WIC Vendor Authorization and Competitive Pricing Determination

PURPOSE

This policy provides information on the types of vendors authorized by the United States Department of Agriculture Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program and the requirements for becoming an authorized vendor; competitive pricing; and vendor agreement details.

AUTHORITY

7 CFR Sections 246.2 and 246.12

I. DEFINITIONS

The following definitions are provided to assist in explaining various acronyms and/or details of certain processes. These definitions do not constitute a comprehensive listing of all terms nor do they replace definitions in the regulations at 7 CFR Part 246. In the event of conflict between the definitions listed in this policy and also in 7 CFR Part 246, the latter shall prevail with the exception of definitions only listed in this policy.

Approved Product List (APL) – A comprehensive listing of WIC approved food items which list Universal Product Code (UPC) and/or Price Look-Up (PLU) information. Information is separated by food category/subcategory.

Arms-Length Transaction – A transaction in which the buyers and sellers of a product act independently and have no relationship to each other. The concept of an arms-length transaction is to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

Authorized Distributor of Record (ADOR) – Distributors with whom a manufacturer has established an ongoing relationship to distribute the manufacturer’s products.
**Category/subcategory** – A category is a group of similar food items (e.g. whole milk, regular milk, infant cereal, infant foods); and a subcategory is the further division of the category based on certain characteristics. For example, whole milk is divided into different subcategories based on size (e.g. gallon, half gallon, and quart).

Competitive Pricing Classification – A peer group designation for WIC authorized vendors based upon the amount of WIC sales.

**Continuous Basis** – On any given day of operation, a retail grocery store offers for sale, and normally displays in a public area, a variety of food items.

**Contract Brand Infant Formula** – All infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract. If under a single solicitation the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas. If a State agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula. For example, all of the milk-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the milk-based contract are considered contract brand infant formulas. Similarly, all of the soy-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the soy-based contract are also considered to be contract brand infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the contract is awarded.

**Drop Shipment** – The shipping of exempt infant formula and/or WIC-eligible nutritionals from a supplier directly to the WIC LA.

**Durable Medical Equipment (DME) Retailer** - A business entity, wholesaler, or supplier that sells exempt infant formula and/or WIC-eligible nutritionals but does not hold a pharmacy license.
Electronic Benefit Transfer (EBT) – Offline system that utilizes a smart card with an embedded microchip that permits electronic access to WIC participants’ food benefits. A point-of-sale system equipped with a smart card reader checks the WIC benefits to be purchased against the benefits on the chip, authorizes the transaction, and uploads the day’s transactions to a host.

EBT Capable – The WIC vendor demonstrates that their cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases.

Exempt Infant Formula – Any infant formula which is represented and labeled for use by an infant (1) who has an inborn error of metabolism or a low birth weight, or (2) who otherwise has an unusual medical or dietary problem, in accordance with 21 U.S.C. 350a(h).

Full-Line Grocer – A retailer that stocks and offers for sale, on a continuous basis, a variety of food products. A vendor type as defined in Section II of this policy.

Least Expensive Brand (LEB) – Vendors must declare and sell their 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. 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).

Level III WIC EBT Certification – A series of steps completed by a vendor applicant or WIC authorized vendor ascertaining EBT system capability.
Local Agency (LA) – An agency established at the local level that represents various clinics within a specified jurisdiction, and is responsible for issuing benefits to WIC participants.

Maximum Allowable Reimbursement (MAR) – A price limit derived monthly by the WIC Program’s end-of-process month analysis of claims paid. MAR limit varies by competitive pricing classification. The MAR for Traditional WICs (TWIC) is 125% of the average prices paid to TWICs in each price region and sales volume band for the various WIC authorized food types by category/subcategory. The MAR for Predominantly WICs (PWIC) is 100% of the statewide average prices paid to TWICs for the various WIC-authorized food types by category/subcategory.

Minimum Stocking Requirement – A vendor must stock minimum food types and quantities, as described by the United States Department of Agriculture (USDA) 7 CFR 246.12.

Minimum Stocking Requirement for Full-Line Grocer – Vendor must maintain a minimum stock of food in the following categories in addition to the minimum stocking requirement for Other Retailers as defined in section II of this policy: (1) fresh vegetables, (2) fresh fruits, (3) frozen vegetables, (4) frozen fruits, (5) fresh and frozen fish, poultry, and meats, (6) canned fish, (7) canned fruits, (8) canned vegetables, and (9) bread.

Minimum Stocking Requirement for Pharmacy and Durable Medical Equipment Retailers - A pharmacy or durable medical equipment retailer is exempt from minimum stocking requirements.

