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Effective October 1, 2019

Policy No. WV:01.0

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## **WIC Vendor Agreement/Policy Violations**

### **Purpose**

To describe State Agency (SA) procedures for monitoring compliance of vendors with the WIC Vendor Agreement and WIC program policies. To inform WIC vendors of violations and the sanctions that will be imposed by the SA for noncompliance.

### **Authority**

7 CFR Section 246.12

### **Policy**

Vendors who fail to comply, either intentionally or unintentionally, with the Vendor Agreement and/or policies of the WIC Program will be sanctioned. If a vendor's sanction results in a disqualification, the SA will terminate the Vendor Agreement. The SA and/or representatives of the SA will document the circumstances of a vendor's noncompliance. Sanctions will be imposed consistently among vendors. The vendor will have to reapply to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the SA's vendor selection criteria and any vendor limiting criteria in effect at the time of authorization.

### **Procedures**

- I. The SA and/or SA representatives routinely monitor the operations of authorized WIC vendors during the term of the WIC Vendor Agreement.
  - A. Monitoring techniques include but are not limited to:
    1. Routine on-site store reviews by the SA and/or SA representative.
    2. Covert in-store compliance buys by the SA and/or SA representative.

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3. Invoice and EBT claim audits by the SA and/or SA representative.
  4. Periodic reviews of vendor redemption reports.
  5. On-site inspections by a city, county, district or health authority.
- B. Criteria used by the SA and/or SA representative to initiate an invoice audit and/or compliance buy include but are not limited to:
1. Price differences identified as a result of an on-site store review or compliance buy.
  2. Apparent discrepancy in vendor's in-store stock compared to the volume of WIC redemptions.
  3. Indicators that the vendor is "high risk".
- C. "High risk" vendors are those that the SA has determined pose the highest risk of non-compliance with the regulations, WIC Vendor Agreement, and/or policies.
- D. The SA and/or SA representative may assess any authorized vendor outlet at any time during the Vendor Agreement period using the selection criteria in effect at the time of the reassessment (See WV:10.0). In addition to assessing selection criteria (to include competitive pricing selection criteria), the assessment may also include compliance with selling declared traditionally Least Expensive Brands (LEB).
- II. Monitoring by routine on-site store reviews may be conducted by the SA and/or SA representative.
- A. During the on-site store review, the SA and/or SA representative will identify him/herself to store personnel and proceed to complete the on-site review. The on-site store review may include, but is not limited to, the following procedures:
1. Collect shelf prices and verify that prices are prominently displayed for authorized WIC products.
  2. Examine the adequacy of stock.
  3. Examine expiration dates on WIC food items.
  4. Examine WIC signage at the store.

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5. Examine for compliance with the requirements for declared traditionally LEBs.
  6. Examine adherence to restriction on vendor incentive items in accordance with WIC Policy WV:09.0.
  7. Test for other requirements as stated in policy and the WIC Vendor Agreement.
- B. The SA and/or SA representative will compare the prices obtained during the review to at least one recently submitted claim. All identified overcharges from the prices obtained during the review will be recovered and a written warning on more serious sanctions, if appropriate, will be transmitted to the vendor.
- C. The vendor will be notified by letter of the results within 60 days of the date of the on-site review.
- III. Monitoring by On-Site Inspections by a city, county, district, or health authority
- A. The vendor may receive an on-site inspection by a public health authority for compliance with the Health and Safety Code. Violations may result in a disqualification from the WIC Program in addition to any other penalties as a result of noncompliance with the Health and Safety Code.
- IV. Monitoring by Inventory Audit
- A. The SA and/or SA representative may request up to 12 months purchase invoices or retail cash tickets from a vendor for analysis to determine that all claims submitted by the vendor are supported by invoices.
1. The vendor will be given 60 days from receipt of a written request to submit purchase invoices to the SA and/or SA representative.
  2. The 60-day period to submit purchase invoices is considered an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3).

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3. The vendor's failure to supply purchase invoices to the SA within the 60-day period will result in disqualification from participation in the WIC Program. The disqualification date for failure to submit purchase invoices within the 60-day period will be included in the written notification.
  4. Additional purchase invoices/records will not be accepted by the SA and/or the SA representative after expiration of the 60-day period unless directed to do so by the WIC Program Director.
- B. Required components of an acceptable purchase invoice:
1. The purchase invoice will reflect the name and address of the wholesaler, food manufacturer or retail food store, a customer number and/or the name and address of the vendor (or any other identifier that specifically identifies the vendor to whom the items were sold), date of the purchase, list of the items purchased (that adequately describes the purchased items, such as a stock number or UPC), size, quantity, unit price, and dollar extension for the quantity purchased.
  2. Retail cash tickets will include the name and address of the store or a code number by which the store location can be identified, the date of purchase, description of the exact items purchased, the unit price of the items purchased, and the total amount purchased.
    - a. Cash tickets, which do not completely describe the actual item, must have a computer code, which can be verified by contacting the store at which the merchandise was purchased.
    - b. Cash tickets which do not specifically identify the product purchased may be verified by the SA and/or SA representative through communication with the vendor's corporate office.
  3. Affidavits, Statements of Fact, and oral statements will not be accepted from a vendor under audit as evidence of inventory.

