which the merchandise was purchased.
 - b. Cash tickets which do not specifically identify the product purchased may be verified by the SA and/or SA representative through communication with the store's corporate office.
3. Affidavits, Statements of Fact, and oral statements shall not be accepted from the WIC contracted vendor under audit as evidence of inventory. Only purchase invoices or retail cash tickets as described in item B.1 and B.2 of this section shall be accepted from the WIC contracted vendor under audit as evidence of inventory.

C. Invoice Audit Sanctions

1. If acceptable purchase invoices do not support amounts paid to the vendor for WIC claims submitted to the SA, the SA shall recover the monies overpaid to the vendor.
2. Since the review of multiple invoices is a SA audit of the vendor's adequate maintenance of sufficient inventory of WIC-eligible food items to support WIC claims over a wide span of time ranging from several months up to 12 months, unsubstantiated WIC sales paid to the vendor in more than one month for a specific food item category/subcategory by UPC in a quantity that exceeds the manufacturer's standard case quantity of that food item shall constitute a pattern of violations and shall result in disqualification of the vendor for three years, unless the vendor provides acceptable purchase invoices and/or cash receipts to the Auditor during the audit period that clearly demonstrates, in the Auditor's opinion, that no pattern exists for any item for which there is an unsubstantiated sale. In making the determination a quantity exceeds the manufacturer's standard case quantity for a food item, the SA or State Agency

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Representative shall utilize the "WIC Listing of Manufacturer's Standard Case Quantity for Food Items" which is an addendum to the WIC Vendor Agreement.

- a. The SA shall not accept a Civil Money Penalty (CMP) in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area. b. The vendor shall be notified in writing of the invoice audit disallowance and afforded 20 days from receipt of the written notification to submit additional purchase invoices. The 20-day period to submit additional purchase invoices is considered an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3) of WIC Program regulations. In addition, the written notification will include the effective date of the three year disqualification if acceptable purchase invoices do not support amounts paid to the vendor for WIC claims submitted to the SA. The letter will be mailed via certified and regular mail service. If the certified letter is returned by the post office as unclaimed mail and the letter sent via regular mail service is not returned, then four days from the date of the letter will be considered the date of receipt by the vendor.
3. If unsubstantiated sales of one or more WIC items are identified but a pattern of more than one month of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item is not identified in an amount greater than the manufacturer's standard case quantity, the vendor shall receive a written warning. In making the determination a quantity exceeds the manufacturer's standard case quantity for a food item, the SA or State Agency Representative shall utilize the "WIC Listing of Manufacturer's Standard Case Quantity for Food Items" which is an addendum to the WIC Vendor Agreement.
 - a. The vendor shall be notified in writing of the invoice audit disallowance and afforded 20 days from receipt of the written notification to submit additional purchase invoices. The 20-day period to submit additional purchase invoices is

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considered an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3) of WIC Program regulations. The letter will be mailed via certified and regular mail service. If the certified letter is returned by the post office as unclaimed mail and the letter sent via regular mail service is not returned, then four days from the date of the letter will be considered the date of receipt by the vendor.

- b. In addition, the written warning shall notify the vendor that if a subsequent invoice audit within three years of the date of the warning letter identifies any additional unsubstantiated WIC sales paid to the vendor for a specific food item for which the vendor previously claimed reimbursement but could not document in the vendor's inventory, the subsequently identified additional unsubstantiated WIC sales shall constitute a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item, and the vendor will be disqualified for three years. In accordance with Federal Regulations 7 CFR Section 246.12(h)(3) and the Vendor Agreement, it is the Vendor's responsibility to maintain inventory records used for Federal and State tax reporting purposes and other records the State may require for a minimum of three years.
4. The vendor claim determination by the SA and/or SA representative regarding the amount of the unsubstantiated WIC sales is not subject to administrative review.

V. Monitoring by Compliance Buys

- A. Definition of a compliance buy: A covert in-store investigation by one or more SA representatives posing as WIC participants or the parent/guardian/proxy of WIC participants using WIC EBT food benefits to test the vendor's compliance with the Vendor Agreement, program policies, and/or rules. The SA representative does not reveal to store personnel that he/she is a SA representative during the visit.

