



Memorandum

#15- 073

TO: WIC Regional Directors
WIC Local Agency Directors

FROM: Amanda Hovis, Director
Nutrition Education/Clinic Services Unit
Nutrition Services Section

DATE: June 15, 2015

SUBJECT: Policy Memo –Revised Policy: *Texas WIC Policy WV: 10.0 WIC Vendor Authorization and Competitive Pricing Determination*

This memo announces revisions to the subject policy as follows. The policy is effective June 15, 2015. It is posted in the policy manual and you may update your *Policy and Procedures Manual* by accessing the *WIC Website* at:

http://www.dshs.state.tx.us/wichd/policy/table_of_contents.shtm

Summary of Revisions

- Section II Vendor Type - revises the definition of store types to include: Full-Line Grocer, Pharmacy or Other Retailers
- Section IV On-Site Evaluation – revises the on-site evaluation process

In conjunction with the release of this revised policy, the State Agency (SA) is also lifting the statewide Vendor Contracting Moratorium for Full-Line Grocers only. The State Agency will provide training to Local Agencies (LAs) prior to requesting that an LA conduct an on-site evaluation.

If you have questions or require additional information regarding *Texas WIC Policy WV: 10.0 WIC Vendor Authorization and Competitive Pricing Determination* please contact the Food Issuance & Redemption Services Unit at (512) 341-4425, 1-800-252-9629 (Texas only), or email at WICVendorRelations@dshs.texas.gov.

Attachments

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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 246.12 SUBPART E

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 Uniform 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.

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

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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 grocer retail store offers for sale, and normally displays in a public area, a variety of food items.

Electronic Benefit Transfer (EBT) – Offline system that utilizes a smart card with an embedded microchip that contains WIC participants' 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.

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) – The least expensive brand food product traditionally sold 26 or more weeks throughout the year for each type and size of WIC authorized foods. The LEB food item categories include milk, juice, dried peas/beans/lentils, cheese, whole wheat bread, whole grain bread, wheat tortillas, corn tortillas, and brown rice.

Level III WIC EBT Certification – A series of steps completed by a vendor applicant or WIC authorized vendor ascertaining EBT system readiness.

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.

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Maximum Allowable Reimbursement (MAR) – A price limit derived monthly by the WIC programs 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 Predominately 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 - A pharmacy 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 vendors 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 does not affect the MAR pricing calculations.

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On-site Evaluation – An evaluation, more detailed than the vendor evaluation (as outlined in Section III of this policy), that is conducted on-site at the vendor outlet location, and is utilized to determine final selection as an approved 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.

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 SA in response to a rebate solicitation under 42 USC 1786, 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.

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

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postpartum women, and infants, and children up to age 5 who are found to be at nutritional risk.

State Agency (SA) - The Department of State Health Services, Texas, 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 Department of State Health Services and a WIC authorized vendor.

Vendor Interactive Training – A training session for vendors that allows interaction with SA staff for addressing questions.

Vendor Evaluation – An assessment completed of vendor applicants and WIC authorized vendors during the initial selection phase. A vendor evaluation is also known as a pre-authorization visit where a list of criteria is verified by SA staff and/or certified by the vendor applicant.

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

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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 Medical Foods – *Types of medical foods:* (1) concentrated liquid, (2) powdered, (3) ready-to-feed (RTF) or ready-to-use (RTU) liquid, (4) RTF or RTU solid/bar, and (5) semi-solid formulas having the consistency of "pudding." *Requirements include:* (1) medical documentation required for issuance, (2) medically necessary and prescribed by a physician when conventional foods cannot be consumed by woman or children with special dietary needs, (3) intended for use as an oral feeding; formulas administered through a nasogastric tube may be substituted, and (4) should serve as a major source of nutrients but may have to be supplemented by additional special nutritional products. *Items not allowed:* (1) formulas used solely for the purpose of enhancing nutrient take or managing body weight (e.g., vitamin pills, weight control products), (2) medicines or drugs, (3) hyperalimentation feedings (nourishment administered through a vein), (4) enzymes, (5) oral rehydration fluids or electrolyte solutions, (6) flavoring agent, and (7) feeding utensils or devices (e.g., feeding tubes, bags, pumps) designed to administer a WIC-eligible formula.

