

<p style="text-align: center;">Texas WIC Program Department of State Health Services</p>
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Effective January 1, 2017

Policy No. WV:02.0

Least Expensive Brands Declaration

Purpose

To promote vendor compliance with selling declared least expensive brand (LEB) products, to promote cost-efficiency, to reduce vendor/participant confusion when identifying the least expensive brands of WIC foods, and to reduce the time required to conduct WIC transactions.

Authority

Vendor Agreement

Policy

At the time of authorization and reauthorization, all vendors shall declare the traditionally least expensive brand (LEB) for each type and size of WIC authorized milk, fluid and frozen juice, dried peas/beans/lentils, cheese, whole wheat bread, whole grain bread, wheat tortillas, corn tortillas, and brown rice the vendor's outlet(s) shall sell when prescribed on a WIC EBT food instrument. The State Agency (SA) recognizes an outlet may periodically experience out-of-stock situations and therefore not have 100% compliance with this requirement. However, at least 85% of an outlet's WIC monthly redemptions within these food types (category/subcategories) must be the vendor's declared traditionally least expensive brands (LEB). Vendor outlets that do not have at least 85% WIC LEB redemptions in each of these food types redeemed are subject to termination of their Vendor Agreements in accordance with Section VII of this policy.

Procedures

- I. At the time of authorization and reauthorization, each vendor shall complete the "Least Expensive Brand Declaration" form, listing the product brand name as well as the Universal Product Code (UPC) for

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each product declared as the traditionally least expensive brand. Only one declaration form is necessary if the traditionally least expensive brands are exactly the same for all outlets within one account. If the traditionally least expensive brand varies from outlet to outlet, then a declaration form shall be submitted for each individual outlet within an account. As a minimum, a new LEB Declaration form(s) shall be submitted with each authorized and reauthorized Vendor Agreement. No vendor will be authorized to participate in the WIC Program without submitting the declaration form(s) as a part of the vendor approval process. It is the vendor's responsibility to notify the SA of changes to its LEB declaration and submit a change request form immediately. Failure to update an LEB declaration is a violation of the Vendor Agreement and can result in a monitor's findings and termination for selling non-LEB brands.

- II. Stores are required to label their declared traditionally least expensive brands of milk, dried peas/beans/lentils, fluid and frozen juices, cheese, whole wheat bread, whole grain bread, wheat tortillas, corn tortillas, and brown rice with the uniform SA issued "WIC Approved Item" pink label. The SA shall supply uniform "WIC Approved Item" labels to stores. Also the vendor may generate pink labels from the Texas WIC website and reproduce them on Avery 5160 labels.

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

- A. Vendors must submit an actual sample to the SA WIC Office in the same pink color used for state-produced labels, and must receive approval in writing prior to the use of any store-supplied label. All costs associated with developing, printing, storing, supplying and using store-supplied labels must be paid by the store.

- B. Vendors must submit a picture to the SA WIC Office for "WIC

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Approved Item" signage and must receive approval in writing prior to the use of the signage. All cost associated with developing, printing, storing, supplying and using store-designed signage must be paid by the vendor.

- III. It is the vendor's responsibility to assure "WIC Approved Item" pink shelf labels are clearly placed designating the appropriate LEB food items.
- IV. If the vendor chooses to label other allowable non-LEB WIC food types with the pink labels, all of the allowable foods the store carries within the food group shall be labeled (i.e. if one cereal is labeled, then all allowable cereals - national brands as well as house brands shall be labeled). The only exception to this is the labeling of infant formula. Only the two standard contract milk-based and soy-based brands of formula in powder and concentrate should be labeled. Instead of using pink labels on non-LEB WIC categories of foods, the SA encourages vendors to use the "Texas WIC Smart Choices Health Families" labels.
- V. In the event a store needs to change a traditionally least expensive brand, it shall submit, to the SA, a change request form stating the new declared traditionally least expensive brand and UPC. The new declared LEB brand must be in the SA's Approved Products List (APL) or the vendor must contact the SA WIC Office to determine if the new product/brand can be authorized by WIC.
- VI. In the event a vendor runs out of the traditionally least expensive brand, the store shall sell the next least expensive brand of that product available on the shelf at that time. The next least expensive brand must be in the SA's APL.
- VII. A vendor's failure to have its declared traditionally least expensive brands (LEB) be at least 85% of its WIC redemptions in each of the applicable WIC food categories during a process month is cause for

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termination of the Vendor Agreement. The sale of non-LEB brands listed in the Approved Products List at prices equal to or less than the unit price of the declared LEB is consistent with the intent of the LEB program and does not harm the SA. The SA will include the redemptions of the non-LEB brand(s) sold at equal to or less than the unit price of the declared LEB in the final computation as part of meeting the 85% compliance requirement. At the SA's discretion a vendor's wholesale supply issues, interim changes to LEB declarations within a review month, and/or low volume of WIC sales may result in sanctions being waived on a case-by-case basis.

- A. The SA may perform a review of the vendor's compliance with selling its declared least expensive brands at any time during the term of the Vendor Agreement. The State agency shall provide a noncompliant vendor with written notification of noncompliance determined from the review. The written warning of noncompliance provides the vendor the opportunity to update the store's LEB declaration form and take other measures to ensure that the store is selling the declared traditionally least expensive brands for a minimum of 85% of the redemptions for each of the categories of foods declared. Also, the warning letter shall specify a consecutive 12-month period during which subsequent assessments will be conducted.
- B. If the vendor fails to comply with selling the declared least expensive brands on a subsequent assessment within the 12-month period specified in the first warning letter, the SA shall issue the vendor a second warning notice of non-compliance. If there are no further violations within the 12-month period specified in the first warning letter, the violation period shall be considered closed and the vendor will be considered in compliance with LEB sales requirements.
- C. If, however, the vendor's redemptions are again found to be non-compliant within the 12-month period specified in the first

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warning letter [3rd overall violation], the SA shall terminate the Vendor Agreement for a one-month period. The SA will accept a civil monetary penalty (CMP) in lieu of termination of the Vendor Agreement in the amount of \$1,000. If the vendor pays the CMP in lieu of termination, the vendor's liability for continued LEB sanctions for violations will continue for an additional 6-month period from the termination date specified in the original termination notice. If no further violation is found within the 6-month period from the original termination date, the vendor shall be considered in compliance with LEB sales requirements.

- D. A subsequent violation within a 6-month period from the original termination date [4th overall violation] shall result in disqualification for one month or a CMP of \$2000, double the first infraction.
- E. A second subsequent violation within 6 months from the original termination date [5th overall violation] shall result in disqualification for one month or a CMP of \$3000, triple the first infraction.
- F. A third subsequent violation within 6 months from the original termination date [6th overall violation] shall result in termination from the WIC Program for six months. The six violations identified in VII.A-F, taken together, shall constitute a persistent pattern of non-compliance with the requirement to sell the store's declared least expensive brand products to WIC at the 85% level. There will be no option to pay a CMP in lieu of termination for a 6th overall violation.
- G. A vendor who is actively working with the Program's EBT Operations branch on changes to its ECR system to automatically enforce LEB requirements may be exempt from sanctions. To qualify for this exemption to LEB enforcement sanctions, the

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vendor must contact the SA in advance of the start of system modifications and submit a timeline for justification. It is at the SA's discretion to modify or terminate the timeline once approved.

Guidelines

It is strongly recommended that a store employee be assigned to verify the accuracy of label placement each day.