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1. If no sanctionable violations are detected on the first monitoring activity, a second compliance monitoring activity is conducted. There is no minimum time interval requirement between the first non-violative compliance monitoring activity and the second compliance monitoring activity. If no sanctionable violations are detected on the second compliance monitoring activity, the vendor is notified in writing within 60 days of the second compliance monitoring activity and the investigation is closed.
2. If one or more sanctionable violations are detected during a compliance buy and/or on-site review, a notice of an in-store violation will be sent to the vendor via facsimile within two weeks after the monitor returns to the office, with the exception of notice of violations pertaining to trafficking in food instruments, selling/buying firearms, ammunition, explosives, controlled substances, alcohol, alcoholic beverages or tobacco products. If one or more additional violations are subsequently detected based on the transactions submitted for reimbursement by the vendor, but prior to the completion of the investigation, no facsimile notification will be sent to the vendor.
3. A letter will be sent to the vendor detailing the results of the compliance buy whether or not a facsimile notice was sent. The letter will be mailed via certified and regular mail service. If the certified letter is returned by the post office as unclaimed mail and the letter sent via regular mail service is not returned, then four days from the date of the letter will be considered the date of receipt of warning of violations by the vendor.
4. If necessary, one or more follow-up compliance monitoring activities are conducted after a warning is received by the vendor and in such case the vendor will be revisited no sooner than 60 days from the date of receipt of the warning.
5. If necessary, follow-up compliance monitoring activities will be conducted until two passes (compliance buys and/or on-site reviews) are conducted with no sanctionable violations or alternately, until evidence of WIC Program noncompliance is established. Both the initial and follow-up compliance monitoring activities will be considered in determining whether sanctions are applicable. The initial and follow-up compliance

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monitoring activities and subsequent follow-up period constitute a single investigation.

6. All compliance monitoring activity relevant to an investigation must be conducted within a 24 consecutive month period. Compliance monitoring activities older than 24 months will be removed from consideration and only those remaining within the open investigation can be used for the determination of a pattern and subsequent levying of a sanction.
- B. Definition of a positive pass: A compliance buy pass and/or on-site review in which evidence of a sanctionable violation of the Vendor Agreement, program policies, and/or rules is obtained. Sanctionable violations identified during compliance buys and on-site reviews may be aggregated to constitute a pattern.
- C. A compliance buy may test for, but not be limited to, areas of potential non-compliance as follows:
1. A SA representative may attempt to transact WIC EBT food benefits for unauthorized package/product sizes, unauthorized food items, unauthorized brands of food items, non-food items, excess quantity of foods, credit (including rain checks which are not allowable), and/or cash.
 2. A SA representative may also test for overcharging, being charged for foods not received, and/or compliance with the vendor's declared traditionally least-expensive brands of products and the related requirement that prices for WIC-approved foods be prominently displayed either on the food item, on the shelf where the food item is displayed, or otherwise displayed where WIC participants can easily see them.
 3. The SA or SA representative may test the WIC EBT in-lane system's ability to accurately sell authorized fruits and vegetables in a WIC EBT transaction.
 4. A SA representative may also test for other violations of policies and the Vendor Agreement and/or addenda.
- D. For trafficking in WIC EBT food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in

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section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for WIC EBT transaction payments. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

1. For conviction of a vendor for a violation of trafficking or illegal sales, the SA shall permanently disqualify the vendor. The SA shall not accept a CMP, for any reason, in lieu of permanent disqualification for conviction of a vendor for trafficking in WIC EBT food instruments or selling firearms, ammunition, explosives, or controlled substances.
2. For an administrative finding, the SA shall disqualify a vendor for six years for:
 - a. One incident of buying or selling WIC EBT food benefits and/or transactions for cash (trafficking); or
 - b. One incident of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for and/or utilizing WIC EBT food benefits.
3. For redemption of WIC EBT food benefits and/or transactions for cash (trafficking), firearms, ammunition, explosives, and/or controlled substances:
 - a. The unauthorized item(s) shall not be paid.
 - b. A warning shall not be issued.
 - c. The SA shall not accept a CMP in lieu of disqualification unless:
 - i. It determines inadequate participant access to other authorized vendors in the area will result from such a disqualification; and
 - ii. The SA determines that the vendor had an effective policy and program in effect to prevent trafficking; and
 - iii. The ownership was not aware of, did not approve of, and was not involved in the conduct of the violation.
 - d. If the vendor receives a second sanction for this violation, the second sanction shall be doubled and no CMP would be considered in lieu of a disqualification.
 - e. Sanctions for subsequent violations after the second sanction shall also be doubled with no possibility of a CMP.

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- E. For redemption of WIC EBT food benefits for alcohol or alcoholic beverages or tobacco products:
 - 1. The unauthorized item(s) shall not be paid.
 - 2. A warning shall not be issued.
 - 3. One incident shall result in the disqualification of the vendor for three years.
 - 4. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 - 5. If the vendor receives a second sanction for this violation, the second sanction shall be doubled.
 - 6. Sanctions for subsequent violations after the second sanction shall also be doubled.