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

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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 evaluation under vendor selection (Section III of this policy).

A. Full-Line Grocer

1. 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: (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.
2. A Full-Line Grocer must stock the following quantities of food products at a minimum in addition to the stocking requirements for Other Retailers on an ongoing basis.
 - 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, mustard greens, 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. *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.

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- 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 5(a) above in place of stocking fresh and/or frozen beef and pork up to the entire 5 pounds of required meats.

 - f. *Canned Fish*: 12 cans of salmon and/or tuna
 - g. *Canned Fruits*: 24 cans of fruit, with a minimum of 3 different varieties. Examples: peaches, pears, pineapple, mixed fruit and fruit cocktail.
 - h. *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.
 - i. *Bread*: 10 loaves of 20-24 ounce bread in at least 2 varieties and/or brands.
- 3. 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.
 - 4. A Full-Line Grocer may elect not to sell infant formula to the WIC program if it believes it can't do so cost effectively. Grocer must declare choice on the vendor application.
 - 5. A Full-Line Grocer must have a valid SNAP authorization to participate on the WIC program.

B. Pharmacy

- 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 Pharmacy may only provide exempt infant formula or WIC eligible medical foods, and shall not be authorized to redeem WIC EBT Benefits for other WIC authorized foods, including primary contract brand infant formula. A Pharmacy is exempt from minimum stocking requirements.
- 3. Upon request, an exempt pharmacy will make available to SA inspectors invoices or receipts documenting the purchase of its exempt infant formulas and/or WIC-eligible medical foods.

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

C. 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 or Pharmacy.
2. Other Retailers stock and offer for sale the following quantities of food products on a continuous basis in all of the following food groups: (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.
3. Other Retailers must stock the following quantities of food products at a minimum on an ongoing basis.
 - a. *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.
 - b. *Canned Fish*
 - i. 12 cans of tuna, salmon, or a combination of both.
 - c. *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.
 - d. *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.).
 - e. *Infant Formula and Food Items*

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(Note: WIC authorized vendor may elect not to provide infant formula, if applicable then disregard this requirement). Retailer must declare choice on vendor application.

- i. 31 cans of milk concentrate infant formula (contract brand).
 - ii. 31 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. 2, 8-ounce boxes of infant cereal (contract brand).
 - vi. 64, 4-ounce containers of single ingredient infant fruits and vegetables.
 - vii. 24, 2.5-ounce containers of single ingredient infant meat.
 - viii. 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) for Abbott Laboratories, Mead Johnson Nutrition Group, and/or Nestle, Inc.
 - 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 Abbott Laboratories, Mead Johnson Nutrition Group, and/or Nestle, Inc.
- f. *Eggs, Beans, Peanut Butter and Juice*
- i. 3, 1-dozen Grade A or AA large, medium, or small size eggs.
 - ii. 3, 1-pound bags of dry beans.
 - iii. 3, 18-ounce jars of peanut butter.
 - iv. 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.

III. VENDOR SELECTION

If a vendor applicant previously participated on the WIC program but was

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disqualified, terminated, or voluntarily allowed its Agreement to expire, regardless of the reason, the store 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. The SA approves the Vendor Evaluation, which consists of the following and 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 an 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. Refer to Section V of this policy for specifics on authorization denials.
 - 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 proposed shelf prices of WIC approved foods. Vendor applicant certifies that submitted pricing will be posted and identifiable on opening day of the

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- vendor outlet, and that shelf pricing shall not exceed the NTE contained in the APL, to ensure competitive pricing.
- 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. Refer to Section V of this policy for specifics on authorization denials.
 - ix. Vendor applicant certifies that it does not appear on a USGSA or State of Texas suspension or debarment list. Refer to Section V of this policy for specifics on authorization denials.
 - x. Vendor applicant must pass a Level III WIC EBT certification, having a successful claim submission and delivery of the corresponding auto-reconciliation file (ARF) prior to the vendor outlet's opening day and acceptance of WIC EBT benefits. If the vendor applicant accepts a WIC EBT food benefit and submits a claim to the SA prior to certification the following applies: (1) The transaction shall not be paid, and (2) the vendor applicant is subject to vendor sanctions as described in 7 CFR 246.12 (I)(1)(iii)(D).
 - xi. 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 as a WIC authorized vendor.
- a. The vendor applicant and/or WIC authorized vendor is required to comply with all criteria on day of opening vendor outlet.