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Only purchase invoices or retail cash tickets as described in item B.1 and B.2 of this Section will be accepted from a vendor under audit as evidence of inventory

C. Invoice Audit Sanctions

1. Vendors must provide adequate documentation to support purchasing the inventory necessary to verify WIC claims for any specified period. If documentation is lacking, the SA will recover all monies unsubstantiated by vendor records for the period in question, and the vendor will be disqualified for three years.
2. A vendor's documentation will be deemed inadequate or incomplete if the discrepancy between substantiated inventory and submitted claims is material. Materiality is determined using a percentage of said claims where variance could be attributed to relevant and substantial discrepancies in delivery documentation. It is the expectation of the SA that vendors closely manage their delivery and sign off process to ensure inventory can substantiate WIC sales. Materiality is considered by each WIC food item and not the aggregate of all items.
3. The vendor will receive a written warning when there is an immaterial difference between documented inventory and WIC claims.
  - a. The written warning will notify the vendor of a subsequent invoice audit, within three years of the dated written notification, and identify any additional unsubstantiated WIC sales paid to the vendor.
  - b. Subsequently identified unsubstantiated WIC sales will constitute a pattern of claiming reimbursement for the sale of a food item that exceeds the vendor's documented inventory, and the vendor will be disqualified for three years.

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4. If the discrepancy between a vendor's substantiated inventory and submitted claims is deemed material, then a pattern is established for claiming reimbursement for the sale of a food item that exceeds the vendor's documented inventory. On this basis, the vendor will be disqualified for three years. Prior to disqualification, the vendor will be notified in writing and given 20 days from receipt of the written notification to submit additional purchase invoices for the period in question. The 20-day period to submit additional purchase invoices is considered an opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3). Notification will include the effective date of the three-year disqualification should the additional purchase invoices fail to substantiate the inventory.
  - a. If the SA determines that disqualification of the vendor would result in inadequate participant access, the SA will impose a civil money penalty (CMP) in lieu of disqualification.
  - b. Under 7 CFR 246.18(a)(1)(iii)(C), the SA's participant access determination is not subject to administrative review.
5. In accordance with Federal Regulations 7 CFR Section 246.12(h)(3)(xvi) and the WIC Vendor Agreement, it is the vendor's responsibility to maintain for a minimum of four Federal fiscal years all inventory records used for Federal and State tax reporting purposes and other records the SA may require.
6. The vendor claim determination by the SA and/or SA representative regarding the amount of the unsubstantiated WIC sales is not subject to administrative review.

V. Monitoring by Compliance Buys

- A. Definition of a compliance buy: A covert in-store investigation by one or more SA and/or SA representatives posing as WIC

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participants or the parent/guardian/proxy of WIC participants using WIC EBT food instruments or cash-value benefits to test the vendor's compliance with the Vendor Agreement, program policies, and/or rules. The SA and/or SA representative does not reveal to store personnel that he/she is a SA and/or SA representative during the visit.

1. If no sanctionable violations are detected on the first monitoring activity, a second compliance monitoring activity is conducted. There is no minimum time interval requirement between the first non-violative compliance monitoring activity and the second compliance monitoring activity. If no sanctionable violations are detected on the second compliance monitoring activity, the vendor is notified in writing and the investigation is closed.
2. If one or more sanctionable violations are detected during a compliance buy, a notice of an in-store violation will be sent to the vendor in writing within 15 business days, with the exception of notice of violations pertaining to trafficking in food instruments, selling/buying firearms, ammunition, explosives, controlled substances, alcohol, alcoholic beverages or tobacco products.
3. After receiving a written warning of noncompliance and when a violation requires a pattern, follow-up will be conducted until two monitoring activities are found with no sanctionable violations. Both the initial and follow-up compliance monitoring activities will be considered in determining whether sanctions are applicable. The initial and follow-up compliance monitoring activities and subsequent follow-up period constitute a single investigation.
4. All compliance monitoring activity relevant to an investigation must be completed within a 24-consecutive month period. If a pattern or a sanctionable offense has not been established within a 24-consecutive month period, the investigation will be closed.