- F. For redemption of WIC EBT food benefits that indicate charging the SA more than the customary selling price charged other customers, the overcharges shall not be paid.
 - 1. One positive compliance monitoring activity will result in a single written warning to the vendor.
 - 2. Follow-up compliance monitoring activities may be conducted after the warning has been received by the vendor.
 - 3. Three or more positive passes shall constitute a pattern.
 - 4. A pattern of violations shall result in disqualification for three years.
 - 5. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 - 6. If there is a difference between the posted shelf price for an item and the price scanned by the store's integrated cash register system, then the scanned price will be deemed the "customary selling price." If a store operates a WIC EBT stand beside system, the store's integrated legacy cash register system scanned price will be deemed the "customary selling price." If a store does not have an integrated cash register system, the posted shelf price for an item is the "customary selling price."

- G. For transactions which indicate charging for foods not received by

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the WIC EBT recipient:

1. The charge for a food item not received shall not be paid.
2. One positive compliance monitoring activity will result in a single written warning to the vendor.
3. Follow-up compliance monitoring activities may be conducted after the warning has been received by the vendor.
4. Three or more positive passes shall constitute a pattern.
5. A pattern of violations shall result in disqualification for three years.
6. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.

H. For acceptance of the WIC EBT card at an unauthorized vendor outlet and submitting the transaction to the SA for payment through an alternate authorized vendor outlet:

1. The transaction shall not be paid.
2. One incident shall result in a disqualification of the authorized vendor outlet for three years.
3. The unauthorized vendor outlet shall not be eligible to apply for WIC authorization for:
 - a. three years from the date of the unauthorized vendor outlet's receipt of SA notification; or
 - b. if the unauthorized vendor outlet is currently disqualified from the Program for a period in excess of three years, the longer period shall apply.
4. The SA shall not accept a CMP from the authorized vendor outlet in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
5. If the authorized vendor outlet receives a second sanction for this violation, the second sanction will be doubled.
6. Sanctions for subsequent violations after the second sanction shall also be doubled.

I. For redemption of WIC EBT food benefits for credit, issuance of rain checks, and/or providing non-food items other than alcohol or

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alcoholic beverages, cash, tobacco products, firearms, ammunition, explosives, and/or controlled substances as defined in 21 U.S.C. 802:

1. The unauthorized item(s) shall not be paid.
 2. One positive compliance monitoring activity will result in a single written warning to the vendor.
 3. Follow-up compliance monitoring activities may be conducted after the warning has been received by the vendor.
 4. Three or more positive passes shall constitute a pattern.
 5. A pattern of violations shall result in disqualification for three years.
 6. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 7. If the vendor receives a second sanction for this violation, the second sanction will be doubled.
 8. Sanctions for subsequent violations after the second sanction shall also be doubled.
- J. For violating WIC Policy WV:09.0, Restriction on Vendor Incentive Items, in any way:
1. One incident shall result in a written warning.
 2. A second incident shall result in disqualification of the vendor for one year.
 3. The state will not accept a CMP in lieu of disqualification.
 4. The state reserves the right to detect violations through any compliance monitoring technique.
- K. For acceptance of WIC EBT food benefits at an authorized vendor outlet and submitting the transactions to the SA for payment through an alternate authorized outlet, a written warning shall be issued to both vendor outlets.
1. The transaction shall not be paid.
 2. One incident shall result in a single written warning to the vendor that accepted the WIC EBT food benefits and the vendor that submitted the transaction for payment.
 3. If a vendor participates in a second incident, the store outlet

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shall be disqualified for three months.

4. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.

For the following Procedures V.L-V, the vendor will receive two warnings, one after each compliance monitoring activity in which a sanctionable violation occurs that does not require immediate disqualification.

- L. For redemption of WIC EBT food benefits for infant formula not authorized on the EBT card:
 1. The transaction(s) shall not be paid.
 2. Three or more positive passes shall constitute a pattern.
 3. A pattern of violations shall result in disqualification for one year.
 4. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.

- M. For redemption of WIC EBT food benefits for unauthorized food items or package sizes of food other than formula and/or charging for quantities of foods provided in excess of those authorized on the WIC EBT card:
 1. The unauthorized item(s) shall not be paid.
 2. Three or more positive passes shall constitute a pattern.
 3. A pattern of violations shall result in disqualification for one year.
 4. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.

