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Effective October 1, 2007

Policy No. WV:01.0

Vendor Agreement/Policy Violations

Purpose

To describe state agency (SA) procedures for monitoring compliance by vendors with the Vendor Agreement and WIC Program policies and to inform vendors of sanctions which will be imposed by the SA for noncompliance.

Authority

7 CFR Part 246; 25 Texas Administrative Code, Chapter 31; WIC Vendor Agreement

Policy

Vendors who fail to comply, either intentionally or unintentionally, with the Vendor Agreement and/or policies of the WIC Program shall be sanctioned. The SA shall document the circumstances of a vendor's noncompliance. Sanctions shall be imposed consistently among vendors and shall be fully documented.

Procedure

- I. The SA and/or representatives of the SA shall routinely monitor the operations of authorized WIC vendors during the term of their Vendor Agreements.
 - A. Monitoring techniques employed shall include but are not limited to:
 1. Routine on-site store reviews;
 2. On-site inspections by a city, county, district or state health authority;
 3. Covert in-store compliance buys by representatives of the SA;
 4. Invoice and EBT claim audits; and/or
 5. Periodic reviews of vendor redemption reports.

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- B. Criteria used by the SA and/or representatives of the SA to initiate an invoice audit and/or compliance buy shall include but are not limited to:
 - 1. Price differences identified as a result of the on-site store review;
 - 2. Apparent discrepancy in vendor's in-store stock compared to the volume of WIC redemptions; or
 - 3. Indicators that the vendor is "high risk".

 - C. "High risk" vendors
High risk vendors are those that the SA has determined pose the highest risk of non-compliance with the Vendor Agreement and/or policies.
- II. Monitoring by routine on-site store reviews may be conducted by the State Agency and/or a SA representative.
- A. The SA representative shall compare the prices obtained during the review to at least one recently submitted claim.

 - B. All identified overcharges from the prices obtained during the review shall be recovered and a written warning on more serious sanctions, if appropriate, shall be transmitted to the vendor.

 - C. During the on-site store review, the SA representative shall identify him/herself to store personnel and assess the store utilizing the following procedures:
 - 1. Collect shelf prices and verify that prices are prominently displayed for authorized WIC products.
 - 2. Ask the store personnel to see transacted WIC food instruments in the register(s) or otherwise on the premises for examination of the following:
 - a. instruments have all been priced;
 - b. acceptance dates within the valid period;
 - c. vendor identification on the food instrument; and

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- d. participant or proxy signatures are on the food instruments.
3. Examine the adequacy of stock to determine if an invoice audit is appropriate.
4. Examine expiration dates on WIC food items.
5. Examine WIC signage at the store.
6. Examine adherence to declared traditionally "Least Expensive Brands."
7. Examine adherence to restriction on vendor incentive items in accordance with WIC Policy WV:09.0.

III. Monitoring by On-Site Inspections by a 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 non-compliance with the Health and Safety Code.
- B. If it is determined by inspection or other means that an authorized WIC vendor purchased infant formula from a wholesale distributor not licensed in Texas in accordance with the Texas Health and Safety Code Chapter 431 and Texas Administrative Code Chapter 229, or from a food manufacturer not registered with the U.S. Food and Drug Administration, or from a retail store not holding a permit in accordance with the Texas Health and Safety Code Chapter 437, or from an entity not on the list provided by WIC of approved formula sources:
 1. A warning shall not be issued.
 2. One incident shall result in the disqualification of the vendor for one year.
 3. The SA shall not accept a CMP in lieu of disqualification.
 4. If the vendor receives a second sanction for this violation, the vendor shall be disqualified for two additional years.