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- B. Definition of an incident of noncompliance: A compliance buy and/or on-site review in which evidence of a sanctionable violation of the Vendor Agreement, program policies, and/or rules is obtained. Sanctionable violations identified during compliance monitoring activities, will be aggregated to constitute a pattern.
- C. A compliance buy may test for, but not be limited to, areas of potential noncompliance as follows:
  - 1. A SA and/or SA representative may attempt to transact WIC EBT food instruments for unauthorized package/product sizes, unauthorized food items, unauthorized brands of food items, non-food items, excess quantity of foods, credit (including rain checks which are not allowable), and/or cash.
  - 2. A SA and/or SA representative may also test for overcharging, being charged for foods not received, and/or compliance with the vendor's declared traditionally LEB of products and the related requirement that prices for WIC-approved foods be prominently displayed either on the food item, on the shelf where the food item is displayed, or otherwise displayed where WIC participants can easily see them.
  - 3. A SA and/or SA representative may test the WIC EBT in-lane system's ability to accurately sell authorized fruits and vegetables in a WIC EBT transaction.
  - 4. The SA and/or SA representative may attempt a split tender transaction of fruits and/or vegetables.
  - 5. A SA and/or SA representative may also test for other violations of policies and the Vendor Agreement.

VI. Violations and Sanction Schedules

- A. For a vendor convicted of trafficking in WIC EBT food instruments, cash-value vouchers, selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802) in exchange for food instruments or cash-value vouchers, a Federal violation:



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1. No warnings will be issued.
  2. A vendor is not entitled to receive any compensation for revenues lost as a result of disqualification.
  3. The vendor will be permanently disqualified.
  4. The SA may impose a civil money penalty (CMP) in lieu of disqualification for this violation when it determines, in its sole discretion, and documents that:
    - a. Disqualification of the vendor would result in inadequate participant access; or
    - b. The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.
  5. In that case, the CMP will be calculated in accordance with Section XI.B of this policy.
- B. The SA will disqualify a vendor for six years for:
1. One incidence of buying or selling WIC EBT food instruments, or cash-value vouchers, for cash (trafficking), a Federal violation; or
  2. One incidence of selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802), in exchange for food instruments or cash-value vouchers, a Federal violation.
  3. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy.
  4. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.

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5. If the vendor receives a third sanction for any Federal violation, the disqualification period will be doubled with no possibility of a CMP.
- C. For enabling trafficking, which means a vendor and/or vendor representative aiding, selling, exchanging, or offering to sell or exchange any food instrument, supplemental foods or infant formula issued to the participant. Offering to sell or exchange includes any offer that is made verbally, in print, or online through a website or social media outlet. A vendor representative includes its owners, officers, managers, agents and employees:
1. One incident of enabling trafficking will result in a single written warning to the vendor.
  2. A second incident of enabling trafficking within two years of the first enabling violation will result in a one-year disqualification. The SA will not accept a CMP in lieu of disqualification unless:
    - a. It determines disqualification would result in inadequate participant access; or
    - b. The SA determines that: (A) the vendor had an effective policy and program in effect to prevent trafficking; and (B) the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.
    - c. If applicable, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
- D. For redemption of WIC EBT food instruments for alcohol or alcoholic beverages or tobacco products, a Federal violation:
1. The unauthorized item(s) will not be paid.
  2. A warning will not be issued.
  3. One incident will result in the disqualification of the vendor for three years.
  4. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the

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- CMP will be calculated in accordance with Section XI.B of this policy.
5. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period.
  6. If the SA determines continued inadequate participant access, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
  7. If the vendor receives a third or subsequent sanction for any Federal violation, the SA will double the disqualification period with no possibility of a CMP.
- E. For redemption of WIC EBT food instruments that indicate charging the SA more than the customary selling price charged other customers, a Federal violation. If there is a difference between the posted shelf price for an item and the price scanned by the store's integrated cash register system, then the scanned price will be deemed the "customary selling price." If a store operates a WIC EBT stand beside system, the store's integrated legacy cash register system scanned price will be deemed the "customary selling price." If a store does not have an integrated cash register system, the posted shelf price for an item is the "customary selling price."
1. The overcharges will be recouped.
  2. The vendor will receive a written warning for the first incident of noncompliance.
  3. The second incident of noncompliance constitutes a pattern.
  4. A pattern of violations will result in disqualification for three years.
  5. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy.
  6. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period. The SA will not accept a CMP in lieu of disqualification unless it

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- determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
7. If the vendor receives a third or subsequent sanction for any Federal violation, the disqualification period will be doubled with no possibility of a CMP.
- F. For transactions which indicate charging for foods not received by the WIC EBT recipient, a Federal violation:
1. The charge for a food item not received will be recouped.
  2. The vendor will receive a written warning for the first incident of noncompliance prior to the SA's identification of any additional incidents.
  3. Three or more incidents of noncompliance will constitute a pattern, except as described in F.4 below.
  4. When one or more of the incidents involves charging for foods scanned at the register then not credited back to account when returned, four or more incidents will constitute a pattern.
  5. A pattern of violations will result in disqualification for three years.
  6. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
  7. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period. If the SA determines continued inadequate participant access, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
  8. If the vendor receives a third or subsequent sanction for any Federal violation, the disqualification period will be doubled with no possibility of a CMP.