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 passes its on-site evaluation, as detailed in Section IV of this policy.
 - b. Vendor applicant WIC approved food shelf prices do not exceed the NTE contained in the APL.

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- 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 has participated in vendor interactive training.
- C. A Vendor applicant that applies for authorization and has been evaluated twice within a six-month period and denied approval both times shall not be evaluated again until at least six months from the last evaluation.
- D. Upon final 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 is disapproved by the SA, the applicant vendor shall be denied authorization. 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 confirm shelf prices, minimum stock, and competitive pricing of WIC authorized food items. The SA shall coordinate with the LA and the WIC authorized vendor to schedule the on-site evaluation, and either the SA or LA representative shall complete the 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. Shelf 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 merchandise (not having for sale expired food items). Expired food dates on WIC authorized food products are prohibited.

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4. Verify and validate that the WIC authorized vendor outlet has posted prices for all WIC authorized food products along with proper labeling.
 5. Verify and validate that the WIC authorized vendor outlet agrees not to allow home delivery of food products purchased with WIC EBT benefits.
 6. Verify and validate that the WIC authorized vendor outlet has participated in vendor interactive training.
- 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.

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 and/or WIC authorized vendor shall be denied authorization 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 Evaluation 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. A vendor applicant and/or WIC authorized vendor shall be denied authorization if the vendor 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 acquisition. If the SA determines that the transaction was not an arms-length transaction, the vendor application shall not be considered until the disqualification period has been served.
- E. A vendor applicant and/or WIC authorized vendor shall be denied authorization if an owner, partner, principal stockholder, officer, director,

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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 is in a disqualification or termination status at the time of submission 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, and the vendor outlet shall not be authorized.
- H. A vendor applicant or WIC authorized vendor that fails to accurately provide certification of business integrity (refer to Section III(A)(3)(h)) shall disqualify a vendor applicant from authorization.
- I. A vendor applicant or WIC authorized vendor that appears on a USGSA or State of Texas suspension or debarment list shall not be considered as a WIC authorized vendor or vendor outlet.

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 vendor that

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- 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 outlets SNAP sales exceed WIC sales then the vendor outlet will be classified as a TWIC. If WIC sales exceed SNAP 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 the SA for reclassification by submitting a written request to the SA and stating the reasons upon which vendor believes it should be reclassified as well as the comparison group it should be placed in. The WIC authorized vendor

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shall have appeal rights as outlined in Texas WIC policy WV 13.0.

6. The SA will assess a Pharmacy for status as a TWIC or PWIC vendor. Pharmacies are subject to the Not to Exceed amounts but may be exempted 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 medical food.

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. PWICs pricing determined through the end-of-process month analysis shall not have a recoupment that exceeds 8% of the total dollar amount paid to PWICs in the process month.
 - e. The SA will confirm cost neutrality between TWICs and PWICs by ensuring that prices paid, after all edits and recoupments, to PWICs does 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. A 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.

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- 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 be completed to 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 medical foods 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.
 - f. 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).
 - g. 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 shelf 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

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- competitive (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 or WIC authorized vendor 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 applicant does not pass final selection the WIC vendor agreement will be terminated and the authorization denied within 60 days of the final selection approval date. The disqualification of one outlet does not affect the authorization of other outlets covered by the vendor agreement.
- 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 that submits a claim for a WIC eligible food item other than an exempt infant formula and/or WIC-eligible medical food will be disqualified as a WIC authorized vendor. The pharmacy may not apply

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for designation again until 6 months after the date of the SA's disqualification notification. Pharmacies with a current vendor agreement who seek reauthorization shall reapply and shall be evaluated for issuance of a subsequent vendor agreement under WIC program procedures, policies, rules, and regulations and shall 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/or the previous owner has not been notified that the vendor agreement for that store location/business will be allowed to expire, 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.
 - 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 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.

- F. The vendor agreement does not constitute a license, since a vendor

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does 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.
- 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 application for renewal of the vendor agreement an on-site visit and evaluation shall be conducted, and the WIC authorized vendor must meet all initial and final selection criteria to receive authorization for renewal.