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IV. Monitoring by Invoice Audit

- A. The SA or State Agency Representative may request up to 12 months purchase invoices from a vendor for analysis.
1. The vendor shall be given 60 days from receipt of the written request to submit purchase invoices to the SA, as time is of the essence.
 2. The vendor's failure to supply purchase invoices to the SA within the 60 day period shall result in disqualification from participation in the WIC Program.
 3. Additional purchase invoices/records shall not be accepted by the SA after expiration of the 60 day period unless directed to do so by the WIC Program Director as a vehicle for DSHS to better prepare for an Administrative Fair Hearing requested by the vendor.
- B. Required components of an acceptable purchase invoice:
1. The purchase invoice shall reflect the name and address of the wholesaler or supplier, date of the purchase, list of the items purchased, size, stock number, quantity, unit price, and dollar extension for the quantity purchased.
 2. Retail cash tickets shall 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, shall 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 shall be signed by the store manager and the manager shall be required to list the exact WIC items purchased (brand, type, and size) on the back of the receipt.
 3. Affidavits, Statements of Fact, and oral statements shall not be accepted as evidence of inventory. Only purchase

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invoices or retail cash tickets as described in item B.1 and B.2 of this section shall be accepted as evidence of inventory.

C. Invoice Audit Sanctions

1. If acceptable purchase invoices do not support amounts paid to the vendor for WIC claims submitted to the SA, the SA shall recover the monies overpaid to the vendor.
2. Since invoices reviewed by the program cover a wide span of time ranging from several months up to 12 months, unsubstantiated WIC sales shall constitute a pattern of violations and shall result in disqualification of the vendor for three years.
3. The SA shall not accept a Civil Money Penalty (CMP) in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area.

V. Monitoring by Compliance Buys

A. Definition of a compliance buy: A covert in-store investigation by one or more SA representatives posing as WIC participants or the parent/guardian/proxy of WIC participants using WIC food instruments to test the vendor's compliance with the Vendor Agreement, program policies, and/or rules. The SA representative does not reveal to store personnel that he/she is a SA representative during the visit.

1. If one or more violations are detected during a compliance buy, a notice of an in-store violation will be sent to the vendor via facsimile within two weeks after the monitor returns to the WIC office. If one or more additional violations are subsequently detected based on the food instruments/transactions submitted for reimbursement by the vendor, but prior to the completion of the investigation, no facsimile notification will be sent to the vendor.
2. A letter will be sent to the vendor detailing the results of the compliance buy whether or not a facsimile notice was

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- sent. The letter will be mailed via certified and regular mail service. If the certified letter is returned by the post office as unclaimed mail and the letter sent via regular mail service is not returned, then the letter date will be considered the date of receipt of warning of violations.
3. If necessary, one or more follow-up compliance buys are conducted after a warning is received by the vendor and in such case the vendor will be revisited no sooner than 60 days from the date of receipt of the warning.
 4. If necessary, follow-up compliance buys will be conducted until two passes with no violations or noncompliance is established. Both the initial and follow-up compliance buys will be considered in determining whether sanctions are applicable. The initial and follow-up buys and subsequent follow-up period constitute a single investigation.
- B. Definition of a positive pass: A compliance buy pass in which evidence of a violation of the Vendor Agreement, program policies, and/or rules is obtained.
- C. A compliance buy will test for, but not be limited to, areas of potential non-compliance as follows:
1. A SA representative may attempt to transact WIC 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 representative may also test for overcharging, being charged for foods not received, and/or compliance with the vendor's declared traditionally least-expensive brands of juice, cheese, and milk 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.

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3. A SA representative may also test for other violations of other policies and the Vendor Agreement.
- D. The SA shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)) in exchange for food instruments. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.
1. The SA shall disqualify a vendor for six years for:
 - a. One incidence of buying or selling food instruments for cash (trafficking); or
 - b. One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.
 2. For redemption of WIC food instruments for cash (trafficking), firearms, ammunition, explosives, and/or controlled substances:
 - a. The unauthorized item(s) shall not be paid.
 - b. A warning shall not be issued.
 - c. The SA shall not accept a CMP in lieu of disqualification unless:
 1. It determines inadequate participant access to other authorized vendors in the area will result from such a disqualification; and
 2. The SA determines that the vendor had an effective policy and program in effect to prevent trafficking; and
 3. The ownership was not aware of, did not approve of, and was not involved in the conduct of the violation.
 - d. If the vendor receives a second sanction for this violation, the second sanction shall be doubled and no CMP would be considered in lieu of a disqualification.