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- G. For acceptance of the WIC EBT card at an unauthorized vendor outlet or by an unauthorized person and submitting the transaction to the SA for payment through an alternate authorized vendor outlet, a Federal violation:
1. The transaction will be recouped.
  2. One incident will result in a single written warning to the vendor.
  3. Two or more incidents of noncompliance will constitute a pattern.
  4. A pattern of violations will result in disqualification for three years.
  5. The unauthorized vendor outlet will not be eligible to apply for WIC authorization for:
    - a. three years from the date of the unauthorized vendor outlet's receipt of SA notification; or
    - b. if the unauthorized vendor outlet is currently disqualified from the Program for a period in excess of three years, the longer period will apply.
  6. The SA will not accept a CMP from the authorized vendor outlet in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
  7. If the authorized vendor outlet receives a second sanction for any Federal violation, the SA will double the disqualification period. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
  8. If the vendor receives a third or subsequent sanction for any Federal violation, the disqualification period will be doubled with no possibility of a CMP.

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- H. For redemption of WIC EBT food instruments for credit, issuance of rain checks, and/or providing non-food items other than alcohol or alcoholic beverages, cash, firearms, ammunition, explosives, and/or controlled substances as defined in 21 U.S.C. 802, a Federal violation:
1. The unauthorized item(s) will not be paid.
  2. The vendor will receive a written warning for the first incident of noncompliance.
  3. Two or more incidents of noncompliance will constitute a pattern.
  4. A pattern of violations will result in disqualification for three years.
  5. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
  6. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
  7. If the vendor receives a third or subsequent sanction for any Federal violation, the disqualification will be doubled with no possibility of a CMP.
- I. For violating WIC Policy WV:09.0, restriction on vendor incentive items, in any way, a Federal violation:
1. One incident will result in a written warning.
  2. A second incident will result in disqualification of the vendor for one year.
  3. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.

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4. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period. If the SA determines continued inadequate participant access, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
  5. If the vendor receives a third or subsequent sanction for any Federal violation, the disqualification period will be doubled with no possibility of a CMP.
- J. For acceptance of WIC EBT food instruments at an authorized vendor outlet or by an unauthorized person and submitting the transactions to the SA for payment through an alternate authorized vendor outlet, a Federal violation:
1. The transaction will be recouped.
  2. One incident will result in a written warning to both vendors.
  3. If either vendor participates in a second incident, the vendor outlet(s) will be disqualified for three years.
  4. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B up to the Federal maximum allowed.
  5. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
  6. If the vendor receives a third or subsequent sanction for any Federal violation, the disqualification period will be doubled with no possibility of a CMP.
- K. For redemption of WIC EBT food instruments for infant formula not authorized on the EBT card, a Federal violation:
1. The item(s) paid amount(s) will be recouped.

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2. The vendor will receive a written warning for the first incident of noncompliance.
  3. Two incidents of noncompliance will constitute a pattern.
  4. A pattern of violations will result in disqualification for one year.
  5. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
- L. For redemption of WIC EBT food instruments for unauthorized food items or package sizes of food other than formula and/or charging for quantities of foods provided more than those authorized on the WIC EBT card, a Federal violation:
1. The unauthorized item(s) will not be paid.
  2. The vendor will receive a written warning for the first incident of noncompliance.
  3. Two incidents of noncompliance will constitute a pattern.
  4. A pattern of violations will result in disqualification for one year.
  5. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
  6. If the vendor receives a second sanction for any Federal violation, the SA will double the disqualification period. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.
  7. If the vendor receives a third or subsequent mandatory sanction for any Federal violation, the disqualification will be doubled with no possibility of a CMP.



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- M. For store personnel entering the WIC EBT recipient's PIN and/or accepting the WIC EBT purchase transaction in lieu of the WIC EBT recipient:
1. The vendor will receive a written warning for the first and second incidents of noncompliance.
  2. Three or more incidents of noncompliance will constitute a pattern.
  3. A pattern of violations will result in disqualification for one year.
  4. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
- N. For using WIC allowable food scan codes from WIC food items, UPC codebooks, and/or UPC barcode/PLU reference sheets to provide an unauthorized food item and/or to provide an authorized WIC food item with a different UPC/PLU:
1. The price difference between the amount charged to the SA and the WIC authorized item provided will be recouped.
  2. The vendor will receive a written warning for the first and second incidents of noncompliance.
  3. Three or more incidents of noncompliance will constitute a pattern.
  4. A pattern of violations will result in disqualification for one year.
  5. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
- O. For failing to prominently display the shelf prices of all WIC authorized foods within the store's commercial area and/or in the drive-thru service area:
1. The vendor will receive a written warning for the first and second incidents of noncompliance.