- N. For store personnel entering the WIC EBT recipient's PIN and/or accepting the WIC EBT purchase transaction in lieu of the WIC EBT recipient:
 1. Three or more positive passes shall constitute a pattern.
 2. A pattern of violations shall result in disqualification for one year.
 3. The SA will not accept a CMP in lieu of disqualification.

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- O. For using WIC allowable food scan codes from WIC food items, UPC codebooks, and/or UPC barcode/PLU reference sheets to provide an unauthorized food item and/or to provide an authorized WIC food item with a different UPC/PLU:
 - 1. The unauthorized item will not be paid. The price difference between the amount charged to the SA and the WIC authorized item provided will not be paid.
 - 2. Three or more positive passes shall constitute a pattern.
 - 3. A pattern of violations shall result in disqualification for one year.
 - 4. The SA will not accept a CMP in lieu of disqualification.

 - P. For failure to prominently display the shelf prices of all WIC-authorized foods within the store's commercial area and/or in the drive-thru service area:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

 - Q. For redemption of WIC EBT food benefits for brands that are not the vendor's declared least expensive brand when the declared products are in stock:
 - 1. The price difference between the non-declared item sold and the declared item in stock shall not be paid.
 - 2. Three or more positive passes shall constitute a pattern.
 - 3. A pattern of violations shall result in disqualification for one month.
 - 4. The SA will accept a CMP in lieu of disqualification.

 - R. For refusing to sell an authorized item in an authorized size when the price falls within the "not to exceed price".
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

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- S. For failing to offer WIC customers the same courtesies and discounts offered to other customers such as manufacturers' cents off coupons, buy one get one free, buy one get one at a reduced price, free ounces added by manufacturer, store loyalty cards, volume discounts, incentive items, or trading stamps:
1. Three or more positive passes shall constitute a pattern.
 2. A pattern of violations shall result in disqualification for one month.
 3. The SA will accept a CMP in lieu of disqualification.

Manufacturers' Coupons – The price of WIC-approved food items bought with a cents-off coupon must be reduced by the same amount for the WIC participant as it would for any other customer. The savings from the coupon would reduce the amount being charged to the WIC Program. If a cents-off coupon offers free additional non-WIC items with the purchase of a specific WIC food, the participant may take advantage of this promotion at no additional cost to the Program. The coupon amount will be applied to the transaction total.

Buy One Get One Free – In these promotions, the retail vendor sells one WIC-approved food item and provides a second identical item or a different WIC-approved item at no extra cost. If the participant has one or more units of the advertised item on the EBT card, only the value of the purchased item will be deducted from the card and the participant will receive the second item free. Therefore, if the second item is a WIC-approved item, the value and item will not be deducted from the card. The participant will then be able to purchase any remaining units of the item from their benefit balance. If the second or free item is not a WIC-approved item, there is no impact on the WIC program and the participant is allowed to participate and benefit from these types of promotions.

Buy One Get One at a Reduced Price – In these instances, a retail vendor will sell one WIC-approved food item at full price and sell a second identical item or a different WIC-approved item at a reduced price. If the participant has one unit of the item on the EBT card, the WIC client will pay for that item by having the unit or benefit deducted from the card, and must use cash or some other means of

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payment to purchase the second item. If the participant has two of the items in the EBT benefit balance, the balance of both items will be deducted from the balance at the time of purchase. WIC will be charged the full price for the first item and the reduced price for the second item. If the WIC participant wishes to preserve his/her WIC benefits and purchase the reduced price items with cash or some other tender, the vendor must allow the customer that option.

Free Ounces Added to Item by Manufacturer – Manufacturers may add extra ounces to their products at no extra cost to the customer. Participants may use their EBT benefits to purchase WIC-approved food items that have bonus ounces added to the package. Any additional ounces included in the package will not be deducted from the remaining EBT benefit balance.

Store/Loyalty Shopping Cards – WIC participants should be provided the opportunity to use store/loyalty-shopping cards if they so choose. The portion of the loyalty card discount applicable to the WIC-redeemed items should reduce the cost of the transaction to the WIC Program.

Volume Discounts – When a discount percentage is applied to the total dollar amount of the WIC and non-WIC items purchased, the pro-rata share of the discount applicable to the WIC purchases should reduce the cost of the transaction to the WIC Program.

T. For seeking restitution from participants for invalidated transactions:

1. Three or more positive passes shall constitute a pattern.
2. A pattern of violations shall result in disqualification for one month.
3. The SA will accept a CMP in lieu of disqualification.