Minimum Stocking Requirement for Other Retailer – Vendor must maintain a minimum stock of food in the following categories as defined in Section II of this policy: (1) dairy, (2) canned fish, (3) whole grains, (4) fruits and vegetables, (5) infant formula and food items, and (6) eggs, beans, peanut butter, and juice.

Not To Exceed (NTE) Amount – The maximum price that the State Agency will pay for a food type (e.g. milk, juice, cereal, eggs, etc.). The NTE amount is set as a reasonableness amount, set high enough so that the food type can be purchased anywhere in the state. The NTE amount is shown in the APL sent electronically to WIC authorized vendor through their EBT system. The NTE amount is enforced as a pre-
payment edit, and is NOT the end-of-process month MAR limitation defined elsewhere. NTE adjustments reduce the reimbursement total to the vendor prior to payment by the State Agency (SA), without regard to TWIC or PWIC status, and do not affect the MAR pricing calculations.

**On-Site Evaluation** – An evaluation that is conducted on-site at the vendor outlet location and is utilized to determine final selection as an authorized WIC vendor. See Section IV for more information.

**Pharmacy** – A facility at which a prescription drug or medication order is received, processed, or dispensed under Texas Health and Safety Code. A vendor type as defined in Section II of this policy.

**Preauthorization On-Site Visit** – An on-site visit to verify that the physical location and signage of a vendor applicant are consistent with the information stated on the vendor application. The SA or LA representative must conduct this visit prior to authorizing the vendor.

**Predominantly-WIC (PWIC)** – A competitive pricing classification given to an outlet that has or is expected to have WIC food sales above 50% of the outlet’s total sales of foods that are eligible for purchase using benefits issued by the Supplemental Nutrition Assistance Program (SNAP). A PWIC is also known as an Above-50-percent vendor as described in 7 CFR Part 246.

**Price Region** – A geographic area comprised of designated zip codes or one or more counties. Such areas may or may not be contiguous.

**Primary Contract Brand Infant Formula** - The specific infant formula for which manufacturers submit a bid to the State Agency (SA) in response to a rebate solicitation and for which a contract is awarded by the State Agency as a result of that bid.

**Sales Volume Band** – A competitive pricing grouping determined by the SA and based on monthly WIC sales volume. Sales bands consist of (1) Band 1: $0.00 - $1,999.99, (2) Band 2: $2,000.00 - $5,999.99, (3) Band 3: $6,000.00 – $19,999.99, and (4) Band 4: $20,000.00 or greater.

**SNAP** – The Supplemental Nutrition Assistance Program, formerly the Food Stamp Program.
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Health and Human Services Commission

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Special Supplemental Nutrition Program for Women, Infants, & Children (WIC) – Federal assistance program of the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) for supplemental foods, healthcare referrals, and nutrition education for low-income pregnant women, breastfeeding and non-breastfeeding postpartum women, and infants, and children up to age 5 who are found to be at nutritional risk.

Split Tender – The cash register allows the participant, authorized representative, or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of the cash-value benefit.

State Agency (SA) - The Texas Health and Human Services Commission in its role as administrator of the WIC Program.

Statewide Average Price Paid – The average price paid to TWICs for a WIC approved food type by category/subcategory. This function is used in competitive pricing.

Traditional WIC (TWIC) – A competitive pricing classification given to an outlet that has or is expected to have, WIC food sales that constitute up to 50% of the outlet’s total sales of foods that are eligible for purchase using benefits issued by the SNAP.

United States General Services Administration (USGSA) – Provides centralized procurement for the federal government, offering products, services, and facilities that federal agencies need to serve the public. USGSA oversees and manages the System for Award Management.

Vendor Agreement – The formal and legally binding agreement between the Texas Health and Human Services Commission and a WIC authorized vendor.

Vendor Interactive Training – A training session for vendors that allows interaction with SA staff for addressing questions.
Vendor Outlet – A retail grocery store which operates and transacts WIC food benefits at a fixed location, has an electric utility hook-up, is a store structure situated on a cement or pier-and-beam foundation that is not used simultaneously as a residence, has a minimum business area of 1,000 square feet, has clearly identifying signage that closely matches the retail store name (abbreviated version acceptable) listed on the WIC Vendor Application, and is walk-in accessible directly from the street or parking lot.

Vendor Type – A distinct group that a WIC authorized vendor is identified under based on physical attributes and food stock of the vendor outlet.

WIC EBT Benefits – WIC food package benefits issued to a WIC participant onto a WIC smart card, which is used at a WIC authorized vendor outlet for redemption.

WIC EBT Transaction – One or more items purchased at one time using an EBT card.