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2. Three or more incidents of noncompliance will constitute a pattern.
  3. A pattern of violations will result in disqualification for one month.
  4. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI. B of this policy up to the Federal maximum allowed.
- P. For redemption of WIC EBT food instruments for brands that are not the vendor's declared least expensive brand when the declared products are in stock:
1. The price difference between the non-declared item sold and the declared item in stock will be recouped.
  2. The vendor will receive a written warning for the first and second incidents of noncompliance.
  3. Three or more incidents of noncompliance will constitute a pattern.
  4. A pattern of violations will result in disqualification for one month.
  5. The SA will accept a CMP in lieu of disqualification. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up the Federal maximum allowed.
- Q. For refusing to sell an authorized item in an authorized size when the price falls within the "not to exceed price".
1. The vendor will receive a written warning for the first and second incidents of noncompliance.
  2. Three or more incidents of noncompliance will constitute a pattern.
  3. A pattern of violations will result in disqualification for one month.
  4. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B of this policy up the Federal maximum allowed.

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- R. For failing to offer WIC customers the same courtesies and discounts offered to other customers such as manufacturers' cents off coupons, buy one get one free, buy one get one at a reduced price, free ounces added by manufacturer, store loyalty programs, volume discounts, incentive items:
1. The vendor will receive a written warning for the first and second incidents of noncompliance.
  2. Three or more incidents of noncompliance will constitute a pattern.
  3. A pattern of violations will result in disqualification for one month.
  4. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.

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

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

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there is no impact on the WIC Program and the participant is allowed to participate and benefit from these types of promotions.

**Buy One Get One at a Reduced Price** – In these instances, a retail vendor will sell one WIC approved food item at full price and sell a second identical item or a different WIC approved item at a reduced price. If the participant has one unit of the item on the EBT card, the WIC participant will pay for that item by having the unit or benefit deducted from the card and must use cash or some other means of payment to purchase the second item. If the participant has two of the items in the EBT benefit balance, the balance of both items will be deducted from the balance at the time of purchase. WIC will be charged the full price for the first item and the reduced price for the second item. If the WIC participant wishes to preserve his/her WIC benefits and purchase the reduced priced items with cash or some other tender, the vendor must allow the customer that option.

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

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

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

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- S. For seeking restitution from participants for invalidated transactions:
1. The vendor will receive a written warning for the first and second incidents of noncompliance.
  2. Three or more incidents of noncompliance will constitute a pattern.
  3. A pattern of violations will result in disqualification for one month.
  4. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.

- T. For improperly labeling WIC foods as follows:

All declared least expensive brand (LEB) food items must be labeled with a pink WIC label.

The following are LEB labeling violations:

1. Failing to label three or more declared LEB items with SA-provided pink stickers or store stickers/signage authorized by the SA.
2. Labeling a product with a pink WIC label when it has not been declared.

The following are non-LEB labeling violations:

1. Labeling a food with a pink WIC label while failing to place a pink WIC label on other WIC approved foods within the same category, such as labeling one brand cereal, but not other WIC approved brands of cereal.
2. Labeling a food as WIC approved with any WIC label when it is not WIC authorized.

The following sanctions apply to labeling violations:

1. The vendor will receive a written warning for the first and second incidents of noncompliance.

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2. Three or more incidences of noncompliance constitutes a pattern of violations.
  3. A pattern of violations will result in disqualification for one month.
  4. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B of this policy and will not exceed \$1,000.
  5. A subsequent violation within a 12-month period from the date of the first disqualification notification will result in disqualification for one month. The CMP will be calculated in accordance with Section XI.B of this policy and will not to exceed \$2,000.
  6. An additional violation within 24 months from the date of the first disqualification notification will result in disqualification for one month. The CMP will be calculated in accordance with Section XI.B of this policy and will not to exceed \$3,000.
- U. For failing to allow the participant to pay the remaining balance for fruits and vegetables when the purchase is more than the value of the WIC benefit (Note: The vendor outlet's EBT system was deemed EBT capable upon WIC authorization.):
1. The vendor will receive a written warning for the first incident of noncompliance.
  2. The second incident of noncompliance will constitute a pattern.
  3. A pattern of violations will result in disqualification for one year.
  4. The SA will accept a CMP in lieu of a disqualification. The CMP will be calculated in accordance with Section XI.B of this policy up the Federal maximum allowed.
- VII. The SA and/or SA Representative may review or assess a vendor's compliance with the requirements of the WIC Vendor Agreement at any time during the Vendor Agreement's effective period.

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- A. Breach of WIC Vendor Agreement will be governed by State of Texas law and specific terms and conditions of the Vendor Agreement.
  