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- e. Sanctions for subsequent violations after the second sanction shall also be doubled with no possibility of a CMP.
 - f. A vendor convicted by a court of law for any of these violations shall be permanently disqualified.
 - g. The SA shall not accept a CMP, for any reason, in lieu of permanent disqualification.

- E. For redemption of WIC food instruments for alcohol or alcoholic beverages or tobacco products:
 - 1. The unauthorized item(s) shall not be paid.
 - 2. A warning shall not be issued.
 - 3. One incident shall result in the disqualification of the vendor for three years.
 - 4. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 - 5. If the vendor receives a second sanction for this violation, the second sanction shall be doubled.
 - 6. Sanctions for subsequent violations after the second sanction shall also be doubled.

- F. For redemption of food instruments that indicate charging the SA more than the customary selling price charged other customers, the overcharges shall not be paid.
 - 1. One positive compliance buy pass will result in a single written warning to the vendor.
 - 2. Follow-up compliance buys may be conducted after the warning has been received by the vendor.
 - 3. Three or more positive passes shall constitute a pattern.
 - 4. A pattern of violations shall result in disqualification for three years.
 - 5. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.

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6. 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."
- G. For redemption of food instruments which indicate charging for foods not received by the food instrument recipient:
1. The charge for a food item not received shall not be paid.
 2. One positive compliance buy pass will result in a single written warning to the vendor.
 3. Follow-up compliance buys may be conducted after the warning has been received by the vendor.
 4. Three or more positive passes shall constitute a pattern.
 5. A pattern of violations shall result in disqualification for three years.
 6. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
- H. For acceptance of food instruments at an unauthorized vendor outlet and submitting the food instruments/transactions to the SA for payment through an alternate authorized vendor outlet:
1. The food instruments/transactions shall not be paid.
 2. One incident shall result in a disqualification of the authorized vendor outlet for three years.
 3. The unauthorized vendor outlet shall not be eligible to apply for WIC authorization for:
 - a. three years from the date of the vendor outlet's receipt of SA notification; or

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- b. if the vendor outlet is currently disqualified from the Program for a period in excess of three years, the longer period shall apply.
 - 4. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 - 5. If the vendor receives a second sanction for this violation, the second sanction will be doubled.
 - 6. Sanctions for subsequent violations after the second sanction shall also be doubled.
 - I. For acceptance of WIC food instruments prior to authorization of an outlet and subsequently submitting the food instruments/transactions for payment after authorization:
 - 1. The food instruments/transactions shall not be paid.
 - 2. One incident shall result in a single written warning to the vendor.
 - 3. Three or more incidents shall constitute a pattern.
 - 4. A pattern of violations shall result in disqualification of the vendor for three years.
 - 5. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 - 6. If the vendor receives a second sanction for this violation, the second sanction will be doubled.
 - 7. Sanctions for subsequent violations after the second sanction shall also be doubled.
 - J. For redemption of food instruments for credit, issuance of rain checks, and/or providing non-food items other than alcohol or alcoholic beverages, cash, tobacco products, firearms, ammunition, explosives, and/or controlled substances as defined in 21 U.S.C. 802:
 - 1. The unauthorized item(s) shall not be paid.
 - 2. One positive compliance buy pass will result in a single