WIC-Eligible Nutritionals - Certain 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. Such WIC-eligible nutritionals must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding (e.g., Pediasure); and may not be a conventional food, drug, flavoring, or enzyme. WIC-eligible nutritionals include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

WIC Authorized Vendor - A sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the SA to provide authorized supplemental foods to WIC participants under a retail food delivery system.
II. VENDOR TYPE

The SA has identified 3 vendor types. An applicant vendor shall self-declare a type on the WIC vendor application. The SA will verify and validate the self-declared vendor type during the vendor selection and on-site evaluation.

A. Full-Line Grocer

1. A Full-Line Grocer must have posted hours of operation reflecting a minimum of 6 days per week between 9:00 am and 6:00 pm daily.
2. A Full-Line Grocer must have a valid SNAP authorization to participate on the WIC Program.
3. A Full-Line Grocer stocks and offers for sale a variety of food products on a continuous basis in all of the following food groups: Fresh Vegetables, Fresh Fruits, Frozen Vegetables, Frozen Fruits, Canned Fruits, Canned Vegetables, Fresh and Frozen Fish, Poultry, Meats, Bread, Canned Fish, Dairy, Whole Grains, Eggs, Beans, Peanut Butter, Juice, and Infant Food Items.
   a. Fresh Vegetables: 2 pounds each of at least 5 different varieties of dark green and orange/red vegetables. Examples: broccoli, collard greens, mustard greens, kale, romaine lettuce, spinach, turnip greens, acorn squash, butternut squash, carrots, hubbard squash, red peppers, and/or sweet potatoes.
   b. Fresh Fruits: 2 pounds each of at least 5 different fresh fruits. Examples: apples, bananas, oranges, pears, peaches, plums, grapes, tomatoes, and/or grapefruit.
   c. Frozen Vegetables: 24 packages of vegetables, minimum of 4 different varieties of frozen vegetables. Examples: mixed vegetables, corn, corn on the cob, peas, broccoli, carrots, cauliflower, green beans, squash, and/or spinach.
   d. Frozen Fruits: 24 packages of fruit, with a minimum of at least 3 different varieties of frozen fruits. Examples: strawberries (sliced or whole), peaches, blueberries, mixed fruit, blackberries, raspberries, pineapple, fruit medley, and/or mixed berries.
   e. Canned Fruits: 24 cans of fruit, with a minimum of 3 different varieties. Examples: peaches, pears, pineapple, mixed fruit and fruit cocktail.
f. **Canned Vegetables:** 24 cans of vegetables, with a minimum of 3 different varieties. Examples: peas, green beans, corn (cream or niblet), beets, carrot, spinach or beans.

g. **Fresh and Frozen Fish, Poultry, and Meats:**
   i. 3 pounds of at least 2 types of fresh and/or frozen fish from the following: Salmon, Trout, Herring, Mackerel, Tilapia, Tuna, Cod, Red Fish, or Halibut.
   ii. 5 pounds of fresh and/or frozen poultry consisting of at least 3 types of cuts. Examples of cuts include whole, halves, leg quarters, wings, etc. of chicken and/or turkey.
   iii. 5 pounds of fresh and/or frozen beef and/or pork with at least 3 types of cuts (i.e. chops, steaks, hamburger, roasts, bacon, sausage, etc.). NOTE: Luncheon and deli style meats and sausages do not apply.
   iv. A vendor may substitute additional quantities of fresh and/or frozen fish from the types cited in g(i) above in place of stocking fresh and/or frozen beef and pork up to the entire 5 pounds of required meats.

h. **Bread:** 10 loaves of 20-24 ounce bread in at least 2 varieties and/or brands.

i. **Canned Fish:** 12 cans of salmon and/or tuna.

j. **Dairy:**
   i. 3 pounds of domestic cheese.
   ii. 13.5 gallons of milk, some of which must be available in half-gallon and 1-quart containers and include any combination of the following types of milk: whole milk, 1%, ½%, skim, fat-free milk, lactose-free milk, or buttermilk.

k. **Whole Grains:**
   i. 108 ounces of breakfast cereal, including 36 ounces each of a whole grain cereal and at least 2 of the following types of cereal: oat, corn, wheat, rice, and multi-grain.
   ii. 4 pounds of at least 2 types of whole grain foods. One type must be 16-ounce 100% whole wheat bread. Whole grain foods include whole grain bread, brown rice, oatmeal, corn tortillas, and wheat tortillas.

l. **Eggs:** 3, 1-dozen Grade A or AA large, medium, or small size eggs.

m. **Beans:** 3, 1-pound bags of dry beans.

n. **Peanut Butter:** 3, 16–18-ounce jars of peanut butter.
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o. Juice: 12 containers of authorized juice of at least 2 flavors. Each flavor shall be available in both a 48-ounce and 64-ounce fluid container.
p. Infant Food Items
   i. 64, 4-ounce containers of single ingredient infant fruits and vegetables.
   ii. 24, 2.5-ounce containers of single ingredient infant meat.
   iii. 2, 8-ounce boxes of infant cereal (contract brand).
q. Infant Formula: See Section II.C.