  - B. The SA may impose specific penalties as described in Section VI.C below for violation of any of the following vendor responsibilities required in the WIC Vendor Agreement applicable to the EBT System:
    - 1. Failing to maintain a SA certified WIC EBT system that ensures system availability during all hours the store is open;
    - 2. Failing of a store's WIC EBT system to maintain the system's accuracy, integrity, or performance required and under which requirements the WIC in-store system was certified regardless of whether the failure is caused by system malfunction or staff intervention.
    - 3. Failing to ensure the WIC EBT redemption process allows a reasonable degree of security for protecting PIN numbers used by WIC recipients;
    - 4. Failing to release food benefits to the WIC participant any time the WIC EBT Card is decremented.
    - 5. Failing to seek recertification when the vendor's system is altered or revised.
  
  - C. For failing to meet any of the WIC EBT requirements listed in Section VI.B above:
    - 1. The SA will issue a written warning for the first violation.
    - 2. A second violation within a 12-month period for the same activity will result in a one-month disqualification. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B. of this policy and will not exceed \$1,000.
    - 3. A third violation within a 12-month period in the same activity will result in a one-month disqualification. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in

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accordance with Section XI.B of this policy and will not exceed \$2,000.

4. Subsequent violations in the same activity, or a total of five cumulative violations regardless of activity, within a 12-month period will result in an additional one-month disqualification. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.B of this policy and will not exceed \$3,000.

VIII. Remaining Competitively Priced

- A. Upon authorization, the vendor outlet 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) and peer group (refer to WV: 10.0 Section VII). A vendor's failure to remain cost competitive (7 CFR 246.12(h)(3)(viii)) is cause for sanctions including termination of the Vendor Agreement.
- B. The SA may perform reviews of a vendor outlet's compliance with competitive pricing at any time during the term of the Vendor Agreement. The SA will provide written notification of noncompliance to any WIC vendor.
  1. Total payments by the SA to a TWIC vendor outlet for a process month's claims for all food category/subcategories, excluding cash value, exempt infant formulas, and medical foods, that collectively exceed 110% of the authorized amount by peer group during the same process month constitutes non-competitive pricing. Purchase level discounts are included in the calculation.
  2. Total cost containment recoupment for a process month that exceeds 8% of the total dollar amount paid to a PWIC vendor outlet for all category/subcategories, excluding cash value, exempt infant formulas, and medical foods, for the same



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process month constitutes non-competitive pricing. Purchase level discounts are included in the calculation.

- C. For failing to remain competitively priced:
1. The vendor will receive a written warning for the first incident of noncompliance. The warning letter will specify a consecutive six-month assessment period during which subsequent assessments will be conducted.
  2. The second incident of noncompliance within the six-month period specified in the first warning letter will constitute a pattern. A pattern of violations will result in disqualification for one month. The SA will accept a CMP in lieu of disqualification in the amount of 1% of the paid amount (net purchase discounts) during the process month, excluding cash value, exempt infant formulas, and medical foods. If a CMP is accepted, the SA will provide a second letter of noncompliance with a new assessment period of six months.
  3. If the vendor outlet fails to comply with the competitive pricing requirement on a subsequent assessment (third violation) within the six-month period specified in the second noncompliance letter, the SA will disqualify the vendor outlet for one month. The SA will accept a CMP in lieu of disqualification in the amount of 2% of the paid amount (net purchase discounts) during the process month, excluding cash value, exempt infant formulas, and medical foods. If a CMP is accepted, the SA will provide a third letter of noncompliance with a new assessment period of six months.
  4. If the vendor outlet fails to comply with the competitive pricing requirement on a subsequent assessment (fourth violation) within the six-month period specified in the third noncompliance letter, the vendor outlet is disqualified for six months. The SA will not accept a civil money penalty (CMP) in lieu of disqualification.

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5. Six (6) continuous process months of compliance with the competitive pricing requirement constitutes overall compliance and restarts the sanction cycle.
- D. For not redeeming at least 85% of its declared traditionally least expensive brands (LEB) in the respective food categories as defined by WIC Policy WV: 02.0, the vendor will be sanctioned according to the following:
1. The vendor will receive a written warning for the first and second incidents of noncompliance.
  2. The third incident of noncompliance will constitute a pattern.
  3. A pattern of violations will result in disqualification for one month.
  4. The SA will accept a CMP in lieu of disqualification. In that case, the CMP will be calculated in accordance with Section XI.B of this policy and not exceed \$1,000.
  5. A fourth violation within a 6-month period from the date of the original termination date will result in disqualification for one month. The SA will accept a CMP in lieu of disqualification. In that case, the CMP will be calculated in accordance with Section XI.B of this policy and not exceed \$2,000.
  6. A fifth violation within 6 months from the date of the original termination date will result in disqualification for one month. The SA will accept a CMP in lieu of disqualification. In that case, the CMP will be calculated in accordance with Section XI.B of this policy and not exceed \$3,000.
  7. A sixth violation within 6 months from the original termination date will result in termination for six months. There will be no option to pay a CMP in lieu of termination for a sixth violation.
  8. A vendor who is actively working with the Program's EBT Operations branch on changes to its EBT system to automatically enforce LEB requirements may be exempt from sanctions. To qualify for this exemption to LEB enforcement sanctions, the vendor must contact the SA in advance of the

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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 (See WIC Policy WV:02.0).