U. For failing to label three or more declared traditionally least expensive items with State furnished pink stickers or store stickers/signage authorized by the SA:

1. Three or more positive passes shall constitute a pattern.
2. A pattern of violations shall result in disqualification for one month.
3. The SA will accept a CMP in lieu of disqualification. The CMP

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shall not exceed \$1,000.

4. A subsequent violation within a 12-month period from the date of the first disqualification notification shall result in disqualification for one month or a CMP double the first infraction, not to exceed \$2,000.
5. An additional violation within 24 months from the date of the first disqualification notification shall result in disqualification for one month or a CMP triple the first infraction, not to exceed \$3,000.

V. For improperly labeling WIC foods as follows:

1. Labeling a product within the LEB categories as WIC approved with a pink sticker when it is not the store's declared least expensive brand, unless the vendor is temporarily out of the declared least expensive brand;
2. Labeling a food as WIC approved when it is not authorized; and
3. Labeling a food as WIC approved with a pink sticker while failing to label other WIC approved foods within the same category, such as labeling one brand cereal but not other WIC approved brands of cereal.
4. Labeling a product with a pink sticker within a LEB category as WIC approved when the store has not declared a LEB food item in the LEB category.
 - a. Three or more positive passes shall constitute a pattern.
 - b. A pattern of violations shall result in disqualification for one month.
 - c. The SA will accept a CMP in lieu of disqualification. The CMP shall not exceed \$1,000.
 - d. A subsequent violation within a 12-month period from the date of the first disqualification notification shall result in disqualification for one month or a CMP double the first infraction, not to exceed \$2,000.
 - e. An additional violation within 24 months from the date of the first disqualification notification shall result in disqualification for one month or a CMP triple the first infraction, not to exceed \$3,000.

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- VI. The SA may review or assess a vendor or outlet's compliance with the requirements of the WIC Vendor Agreement (including addendums) at any time during the vendor agreement's effective period based on information received from internal reports or outside agents.
- A. Breach of contract will be governed by State law and specific terms and conditions of the vendor agreement.
 - B. The State may impose specific penalties as described in Section VI.C below for violation of any of the following vendor responsibilities required in the WIC Vendor Agreement applicable to the Electronic Benefits Transfer (EBT) System:
 - 1. Failure to maintain a State certified in-store WIC EBT system that ensures system availability during all hours the store is open;
 - 2. Failure of a store's WIC EBT system to maintain the system's accuracy, integrity, or performance required and under which requirements the WIC in-store system was certified regardless of whether the failure is caused by system malfunction or staff intervention.
 - 3. Failure to ensure the EBT redemption process allows a reasonable degree of security for protecting PIN numbers used by WIC recipients;
 - 4. Failure to release food benefits to the WIC recipient any time the WIC EBT Card is decremented.
 - C. If the vendor or outlet fails to meet any of the WIC EBT requirements listed in Section VI.B above, the SA shall issue a written warning for the first violation. A second violation within a 12-month period for the same activity will result in a one-month disqualification from participating in the WIC Program or the vendor may request a civil monetary penalty (CMP) in the amount of one thousand dollars (\$1,000.00) as an alternative to the disqualification. A third violation within a 12-month period in the same activity will result in a one-month disqualification from participating in the WIC Program or the vendor may request a civil

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monetary penalty in the amount of three-thousand dollars (\$3,000.00) as an alternative to the disqualification. Subsequent violations in the same activity, or a total of five cumulative violations regardless of activity, within a 12-month period will result in additional one-month disqualifications from participation in the WIC Program for that outlet or the vendor may request a civil monetary penalty in the amount of three-thousand dollars (\$3,000.00). A vendor may request a civil monetary penalty as described in Section X.A-B below as an alternative to each one-month disqualification period beyond the initial two disqualifications.

- VII. The SA may review or assess any authorized vendor outlet at any time during the vendor's agreement period using the selection criteria in effect at the time of the review or reassessment, including but not limited to charging competitive prices and/or compliance with selling declared traditionally least expensive brands.
- A. For charging the WIC Program food prices that are determined to be non-competitive as defined by WIC Policy WV:10.0, the Vendor Agreement authorization for the Outlet/vendor site shall be sanctioned according to the following:
1. From a preliminary review of the vendor's pricing, the state will provide a non-compliant vendor with a written notification (warning) of non-compliance.
 2. Upon subsequent assessment by the state within a 12-month period, if the vendor's prices are again found to be non-competitive the state will terminate the Vendor Agreement and the state will not consider an application from that vendor site for a full six-month period.
 3. The state will not accept a CMP in lieu of a termination of the Vendor Agreement unless it determines inadequate participant access to other authorized vendors in the area will result from such a termination.
- B. For not redeeming at least 85% of its declared least expensive brands in the respective food categories as defined by WIC Policy