B. Other Retailers

1. Other Retailers may consist of general merchandise retailers, convenience retailers, specialty retailers, and all other retailers not classified as a Full-Line Grocer, Pharmacy, or Durable Medical Equipment Retailer.
2. Other Retailers stock and offer for sale on a continuous basis all of the following food groups and associated quantities: Fruits and Vegetables, Canned Fish, Dairy, Whole Grains, Eggs, Beans, Peanut Butter, Juice, and Infant Food Items
3. Other Retailers must stock the following quantities of food products at a minimum on a continuous basis.
   a. Fruits and Vegetables
      i. 10 pounds of 2 types of fresh vegetables (e.g., broccoli, squash, etc.).
      ii. 10 pounds of 2 types of fresh fruits (e.g., apples, oranges, etc.).
   b. For the requirements on Canned Fish, Dairy, Whole Grains, Eggs, Beans, Peanut Butter, Juice, and Infant Food Items, please see Section II.A.3 (i-p).
   c. Infant Formula: See Section II.C.
C. Infant Formula

1. Vendor applicant may elect not to sell infant formula and must declare choice on vendor application. If selling infant formula, Full-Line Grocers and Other Retailers must stock the following quantities of food products, at a minimum, on a continuous basis.
   a. Infant Formula
      i. 7 cans of milk concentrate infant formula (contract brand).
      ii. 7 cans of soy concentrate infant formula (contract brand).
      iii. 9 cans of milk-based powder formula (contract brand).
      iv. 9 cans of soy powder formula (contract brand).
      v. Specifics on Formula - If a WIC authorized vendor elects to provide infant formula, the following applies:
         1. A WIC authorized vendor shall purchase all its infant formula directly from:
            a. Food wholesalers currently licensed in Texas in accordance with the Health and Safety Code, Chapter 431, the Texas Food, Drug, and Cosmetic Act, and 25 Texas Administrative Code, Chapter 229, who are Authorized Distributors of Record (ADOR)
            b. Food manufacturers registered with the U.S. Food and Drug Administration, or
            c. Retail food stores holding permits in accordance with the Health and Safety Code, Chapter 437 that purchase infant formula directly from ADOR. Vendors can contact the SA for a list of approved distributors.
         2. The SA shall provide the infant formula list of contract brands and exempt infant formulas to vendor applicants.

D. Pharmacy and Durable Medical Equipment Retailer

1. A Pharmacy is a retail location at which a prescription drug or medication order is received, processed, or dispensed under Texas Health and Safety Code, Chapter 483 or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).
2. A Durable Medical Equipment (DME) retailer is a business entity, wholesaler, or supplier that sells exempt infant formula and/or WIC-eligible nutritionals. A DME retailer does not hold a pharmacy license.

3. Pharmacies and DME retailers may only provide exempt infant formula and/or WIC-eligible nutritionals, and shall not be authorized to redeem WIC EBT Benefits for other WIC authorized foods, including all contract brand infant formulas. Pharmacies and DME retailers are exempt from minimum stocking requirements.

4. Upon request, an exempt Pharmacy or DME retailer will make available to SA inspectors invoices or receipts documenting the purchase of its exempt infant formulas and/or WIC-eligible nutritionals.

5. Specifics on WIC-Eligible Nutritionals
   a. If the vendor outlet offers WIC-eligible nutritionals on its shelves, prices must be posted along with proper labeling.
   b. Refer to definition of WIC-eligible nutritionals for additional details on types, requirements, and items not allowed.

III. VENDOR SELECTION

If a vendor applicant previously participated on the WIC Program, but was disqualified, terminated, or voluntarily allowed its Agreement to expire, regardless of the reason, the vendor applicant is considered a NEW applicant and must meet all criteria contained in this policy.