IX. Vendor Agreement Termination

- A. A vendor's termination of the Vendor Agreement after having received notification by the SA and/or SA representative of a violation will not deprive the SA of jurisdiction to impose sanctions for Program violations as set forth in this policy (WV:01.0). If the outlet/vendor fails to request a hearing according to WIC Policy WV:13.0, the SA will impose the sanction proposed in the notice to the vendor.
  - B. Disqualification for violations identified during one Vendor Agreement period may be imposed in any subsequent Vendor Agreement period, if the vendor has been notified in writing at least 20 days prior to the disqualification period.
  - C. The Vendor Agreement will be terminated if the authorized vendor elected to carry infant formula and purchased the infant formula from a wholesale distributor is not approved by the SA in the Approved Distributors List in accordance with policy WV:10.0. Approved distributors must be licensed in Texas in accordance with the Texas Health and Safety Code Chapter 431 and Texas Administrative Code Chapter 229, and registered with the U.S. Food and Drug Administration, and hold a permit in accordance with the Texas Health and Safety Code Chapter 437.
- X. The vendor will be provided a written notice of administrative action containing the results of any on-site store review, invoice audit, and/or compliance buy and any resultant WIC Program violations and sanctions.
- XI. Civil Money Penalty (CMP)  
The outlet/vendor may choose either to accept the disqualification or

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to pay the CMP. Following a hearing, the hearing examiner on behalf of the SA, may uphold a disqualification or allow a CMP ranging from the minimum of the pre-hearing amount as calculated, but may also include all the administrative costs of the SA associated with preparing and conducting the hearing. If the vendor does not request a hearing, the request to pay a CMP must be made within 15 days of receipt of the SA's written notification of disqualification. The CMP payment must be submitted to the SA prior to the disqualification effective date.

- A. For violations resulting in a disqualification, the CMP will be calculated as follows:
  - 1. Determine the vendor's average monthly redemptions for the most current six-month period available and multiply by 0.10 (10%) and multiply the resulting amount by the number of months the vendor would have been disqualified.
  - 2. The amount of the resulting CMP will not exceed \$15,041 per violation nor more than \$60,161 for all violations occurring as part of a single investigation.
- B. One or more violations of a single type during the first routine monitoring or initial compliance buy visit will be considered one violation for the purpose of establishing a pattern of violations.
- C. The validity or appropriateness of the State agency's participant access criteria and the State agency's determination regarding inadequate participant access is not subject to administrative review.
- D. If the SA determines disqualification would result in inadequate participant access, the CMP may be imposed.
- E. During the course of a single investigation, if the SA determines a vendor has committed multiple violations, the SA will, in the event of a determination of inadequate participant access, impose a CMP per violation. The total amount of the CMPs for each violation as a

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result of a single buy will not exceed \$15,041 and per single investigation will not exceed \$60,161.

- F. No CMP will be accepted in lieu of a third and subsequent sanction(s) for Federal violations.
  - G. The SA may agree to accept CMPs paid in installments as appropriate. If the vendor does not pay, pays only partially, or fails to pay a CMP assessed in lieu of disqualification in a timely manner, the SA will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed.
- XII. For violations requiring more than one incident to establish a pattern of noncompliance, the number of incidents identified in an initial compliance buy activity will be aggregated by type. All the incidences of a violation occurring during the first monitoring activity must constitute only one incidence of that violation for the purpose of establishing a pattern. The SA must disqualify the vendor for the period corresponding to the most serious Federal mandatory violation. However, the SA must include all violations in the notice of administrative action. If a Federal mandatory sanction is not upheld on appeal, then the SA may impose a SA-established sanction.
- XIII. Disqualification from the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, will result in an automatic disqualification of the same duration from the WIC Program. The disqualification will be for the same length of time as the SNAP disqualification, may begin at a later date than the SNAP disqualification, and is not subject to administrative or judicial review under the WIC Program.
- XIV. The SA will disqualify a vendor who has been assessed a CMP in SNAP based on hardship, as provided by the SNAP regulations, 7 CFR §278.6.