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WV: 02.0, the Outlet/vendor site shall be sanctioned according to the following:

1. From a preliminary review of the vendor's UPC redemptions, the state will provide a non-compliant vendor with a written notification (warning) of non-compliance.
2. Upon subsequent assessment by the state within a specified 12-month period, if the vendor's UPC redemptions are again found to be non-compliant with the least expensive brands declared, the state shall issue a second notice of non-compliance to the vendor.
3. If the vendor's UPC redemptions are again found to be non-compliant with the least expensive brands declared within the specified 12-month period, the state shall disqualify the vendor for a one-month period and must therefore terminate the Vendor Agreement for non-compliance with LEB requirements. The State will accept a civil monetary penalty (CMP) in the amount of \$1,000 in lieu of disqualifying the vendor and terminating the Vendor Agreement.
4. A subsequent violation within a 12-month period from the date of the first termination notification shall result in disqualification for one month or a CMP double the first infraction of \$2,000.
5. An additional violation within 24 months from the date of the first termination notification shall result in disqualification for one month or a CMP triple the first infraction of \$3,000.
6. A vendor who is actively working with the Program's EBT Branch on changes to its ECR system to automatically enforce LEB requirements may be exempt from sanctions from a period not to exceed 180 days beginning the date work on the system change(s) begins (see WV:02.0).

VIII. A vendor's termination of the Vendor Agreement after having received notification by the SA and/or SA representative of a violation shall not deprive the SA of jurisdiction to impose sanctions for Program violations as set forth in this policy (WV:01.0). If the outlet/vendor fails to request a hearing according to WIC Policy WV:13.0, the SA shall impose the sanction proposed in the notice to the vendor.

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- IX. The vendor shall be provided a written notice of administrative action containing the results of any on-site store review, invoice audit, and/or compliance buy and any resultant Program violations and sanctions.
- X. Civil Money Penalty (CMP)
- A. With the exception of CMPs specified in Sections V.U, V.V, VI.C, and VII.B. above, vendors may request a CMP as an alternative to disqualification for six months or less, unless otherwise not allowed. Prior to a hearing on the matter, the outlet/vendor may choose either to accept the disqualification or to pay the CMP. Following a hearing, the hearing examiner on behalf of the SA, may uphold a disqualification or allow a CMP ranging from the minimum of the pre-hearing amount as calculated, but may also include all the administrative costs of the SA associated with preparing and conducting the hearing. If the vendor does not request a hearing, the request to pay a CMP must be made within 15 days of receipt of the state's written notification of disqualification. The CMP payment must be submitted to the state prior to the disqualification effective date.
- B. For violations resulting in a disqualification of one but not more than six months, the CMP shall be calculated as follows:
1. Determine the vendor's average monthly redemptions for the most current six-month period available and multiply by 0.10 (10%) and multiply the resulting amount by the number of months the vendor would have been disqualified.
 2. The amount of the resulting CMP shall not exceed \$ 11,000 for any number of violations within a violation type nor more than \$49,000 as part of a single investigation.
- C. One or more violations within a violation type during one compliance buy or one routine monitoring visit shall be considered one violation.
- D. If more than one violation type rises to the level of a pattern, the CMP will be calculated based on the offense for which the most severe sanction would be required.

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- E. The State will not accept a CMP in lieu of a proposed disqualification period longer than six months unless the SA determines that disqualification would result in inadequate participant access to supplemental foods available through other vendors in the area. If the disqualification period longer than six months is waived due to inadequate participant access, the CMP shall be calculated in accordance with X.B.1., with the resultant amount being multiplied by the number of months the vendor would have been disqualified.
- F. The determination by the SA regarding inadequate participant access is not subject to administrative review.
- G. If the SA determines disqualification would result in inadequate participant access, the CMP may be waived except for violations that warrant a disqualification of more than six months.
- H. When during the course of a single investigation, the SA determines a vendor has committed multiple violations, the SA shall, in the event of a determination of inadequate participant access, impose a CMP for violations within each violation type. The total amount of the CMPs imposed as a result of a single investigation shall not exceed \$49,000.
- I. If the vendor receives a second disqualification for the following violations as defined in this policy and elects to pay a CMP, the CMP shall be doubled but shall not exceed \$49,000:
 - 1. Redemption of WIC EBT food benefits for infant formula not authorized on the WIC EBT card;
 - 2. Redemption of WIC EBT food benefits for unauthorized brands or package sizes of food and/or charging for quantities of foods provided in excess of those authorized on the WIC EBT card;
 - 3. Redemption of WIC EBT food benefits in LEB categories for brand products other than the declared least expensive brands when the declared items are in stock;
 - 4. Redemption of WIC EBT food benefits for unauthorized foods;
 - 5. Redemption of WIC EBT food benefits for foods not received;