A. Initial Selection

1. The SA shall approve an interested vendor applicant for initial authorization as a WIC authorized vendor or authorized vendor outlet if the following items are met:

   a. The SA receives an accurate and completed WIC vendor application from the vendor applicant.
   b. The SA receives a completed and properly signed “Gross Food Sales Certification Form” indicating the vendor applicant’s estimated gross food sales, defined as foods that can be purchased with SNAP benefits, and the percent estimated to be derived from WIC food sales.
c. Vendor applicant has no apparent conflict of interest with the vendor outlet designated LA or with the SA.
d. Vendor applicant has a history of compliance with WIC Program rules, policies, and procedures, if applicable.
e. Vendor applicant WIC-approved food prices do not exceed the NTE contained in the APL.
f. The SA approves the vendor application, which consists of the following. The following criteria are subject to Section V-Vendor Selection Denials.
   i. Vendor applicant certifies its outlet exists at the stated address on the vendor application, the facility has a minimum business area of 1,000 square feet, and signage closely matches the applicant vendor name listed on the vendor application. The SA or LA representative shall verify the physical location by making a preauthorization on-site visit to the location.
   ii. Vendor applicant certifies that an arms-length transaction has occurred if the vendor applicant purchases or acquires a vendor outlet that was in the process of being disqualified or was disqualified from the WIC Program at the time of purchase/acquisition.
   iii. Vendor applicant self-declares vendor type on application.
   iv. Vendor applicant submits a valid retail food operations permit, food manufacturer’s permit, or pharmacy license from the applicable city, county, district, or state authority.
   v. Vendor applicant submits a valid Texas Sales and Use Tax Permit from the Texas Comptroller of Public Accounts.
   vi. Vendor applicant submits declared prices, also known as shelf prices, of WIC approved foods. To ensure competitive pricing, the vendor applicant certifies that the submitted declared pricing must not exceed the NTE contained in the APL.
   vii. Vendor applicant agrees to maintain Minimum Stocking Requirements on an ongoing basis, as detailed in Section II of this policy.
   viii. Vendor applicant agrees to have business integrity and certifies that during the last 6 years, current owners, officers, or managers have not been convicted of nor had a civil judgment for any activity indicating a lack of business integrity.
ix. Vendor applicant certifies that it does not appear on a USGSA or State of Texas suspension or debarment list.

x. Vendor applicant certifies that it is not currently disqualified from SNAP and has not been assessed a SNAP Civil Money Penalty for hardship for which a disqualification period that would otherwise have been imposed has not expired. If vendor meets any of these items, then vendor applicant shall not be considered for WIC authorization.

xi. Vendor applicant must be determined EBT Capable, which includes split tender functionality, by the SA.

g. The SA received an accurate and completed LEB form from the vendor applicant.

h. The vendor applicant and/or WIC authorized vendor is required to comply with all criteria on day of opening vendor outlet.

i. Vendor applicant has participated in vendor interactive training.

B. Final Selection

1. The SA shall determine final selection of an initially selected WIC authorized vendor or vendor outlet if the following items are met:

a. Vendor applicant meets initial selection criteria.

b. Vendor applicant passes its on-site evaluation, as detailed in Section IV of this policy.

C. Upon initial selection by the SA, the vendor applicant shall receive a full term WIC Vendor Agreement as detailed in Section VII of this policy. If final selection of the vendor is disapproved by the SA, the WIC Vendor Agreement will be terminated. The vendor applicant shall have appeal rights as outlined in Texas WIC policy WV: 13.0.

IV. ON-SITE EVALUATION

A. An on-site evaluation shall be conducted at the authorized vendor outlet site at least two weeks after the vendor outlet opening day. The on-site evaluation will observe prices, competitive pricing of WIC authorized food items, and proper labeling. The on-site evaluation will also confirm minimum stocking requirements. The SA shall coordinate with the LA and the WIC authorized vendor to schedule the on-site evaluation. The vendor applicant and/or WIC authorized vendor is required to comply
with all criteria as described in this policy on day of opening vendor outlet.

B. The on-site evaluation shall be conducted by either the SA or LA representative. The SA or LA representative shall:
   1. Collect WIC authorized food shelf prices. Prices will be verified against actual WIC EBT claim data for competitive pricing purposes.
   2. Verify and validate minimum stocking requirements by vendor type as defined in Section II of this policy.
   3. Verify and validate that the WIC authorized vendor outlet is clean, as determined by the SA or LA representative, with fresh foods (no expired items). Expired food dates on WIC authorized food products are prohibited.
   4. Verify and validate that the WIC authorized vendor outlet has posted prices for all WIC authorized food products along with proper labeling.

C. The WIC authorized vendor shall have the opportunity to review the information of the on-site evaluation. The SA or LA representative shall provide a copy of the completed on-site evaluation form to the vendor outlet representative at the time of the on-site evaluation.

D. A vendor shall receive up to two on-site evaluations. If the vendor fails both evaluations, they will be terminated from the WIC Program and will not be eligible to apply for authorization until six months from the termination date.

V. VENDOR SELECTION DENIALS

A. The SA shall notify a vendor applicant in writing of any authorization disapproval(s). Such notification will include appeal rights consistent with 7 CFR 246.18 as outlined in Texas WIC policy WV: 13.0.