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- 3. written warning to the vendor.
 - 3. Follow-up compliance buys may be conducted after the warning has been received by the vendor.
 - 4. Three or more positive passes shall constitute a pattern.
 - 5. A pattern of violations shall result in disqualification for three years.
 - 6. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 - 7. If the vendor receives a second sanction for this violation, the second sanction will be doubled.
 - 8. Sanctions for subsequent violations after the second sanction shall also be doubled.
- K. For violating WIC Policy WV:09.0, Restriction on Vendor Incentive Items, in any way:
- 1. One incident shall result in a written warning.
 - 2. A second incident shall result in disqualification of the vendor for one year.
 - 3. The state will not accept a CMP in lieu of disqualification.
 - 4. The state reserves the right to detect violations through on-site monitoring reviews.
- L. For forging the food instrument recipient's signature and/or validation information on the WIC food instrument:
- 1. The food instrument shall not be paid.
 - 2. One incident shall result in a single written warning to the vendor.
 - 3. A second incident shall result in disqualification of the vendor for three months.
 - 4. The SA will accept a CMP in lieu of disqualification.
 - 5. The SA reserves the right to detect forgeries through means other than compliance buys.
- M. For acceptance of food instruments at an authorized vendor outlet and submitting these food instruments/transactions to the

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SA for payment through an alternate authorized outlet, a written warning shall be issued to both vendor outlets.

For the following Procedures V. N-Y, the vendor will receive two warnings, one after each pass in which a violation occurs that does not require immediate disqualification.

- N. For redemption of WIC food instruments for infant formula not authorized or imprinted on the food instrument:
1. The food instrument/transaction(s) shall not be paid.
 2. Three or more positive passes shall constitute a pattern.
 3. A pattern of violations shall result in disqualification for one year.
 4. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 5. If the vendor receives a second sanction for this violation, the second sanction will be doubled.
 6. Sanctions for subsequent violations after the second sanction shall also be doubled.
- O. For redemption of WIC food instruments for unauthorized food items or package sizes of food other than formula and/or charging for quantities of foods provided in excess of those authorized on the food instrument:
1. The unauthorized item(s) shall not be paid.
 2. Three or more positive passes shall constitute a pattern.
 3. A pattern of violations shall result in disqualification for one year.
 4. The SA shall not accept a CMP in lieu of disqualification unless it determines inadequate participant access to other authorized vendors in the area will result from such a disqualification.
 5. If the vendor receives a second sanction for this violation, the second sanction will be doubled.
 6. Sanctions for subsequent violations after the second

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sanction shall also be doubled.

- P. For failure to enter prices for foods purchased onto a food instrument at the time of purchase:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

- Q. For failure to prominently display the shelf prices of all WIC-authorized foods:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

- R. For redemption of WIC food instruments for milk, juice and/or cheese other than the declared least expensive brand when the declared milk, juice and/or cheese items are in stock:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

- S. For accepting food instruments outside of their valid period:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

- T. For failing to offer WIC customers the same courtesies and discounts offered to other customers such as manufacturers' cents-off coupons or trading stamps:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

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- U. For seeking restitution from participants for invalidated food instruments/transactions:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

- V. For failing to label declared traditionally least expensive brands:
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.

- W. For improperly labeling WIC foods as follows:
 - 1. Labeling milk, juice and/or cheese as WIC approved when it is not the declared least expensive brand, unless the vendor is temporarily out of the declared least expensive brand;
 - 2. Labeling a food as WIC approved when it is not authorized; and
 - 3. Labeling a food as WIC approved while failing to label other WIC approved foods within the same category, such as labeling a house brand cereal but not other WIC approved brands of cereal.
 - a. three or more positive passes shall constitute a pattern.
 - b. a pattern of violations shall result in disqualification for one month.
 - c. the SA will accept a CMP in lieu of disqualification.