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6. Charging the SA more than the customary selling price charged other customers for the same items;
 7. Redemption of WIC EBT food benefits for credit, including rain checks, and/or non-food items other than alcohol, alcoholic beverages, cash, tobacco products, firearms, ammunition, explosives, controlled substances;
 8. Redemption of WIC EBT food benefits for cash (trafficking), firearms, ammunition, explosives, or controlled substances;
 9. Redemption of WIC EBT food benefits outside authorized channels; and/or
 10. Unsubstantiated WIC sales.
- J. No CMP shall be accepted in lieu of a third and subsequent sanction(s) for violations listed in item I. of this section.
- K. The SA may agree to accept CMPs paid in installments as appropriate. If the vendor does not pay, pays only partially, or fails to pay a CMP assessed in lieu of disqualification in a timely manner, the SA shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed.
- XI. Disqualification for violations identified during one Vendor Agreement period may be imposed in any subsequent Vendor Agreement period, if the vendor has been notified in writing at least 20 days prior to the disqualification period.
- XII. For violations requiring more than one incident to establish a pattern of noncompliance, the number of incidents shall be aggregated by type. The most severe sanction applicable among all the violation types shall be imposed.
- XIII. Disqualification from the Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamp Program) shall result in an automatic disqualification of the same duration from the WIC Program. The disqualification shall be for the same length of time as the SNAP disqualification, may begin at a later date than the SNAP

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disqualification, and is not subject to administrative or judicial review under the WIC Program.

- XIV. The SA shall disqualify a vendor who has been assessed a CMP in SNAP based on hardship, as provided by Supplemental Nutrition Assistance Program regulations, 7 CFR §278.6.
- A. The length of the disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Supplemental Nutrition Assistance Program.
 - B. If the SA determines that inadequate participant access would result, no disqualification shall be imposed.
- XV. A vendor's disqualification from the WIC Program may result in disqualification of the vendor's SNAP authorization, which is not subject to administrative or judicial review under Supplemental Nutrition Assistance Program regulations, 7 CFR §278.6(e)(8).
- XVI. A vendor being disqualified shall be given at least 20 days prior notice before the proposed disqualification becomes effective, unless specifically excepted in this section:
- A. The SA will provide administrative reviews for any adverse action affecting participation as defined in WIC Policy WV:13.0, with the following exceptions:
 - 1. The validity or appropriateness of the SA's vendor limiting or selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;
 - 2. The validity or appropriateness of the SA's participant access criteria and the SA's participant access determination concerning whether disqualification of a vendor would result in inadequate participant access.
 - 3. The validity or appropriateness of the SA's selection criteria for competitive price, including, but not limited to, vendor peer group criteria and the criteria used to identify vendors that are

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above-50-percent vendors or comparable to above-50-percent vendors;

4. Denial of authorization if the SA's vendor authorization is subject to the procurement procedures applicable to the SA.
5. Expiration of the vendor agreement;
6. Disputes regarding WIC EBT food instrument and cash-value benefit payments or claims assessed against a vendor (other than the opportunity to justify or correct a vendor overcharge or other errors, as permitted by 7 CFR §246.12(k)(3));
7. SA disqualification of a vendor based on a disqualification from the SNAP;
8. The validity or appropriateness of the SA's prohibition of incentive items and the SA's denial of an above-50-percent vendor's request to provide an incentive item to customers;
9. The SA's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;
10. The SA's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
11. The SA's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list provided by the SA to a vendor; and
12. The validity or appropriateness of the provisions contained in the SA's WIC vendor agreement. Neither the SA nor a vendor is obligated to enter into or renew a vendor agreement. The vendor agreement does not constitute a license or a property interest. Available recourse for any vendor wishing to dispute the terms of the vendor agreement is termination or nonrenewal of the vendor agreement.