B. A vendor applicant will be denied authorization or WIC authorized vendor shall be terminated for providing false information at any point during the vendor selection process or failing either the initial or final selection process, which includes but is not limited to the vendor application, preauthorization on-site visit, or on-site evaluation.
C. A vendor applicant deemed ineligible for initial authorization may be authorized on a case-by-case basis, if the vendor is needed to address inadequate participant access to WIC authorized vendor outlets as outlined in Texas WIC Policy WV: 3.0.

D. The SA may not authorize a vendor applicant if the SA determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. The State agency may consider such factors as whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.

E. A vendor applicant will be denied authorization or WIC authorized vendor will be terminated if an owner, partner, principal stockholder, officer, director, manager, or operator of the vendor applicant and/or WIC authorized vendor was an owner, partner, principal stockholder, officer, director, manager, or operator of another WIC authorized vendor or authorized vendor outlet which has been disqualified or which has violated WIC Program Vendor Agreement procedures, policies, rules, or regulations.

F. New outlets for an existing WIC authorized vendor shall be denied authorization if 50% or more of its vendor outlets are in a disqualification or termination status at the time of requesting authorization of new vendor outlets. Business integrity, which includes, but is not limited to, prior non-compliance with the WIC Program’s federal and state statutes and regulations, rules, policies, and procedures shall be considered by the SA when evaluating new outlets.

G. If a representative from the SA or LA visits an applicant vendor outlet or WIC authorized vendor outlet to conduct the required on-site evaluation at a time previously agreed upon, and the vendor outlet cannot be evaluated and/or is not ready for the evaluation at the agreed upon time, the vendor outlet shall be deemed to have failed the evaluation. The vendor outlet shall be terminated if the on-site evaluation is failed twice.

H. A vendor applicant will be denied authorization or WIC authorized
vendor will be terminated for failing to accurately provide certification of business integrity.

I. A vendor applicant will be denied authorization or WIC authorized vendor will be terminated for appearing on a USGSA or State of Texas suspension or debarment list.

VI. VENDOR COMPETITIVE PRICING AND MAXIMUM ALLOWABLE REIMBURSEMENT

A. Competitive Pricing Classification
   1. WIC authorized vendors shall be classified as PWIC, TWIC, or Other for competitive pricing purposes. A PWIC shall have above 50% in WIC sales. A TWIC shall have up to 50% in WIC sales, and the SA may reassign any WIC authorized vendor to the Other classification and/or an alternative comparison group when the WIC authorized vendor is a national discount superstore, a pharmacy, a durable medical equipment retailer, a vendor that has elected to provide only exempt infant formula, a military commissary, or a vendor that is not in the SA’s judgment, characteristic of other comparison groups. The SA may also reassign a WIC authorized vendor to an alternative comparison group if the vendor is the only vendor outlet in its comparison grouping. At the SA’s discretion, some stores, including but not limited to Wal-Mart and/or Military Commissaries, may be placed into their own comparison group.
   2. WIC authorized vendors shall be initially classified based on their vendor type, as verified by the SA during the on-site evaluation. A Full-Line Grocer shall be classified as a TWIC unless the Full-Line Grocer indicates that (1) its store opening is dependent on WIC authorization, or (2) the Full-Line Grocer indicates it receives, or expects to derive, more than 50% of its annual food sales revenue from WIC sales. A Pharmacy and Other retailers shall be classified as PWIC. These classifications shall remain in effect until the vendor submits to the SA documentation substantiating WIC sales. [NOTE: Documentation consists of sales and use tax and/or fuel reports submitted to the State Comptroller.]
   3. WIC authorized vendors shall be properly classified after 4 months of WIC sales. An analysis of WIC sales shall be completed to determine proper classification, which consists of examining a vendor outlet’s SNAP sales to determine if they exceed WIC sales. If a vendor outlet’s SNAP sales exceed WIC sales then the vendor outlet will classified as
a TWIC. If WIC sales exceed SNAP sales, plus other food sales, then the store will be classified as PWIC. WIC authorized vendors shall have the opportunity to provide documentation substantiating WIC sales comprising 50% or less of gross food sales. [NOTE: Documentation consists of sales and use tax and/or fuel reports submitted to the State Comptroller. Documentation must show that WIC sales for the 4-month period were less than or equal to 50% of total gross food sales counting only foods eligible for sale under the SNAP in order to qualify as a TWIC.]

4. If the WIC authorized vendor fails to provide documentation to substantiate WIC sales in a timely manner (defined as submittal within 30-days), or documentation fails to support the preferred classification, then the vendor will be classified as PWIC.