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- A. The length of the disqualification will correspond to the period for which the vendor would otherwise have been disqualified in SNAP.
  - B. If the SA determines that inadequate participant access would result, no WIC disqualification will be imposed.
- XV. A vendor's disqualification from the WIC Program may result in disqualification of the vendor's SNAP authorization, which is not subject to administrative or judicial review under the SNAP regulations, 7 CFR §278.6(e)(8).
- XVI. The SA may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another state agency's WIC program for a mandatory Federal vendor sanction. The disqualification period will be equal to the other state agency's WIC program disqualification period. The SA will accept a CMP in lieu of disqualification, if inadequate participant access is determined. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
- XVII. A vendor being disqualified will be given at least 20 days prior notice before the proposed disqualification becomes effective, unless specifically excepted in this Section:
- A. The SA will provide administrative reviews for any adverse action affecting authorization as defined in WIC Policy WV:13.0, with the following exceptions:
    - 1. The validity or appropriateness of the SA's vendor limiting or selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;
    - 2. The validity or appropriateness of the SA's participant access criteria and the SA's participant access determination concerning whether disqualification of a vendor would result in inadequate participant access.

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

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- B. Disqualifications which take effect upon receipt by the vendor of the notice of disqualification from the SA and which do not require 20 days prior notice include the following:
    - 1. Conviction for trafficking in food instruments or cash-value benefits;
    - 2. Conviction for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments; and
    - 3. Appealed disqualifications in which the Hearing Officer rules in favor of the SA.
  
  - C. Vendors who wish to appeal will provide the SA with a written request for a hearing within 20 days of receipt of the adverse action disqualification notice. The request will, at a minimum, describe the action that is being appealed (See WV:13.0 for the Administrative Review policy).
- XVIII. The SA will notify the United State Department of Agriculture (USDA) of permanently disqualified vendors and of all vendors that have received Federally mandated sanctions, when appeal rights have been exhausted. On a quarterly basis, Texas WIC Program staff will also report the permanent WIC disqualification information in the System for Award Management (SAM) for PWIC vendors that only accept WIC benefits.
- XIX. The WIC Vendor Agreement does not constitute a license or a property interest.
- XX. A vendor who commits fraud or abuse of the WIC Program is liable to prosecution under applicable Federal, state or local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds will be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both. These criminal penalties are in addition to those administrative sanctions already stated.



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- XXI. WIC vendors are not permitted to use either the acronym "WIC" or the WIC logo, including facsimiles thereof, in total or in part, either in the official name in which the vendor is registered or in a different name under which it does business. WIC vendors are also not permitted to use the WIC acronym or the WIC logo on advertising or promotional materials. Advertising may be used to inform the public that a vendor is WIC-authorized, but the WIC acronym must not be used in a manner which states or implies that the vendor itself is affiliated with or sponsored by the SA, USDA, or the WIC Program.

For violations pertaining to the use of the acronym "WIC" or the WIC logo, the SA and/or SA representative will issue a written warning. For a subsequent violation after having received a written warning, the SA and/or SA representative will disqualify the vendor for three months. The SA will accept a CMP in lieu of disqualification.

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

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

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- E. Under certain conditions, the SA may approve store-supplied LEB "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 LEB labels and/or signage. The approval is not perpetual. If approval is granted, it will expire when the Vendor Agreement expires or terminates.
  - 1. Vendors must submit an actual sample to the SA in the same pink color used for SA produced labels and must receive approval in writing prior to the use of any vendor-supplied shelf label. All changes and alterations to store-supplied labels must be submitted to the SA for approvals. All costs associated with developing, printing, storing, supplying and using vendor-supplied labels must be paid by the vendor.
  - 2. Vendors must submit a picture to the SA for "WIC Approved Item" signage and must receive approval in writing prior to the use of the signage. All costs associated with developing, printing, storing, supplying and using vendor-designed signage must be paid by the vendor.
  
- F. Vendors may label their non-LEB WIC approved foods with the "Texas WIC Smart Choices Healthy Families" logo. The labeling of all or none within a food group is not mandated for non-LEB WIC approved foods when a vendor uses the "Smart Choices" label. A vendor would not be in violation of this policy if only one non-LEB WIC authorized brand within a food group such as cereal was labeled with "Texas WIC Smart Choices Healthy Families" and the other WIC-authorized cereal brands were not labeled.

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

When a vendor, who previously has been assessed two or more sanctions for violation of a Federal regulation listed in 7 CFR Part 246.12(l)(1)(ii) through 246.12(l)(1)(iv), receives another sanction for any of these violations, the SA must double the third sanction and all subsequent sanctions up to the regulatory limits of \$15,041 per

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monitoring activity and \$61,061 per investigation. The SA may not impose CMP in lieu of disqualification for third or subsequent sanctions for these violations.

**XXIII. Expiration of a Vendor Agreement Without Renewal**

If the vendor allows its Vendor Agreement to expire because of the vendor's history of noncompliance with the provisions of the Vendor Agreement or the WIC Program procedures, policies, rules, and/or regulations, the SA will not authorize the vendor until the vendor resolves previous violations and/or sanctions, if applicable, and meets all selection and limiting criteria.