B. Disqualifications which take effect upon receipt by the vendor of the notice of disqualification from the SA and which do not require 20 days prior notice include the following:

1. Conviction for trafficking in food instruments;

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2. Conviction for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments; and
 3. Appealed disqualifications in which the Hearing Officer rules in favor of the SA.
- C. Vendors who wish to appeal shall provide the SA with a written request for a hearing within 20 days of receipt of the adverse action disqualification notice. The vendor's request for appeal must be postmarked and/or faxed on or before the 20th day after receipt of the adverse action notification to the vendor. The request shall, at a minimum, describe the action that is being appealed.
- XVII. The SA shall notify USDA of permanently disqualified PWIC vendors on a quarterly basis. FNS WIC Program staff will report the information in the System for Award Management (SAM).
- XVIII. The Vendor Agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current Vendor Agreement, the vendor must reapply for authorization. If a vendor is disqualified, the SA will terminate the Vendor Agreement, and the vendor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the SA's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication.
- XIX. A vendor who commits fraud or abuse of the WIC Program is liable to prosecution under applicable federal, state or local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds will 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. These criminal penalties are in addition to those administrative sanctions already stated.

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- XX. WIC vendors are not permitted to use either the acronym "WIC" or the WIC logo, including facsimiles thereof, in total or in part, either in the official name in which the vendor is registered or in a different name under which it does business. WIC vendors are also not permitted to use the WIC acronym or the WIC logo on signs, pamphlets, posters, or brochures. For violations pertaining to the use of the acronym "WIC" or the WIC logo, the SA and/or SA representative shall issue a written warning. For a subsequent violation after having received a written warning, the SA and/or SA representative shall disqualify the vendor for three months. The SA will accept a CMP in lieu of disqualification.

Vendors' use of the WIC acronym and logo is authorized only under the following conditions:

- A. State issued posters, signs, labels or other items.
- B. Vendors may have a sign, pamphlet, poster or brochure indicating that WIC food instruments are accepted (For example: "WIC CARD ACCEPTED HERE" or "WIC Accepted Here") in English and/or Spanish, as long as the letters are printed in the same size of all capital letters or capital and lower case letters and in the same print style. In all instances when wording pertaining to the acceptance of the WIC food instrument is adjacent to the store name and visible from the exterior of the building, the font size must be smaller than the store's name.
- C. Vendors are required to use state-furnished pink "WIC Approved Item" labels on shelves of declared traditionally least expensive brands.

Under certain conditions, the State may approve store-supplied LEB "WIC Approved Item" labels and/or signage. Stores must send a written request and justification to the State if the stores want to supply their own LEB labels and/or signage.

1. Stores must submit an actual sample to the State WIC Office in the same pink color used for state-produced labels, and

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must receive approval in writing prior to the use of any store-supplied shelf label. All costs associated with developing, printing, storing, supplying and using store-supplied labels must be paid by the store.

2. Stores must submit a picture to the State WIC Office for "WIC Approved Item" signage and must receive approval in writing prior to the use of the signage. The approval is not perpetual. If approval is granted, it will expire when the Vendor Agreement expires. All costs associated with developing, printing, storing, supplying and using store-designed signage must be paid by the store.

- D. Vendors may label their non-LEB WIC approved foods with the "Texas WIC Smart Choices Healthy Families" logo. The labeling of all or none within a food group is not mandated for non-LEB WIC approved foods when a vendor uses the "Smart Choices" label. A vendor would not be in violation of this policy if only one non-LEB WIC authorized brand within a food group such as cereal was labeled with "Texas WIC Smart Choices Healthy Families" and the other WIC authorized cereal brands were not labeled.

XXI. Third or Subsequent Mandatory Sanction (Ref. 246.12(l)(1)(vi))

When a vendor, who previously has been assessed two or more sanctions for violation of a federal regulation listed in 7 CFR Part 246.12(l)(1)(ii) through 246.12(l)(1)(iv), receives another sanction for any of these violations, the SA must double the third sanction and all subsequent sanctions. The SA may not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for these violations.

XXII. Expiration of a Vendor Agreement Without Renewal

- A. If the SA allows the Vendor Agreement to expire because the volume of the vendor's WIC sales has fallen below \$750 a month for three consecutive months, the SA shall not consider the

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vendor's application to participate for six months after the expiration of the vendor's prior Vendor Agreement.

- B. If the SA allows the Vendor Agreement to expire because of the vendor's history of noncompliance with the provisions of the Vendor Agreement or the WIC Program procedures, policies, rules, and/or regulations, the SA will not consider the vendor's application to participate for six months after the expiration of the vendor's prior Vendor Agreement.

- C. If the SA allows the Vendor Agreement to expire because the vendor or a representative of the vendor has failed to attend WIC vendor classroom or video teleconferencing training for a period of more than three years, the SA will not consider the vendor's application to participate until the vendor or the vendor's representative attends WIC vendor classroom or video teleconferencing training provided by the SA.