5. WIC authorized vendors may petition for reclassification by submitting a written request to the SA and stating the reasons why they should be reclassified, as well as the comparison group they should be placed in. The WIC authorized vendor shall have appeal rights as outlined in Texas WIC policy WV: 13.0.

6. Pharmacies and DME retailers are subject to the Not to Exceed amounts but may be exempt from competitive price criteria and maximum allowable reimbursement levels, as allowed under the provisions of 7 CFR 246.12(g)(4)(iv) for redemption of exempt infant formula and/or WIC-eligible nutritionals.

B. Calculation and Use of Competitive Pricing Data

1. Food prices by category/subcategory shall be compared for competitive pricing purposes according to the criteria below, in addition to Section VI(C).
   a. TWICs pricing shall be compared utilizing price regions and sales volume bands. WIC sales volume bands are:
      - Band 1 = $0.00 - $1,999.99
      - Band 2 = $2,000.00 - $5,999.99
      - Band 3 = $6,000.00 - $19,999.99
      - Band 4 = $20,000 or greater
   b. TWICs pricing, determined through the end-of-process month analysis, shall not collectively exceed 110% of the average prices paid to TWICs in the process month.
   c. PWICs pricing shall be compared utilizing the statewide average pricing of TWICs.
d. The pricing for a PWIC vendor, determined through the end-of-process month analysis, shall not have a recoupment that exceeds 8% of the total dollar amount paid to that PWIC in the process month.

e. The SA will confirm cost neutrality between TWICs and PWICs by ensuring that prices paid to PWICs do not exceed the statewide average price paid to TWICs (regardless of their price region or WIC sales volume band).

f. Both TWICs and PWICs shall be held to a MAR derived from the prices paid to TWICs.

g. New authorized WIC vendors and authorized outlets shall have food prices (collected during the on-site evaluation) compared to the statewide average pricing of TWICs. The SA may exclude the prices of Wal-Mart and/or Military Commissaries in the averages.

2. Not To Exceed (NTE) Pricing

a. An NTE amount is put in place across the board for all WIC approved foods by food category/subcategory and is applicable to any competitive pricing classification.

b. NTE amounts are enforced as prepayment edits on each unit of food product (e.g. by ounce, pound, can, etc.) purchased within a calendar month for claims processing.

3. Maximum Allowable Reimbursement (MAR)

a. TWICs will be held to a MAR of 125% of the average price paid (after edits and recoupments) by food category/subcategory, for their respective price region and sales volume band. When calculating average prices the SA may exclude prices paid to Wal-Mart and/or Military Commissaries.

b. PWICs will be held to a MAR equal to the statewide average price paid by food category/subcategory to TWICs. Prices paid to Wal-Mart and/or Military Commissaries will be included in the calculation.

c. At the end of each calendar month, an analysis shall determine the average payment totals in order to implement the MAR reimbursement calculation process. WIC approved food category/subcategory items, except fruits and vegetables, exempt infant formula, and WIC-eligible nutritionals shall be analyzed. The MAR will be implemented by dividing the total price paid for a month for a food category/subcategory by the total number of units redeemed by TWICs in the price region and band.

d. TWICs that received reimbursement for an amount that exceeds the
125% of the average price of one or more category/subcategories for the vendor’s respective price region and sales volume band will have a recoupment adjustment of the difference (reimbursement amount less 125% of the average price amount) that will be applied against a subsequent month’s claim(s).

e. PWICs that received reimbursement for an amount higher than the statewide average pricing of one or more category/subcategories of TWICs will have a recoupment adjustment of the difference (reimbursement amount less average amount) that will be applied against a subsequent month’s claim(s).

C. Remaining Competitively Priced
1. Upon selection as a WIC authorized vendor or authorized vendor outlet, the vendor must not increase its food pricing to a level that exceeds the pricing by food category/subcategory for its approved cost competitiveness classification (TWIC or PWIC) (refer to Section VI(A) and (B) in this policy). A vendor’s failure to remain cost competitive (7 CFR 246.12(h)(3)(viii)) is cause for termination of the Vendor Agreement.

2. The SA may perform reviews of a WIC vendor’s compliance with competitive pricing at any time during the term of the Vendor Agreement. The SA shall provide written notification of non-compliance to any WIC vendor. If on a subsequent assessment within a 12-month period the non-compliant vendor fails to comply with competitive pricing, the SA will terminate the Vendor Agreement.

3. If WIC authorized vendors classified as TWIC, have overall prices that are at or below 110% of the average price paid within its respective price region and sales volume band (averages calculated using prices paid to TWICs and excluding prices paid to PWICs) then the vendor will be deemed price competitive.

