

WIC VENDOR BULLETIN

Volume III No. 1

January - March 2003 Quarter

To: Authorized Vendors of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

This is the first quarterly WIC Vendor Bulletin for the Federal Fiscal Year 2003. Quarterly bulletins update the terms of the WIC Vendor Agreement as set forth in Section 2.s. of that Agreement.

Policy/Vendor Agreement Changes Since Last Bulletin

Policy WV:01.0 has been revised with an effective date of March 1, 2003, and has been posted on the WIC website. In addition, revised Policy WV:01.0 is being mailed to all authorized WIC vendors. This revised policy changes the terms of the Vendor Agreement effective March 1, 2003.

The WIC Vendor Operations Division worked with members of the WIC Advisory Committee, WIC vendors, and other interested stakeholders to review the process used by WIC staff to monitor vendors when conducting compliance investigation buys in WIC-authorized stores. A proposal for change was finalized at a meeting held on August 13, 2002, open to the public. The proposed changes were presented to the WIC Advisory Committee on January 15, 2003, have been endorsed by the Gulf Coast Retailers Association, and the revised policy approved by the United States Department of Agriculture (USDA).

Summary of Material Changes to WIC Policy WV:01.0

- For specified violations, compliance buy procedures have changed to allow for two warning letters before sanctioning occurs. Thus, the first positive pass will result in a warning letter, the second positive pass a second warning letter, and the third positive pass a sanction. Three or more positive passes will constitute a pattern.

Reason: To accommodate vendor suggestions that they be given more chances to make corrections before a sanction is imposed for certain violations.

- Deleted the requirement that compliance buys will be conducted within 12 months.

Reason: It is likely that investigations cannot be completed with one buy each trip with warnings in between and vendors given 60 days following each warning to initiate corrective action.

- For certain violations, revised downward the number of violations within a violation type that constitute a pattern.

Reason: A trade-off with vendor representatives in return for the additional warning.

- Revised the amount of overcharge from 1% to 10% per item when determining violations leading to disqualification.

Reason: To implement a change recommended by vendor stakeholders.

- Changed the term during which vendors must meet selection criteria from the term of the Vendor Agreement to a 12-month period. Vendors will now be terminated due to failure to meet selection criteria during a 12-month period (October 1 through September 30), rather than during the term of the Vendor Agreement that may span 24 months.

Reason: Vendor Agreements are transitioning from 12 to 24 months. Without the change, vendors would be in jeopardy of termination for a longer period of time.

- Changed the sanction for improper use of the WIC acronym or WIC logo from expiration of the Vendor Agreement to a three month disqualification or payment of a civil money penalty.

Reason: Vendor Agreements are transitioning from 12 to 24 months and a vendor could conceivably violate this provision for up to 24 months.

Proposed Changes in Near Future

Highlights of the proposed material changes to WIC rules are listed below. It is anticipated that the complete text of the proposed rules will be published in the *Texas Register* in April 2003. Vendors will have a month to provide comments and suggestions regarding the proposed rules at that time, and are invited to attend the Public Hearing scheduled for April 22, 2003 at 9:00 a.m. at the WIC Program offices located at 4616 W. Howard Lane, Suite 275, Austin, Texas 78728.

Summary of Proposed Material Changes to the Texas Administrative Code

§31.21 Definitions

- Add definition of price regions.

Reason: To accommodate grouping of vendors into areas other than local agency areas if needed.

- Add definition of WIC Only outlet

Reason: To clarify a store type which is not characteristic of retail vendors catering to the general public and Food Stamp recipients on a competitive price basis.

- Revise definition of vendor band.

Reason: To accommodate placing vendors into comparison groups based on similar pricing characteristics in addition to or in lieu of WIC sales volume.

- Add to definition of vendor outlet.

Reason: To strengthen the state agency's authority to deny vendor applicants who propose to operate out of their residences.

§31.32 Selection of Vendors for WIC Initial Authorization for Participation

- Delete reference to local agency service area and substitute price region.

Reason: To provide a greater flexibility to group vendors into regions with similar prices.

- Add selection criteria that a vendor must purchase infant formula for sale to WIC participants directly from licensed distributors or wholesalers or directly from the manufacturer.

Reason: To help curb the resale of stolen or otherwise diverted formula in order to reduce risks to infants caused by potentially expired or adulterated formula products and to reduce losses to vendors due to theft.

§31.34 Calculation and Use of Competitive pricing Data

- Delete reference to local agency service area and substitute price region.

Reason: To provide a greater flexibility to group vendors into regions with similar prices.

- Delete reference to vendor sales volume and substitute similar characteristics.

Reason: To accommodate placing vendors into comparison groups based on similar pricing characteristics in addition to or in lieu of WIC sales volume.

- Add authority for the state agency to assign, in addition to a discount superstore, a WIC only store to an alternative comparison group.

Reason: To provide the ability to implement a change in vendor peer grouping to accommodate the assignment of vendors who are not typical in the sense that they do not compete for non-WIC business such as Food Stamps or cash paying customers.

§31.35 Vendor Agreement with the State Agency

- Delete the requirement that new vendors be given a probationary agreement.

Reason: There is little reason for a probationary agreement since Federal regulations now preclude allowing the vendor agreement to expire in lieu of termination for most violations.

§31.40 Reimbursement Claims by Vendor for Food Instruments Lost in Transit

- Added timeframe of sixty days for vendors to appeal state agency's nonpayment of food instruments lost in transit, as well as end of year deadline of December 31 for submission of appeals.

Reason: Appeals for nonpayment of food instruments must be submitted within sixty days in order to allow the WIC Program to manage its funds. The end of year deadline of December 31 is consistent with other WIC Program contracts and allows the state agency to closeout the fiscal year within the timeframe prescribed by USDA.

§31.41 Appeal Procedure for Food Instruments Invalidated by the State Agency

- Added end of year deadline for appeal submission of food instruments invalidated by the state agency.

Reason: The end of year deadline of December 31 is consistent with other WIC Program contracts and allows the state agency to closeout the fiscal year within the timeframe prescribed by USDA.