- X. For refusing to issue an authorized item in an authorized size when the price falls within the "not to exceed price," with the exception of fluid milk in half-gallon containers (see X.4)
 - 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for

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- one month.
 - 3. The SA will accept a CMP in lieu of disqualification.
 - 4. A vendor may refuse to sell gallon equivalents of milk in half-gallon containers. This exception does not apply to buttermilk or lactose-free milk, which must be sold ONLY in half-gallon containers. For example, if a participant selects two half-gallon containers of the same type milk (whole, low fat, skim), the vendor may require the participant take a one-gallon container instead.
- Y. For not allowing a WIC participant or proxy to refuse an authorized product:
- 1. Three or more positive passes shall constitute a pattern.
 - 2. A pattern of violations shall result in disqualification for one month.
 - 3. The SA will accept a CMP in lieu of disqualification.
- Z. For charging the WIC Program food prices that are determined to be non-competitive as defined by WIC Policy WV:10.0, the Vendor Agreement authorization for the Outlet/vendor site will be terminated.
- 1. From a preliminary review of the vendor's pricing, the state will provide a non-compliant vendor with a written notification (warning) of non-compliance.
 - 2. Upon subsequent assessment by the state within a 12-month period, if the vendor's prices are again found to be non-competitive the state will terminate the vendor's Vendor Agreement and the state will not consider an application from that vendor site for a full six-month period.
 - 3. The state will not accept a CMP in lieu of a termination of the Vendor Agreement unless it determines inadequate participant access to other authorized vendors in the area will result from such a termination.
- VI. The SA may review or assess a vendor or outlet's compliance with the requirements of the WIC Vendor Agreement (including addendums) at

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any time during the vendor agreement's effective period based on information received from internal reports or outside agents.

- A. Breach of contract will be governed by State law and specific terms and conditions of the vendor agreement.

- B. The State may impose specific penalties as described in Section VI.C below for violation of any of the following vendor responsibilities required in Addendum 1 to the WIC Vendor Agreement – Electronic Benefits Transfer:
 - 1. Failure to maintain a State certified in-store WIC EBT system that ensures system availability during all hours the store is open;
 - 2. Failure 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. Failure to ensure the EBT redemption process allows a reasonable degree of security for protecting PIN numbers used by WIC recipients;
 - 4. Failure to have the WIC recipient enter the PIN number into the point-of-sale device. Allowing store personnel to enter the WIC recipient's PIN into the point-of-sale device is not allowed.
 - 5. Failure to have the WIC recipient accept/approve the WIC transaction. Allowing store personnel to accept/approve the WIC transaction for the WIC recipient is not allowed.
 - 6. Failure to release food benefits to the WIC recipient any time the WIC EBT Card is decremented;
 - 7. Using scan codes from UPC codebooks or reference sheets rather than actual products purchased for transaction entry.

- C. If the vendor or outlet fails to meet any of the WIC EBT requirements listed in Section VI.B above (as extracted from the

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WIC Vendor Agreement, Addendum 1), the SA shall issue a written warning for the first violation. A second violation within a 12-month period for the same activity will result in a one-month disqualification from participating in the WIC Program or the vendor may request a civil monetary penalty (CMP) in the amount of one thousand dollars (\$1,000.00) as an alternative to the disqualification. A third violation within a 12-month period in the same activity will result in a second one-month disqualification from participating in the WIC Program or the vendor may request a civil monetary penalty in the amount of three-thousand dollars (\$3,000.00) as an alternative to the disqualification. Subsequent violations in the same activity, or a total of five cumulative violations regardless of activity, within a 12-month period will result in additional one-month disqualifications from participation in the WIC Program for that outlet. A vendor may request a civil monetary penalty as described in Section X.A-B below as an alternative to each one-month disqualification period beyond the initial two disqualifications.