4. If WIC authorized vendors classified as PWIC, have overall prices that are at or below the statewide average prices paid to TWICs then the vendor will be deemed price competitive.

5. A WIC authorized vendor shall have a vendor outlet terminated for non-competitive pricing and must wait a period of 6 months before that vendor outlet is considered for re-authorization. A vendor may apply for authorization after the 6-month waiting period.
VII. VENDOR AGREEMENT

A. If a vendor applicant passes initial selection, the SA shall authorize the vendor and provide a WIC Vendor Agreement for a period of up to 3 years, which shall include all authorized outlets. If a vendor does not pass final selection, the WIC Vendor Agreement will be terminated.

B. A vendor applicant or WIC authorized vendor must not conduct WIC EBT transactions at the vendor outlet for which application is being made until the vendor receives a WIC Vendor Agreement fully executed that encompasses that outlet.

C. A Pharmacy or DME retailer that submits a claim for a WIC-eligible food item other than an exempt infant formula and/or WIC-eligible nutritionals will be disqualified as a WIC authorized vendor and may not apply for authorization until 6 months after the date of the SA’s disqualification notification. Pharmacies and DME retailers with a current Vendor Agreement, who seek reauthorization, shall reapply, be evaluated for issuance of a subsequent Vendor Agreement under WIC Program procedures, policies, rules, and regulations, and be reauthorized unless notified in writing by the SA at least 15 days before expiration of the Vendor Agreement.

D. A change of ownership of an authorized vendor outlet or account terminates the authorization of that vendor outlet under the Vendor Agreement. A change of ownership occurs when all, or substantially all, of the property or assets of a vendor are acquired by a purchaser in an arms-length transaction, as determined by the SA.

1. If a store/location under previous ownership is not disqualified or is not in the process of being disqualified at the time of acquisition, and the acquiring party is in compliance with the rules, regulations, and vendor qualification criteria of the WIC Program, the acquiring party may, upon request, be considered for authorization as a WIC vendor. In order to request consideration for authorization, the acquiring party must submit a vendor application for the acquired or purchased store/location.

   a. The applicant vendor must submit a written notification stating that a change of ownership has been effected and duly executed by the seller and purchaser or their duly authorized officers or
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other agents.
b. The notification shall include, at a minimum, the following information and any other information the SA deems necessary: name and business address of the seller; name and business address of the purchaser; WIC vendor account number and outlet number, if applicable; name and street address of the vendor outlet location(s); effective date of ownership change; and State of Texas Comptroller tax ID number of the new owner.

2. WIC authorized vendors shall provide the SA with written notification prior to the sale, including the date the outlet being sold will cease to accept WIC EBT food benefits.

E. The SA may implement a vendor moratorium at any time during the Vendor Agreement period. Per 7 CFR 246.12(g)(8), the State agency may limit the periods during which applications for vendor authorization will be accepted and processed, except that applications must be accepted and processed at least once every three years.

F. The Vendor Agreement does not constitute a license, since a vendor not require the SA’s approval to engage in the retail grocery business in Texas and the vendor would not effectively be deprived of this right in the absence of WIC Program authorization.

G. The Vendor Agreement does not convey any property interest, since federal law does not give rise to a legitimate claim of entitlement for vendors.

H. The terms of authorization are established in the Vendor Agreement. The Vendor must comply with all applicable Federal and State statutes, regulations, policies, and procedures governing the WIC Program. The contractual relationship ends with the expiration or termination of the Vendor Agreement. Termination of the Vendor Agreement including a WIC authorized vendor’s unilateral termination after receipt of notification of a violation, does not deprive the SA of jurisdiction to impose price adjustments, claims, or sanctions for vendor errors or WIC Program violations. Such notification will include appeal rights consistent with 7 CFR 246.18 as outlined in Texas WIC policy WV: 13.0. Pursuant to 246.12(h)(3)(xxvi) and as outlined in Texas WIC policy WV: 1.0, disqualification from the WIC Program may result in disqualification as a
retailer in SNAP. Such disqualification may not be subject to administrative or judicial review under SNAP.

I. The SA may amend a WIC vendor Policy or State of Texas Administrative Code rule during the term of the agreement with written notification to WIC vendors.

J. The SA, as well as officers, agents, and employees of the State Agency, are not responsible for losses incurred by a vendor as a result of the disqualification, termination, and/or expiration of the Vendor Agreement.

K. Upon the WIC Vendor Agreement end date, the vendor must apply for reauthorization of the agreement to continue as a WIC vendor. In accordance with WV: 11.0 and the WIC Vendor Agreement, an on-site evaluation may be conducted at any time during the Agreement period.