- VII. The SA may review or assess any authorized vendor outlet at any time during the vendor's agreement period using the selection criteria in effect at the time of the review or reassessment. If the vendor outlet fails to meet selection criteria at the time the SA conducts a review, the SA shall either issue a warning or terminate the vendor's Vendor Agreement depending on the severity of the violation. If the vendor outlet fails a second time within a 12 month period to meet selection criteria at the time the SA does a reassessment, the SA shall terminate the Vendor Agreement for that outlet. If, at the time of the assessment, the vendor charges prices in excess of those allowed by the selection criteria, the vendor shall also repay the excess charges to the SA. If a vendor's Vendor Agreement is terminated because the vendor no longer meets the selection criteria, including charging competitive prices, the state will not consider an application from that vendor site for a full six-month period.

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- VIII. A vendor's termination of the Vendor Agreement after having received notification by the SA of a violation shall 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 25 TAC, Section 31.36, the SA shall impose the sanction proposed in the notice to the vendor.
- IX. The vendor shall 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 Program violations and sanctions.
- X. Civil Money Penalty (CMP)
- A. With the exception of CMP's specified in Section VI.C above, vendors may request a CMP as an alternative to disqualification for six months or less, unless otherwise not allowed. Prior to a hearing on the matter, the outlet/vendor may choose either to accept the disqualification or 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 state's written notification of disqualification. The CMP payment must be received by the state prior to the disqualification effective date.
- B. For violations resulting in a disqualification of one but not more than six months, the CMP shall 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 shall not exceed \$11,000 for any number of violations within a violation type nor more than \$44,000 as part of a single investigation.

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- C. One or more violations within a violation type during one compliance buy or one routine monitoring visit shall be considered one violation.
- D. If more than one violation type rises to the level of a pattern, the CMP will be calculated based on the offense for which the most severe sanction would be required.
- E. A vendor may not pay a CMP in lieu of a proposed disqualification period longer than six months unless the SA determines that disqualification would result in inadequate participant access to other vendors in the area.
- F. The determination by the SA regarding inadequate participant access is not subject to administrative review.
- G. If the SA determines disqualification would result in inadequate participant access, the CMP shall be calculated as follows except for violations that warrant permanent disqualification:
 - 1. Determine the vendor's average monthly redemptions for the most current six-month period available and multiply by 0.10 (10%); multiply the resulting amount by the number of months the vendor would have been disqualified.
 - 2. The amount of the resulting CMP shall not exceed \$11,000 for any number of violations within each violation type nor more than \$44,000 as part of a single investigation.
- H. When during the course of a single investigation, the SA determines a vendor has committed multiple violations, the SA shall, in the event of a determination of inadequate participant access, impose a CMP for violations within each violation type. The total amount of the CMPs imposed shall not exceed \$44,000.
- I. If the vendor receives a second disqualification for the following violations as defined in this policy and elects to pay a CMP, the CMP shall be doubled but shall not exceed \$44,000:

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1. Redemption of food instruments for infant formula not authorized nor imprinted on the food instrument;
 2. Redemption of food instruments for unauthorized brands or package sizes of food and/or charging for quantities of foods provided in excess of those authorized on the food instrument;
 3. Redemption of food instruments for other than the declared least expensive brands of milk, juice, and/or cheese when the declared items are in stock;
 4. Redemption of food instruments for unauthorized foods;
 5. Redemption of food instruments for foods not received;
 6. Charging the SA more than the customary selling price charged other customers for the same items;
 7. Redemption of food instruments for credit, including rain checks, and/or non-food items other than alcohol, alcoholic beverages, cash, tobacco products, firearms, ammunition, explosives, controlled substances;
 8. Redemption of food instruments for cash (trafficking), firearms, ammunition, explosives, or controlled substances;
 9. Redemption of food instruments outside authorized channels; and/or
 10. Unsubstantiated WIC sales.
- J. No CMP shall be accepted in lieu of a third and subsequent sanction(s) for violations listed in item I. of this section.
- K. 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 shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed.
- XI. Disqualification for violations identified during one Vendor Agreement period may be imposed in a subsequent Vendor Agreement period, if

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the vendor has been notified in writing at least 15 days prior to the disqualification period.

- XII. For violations requiring more than one incident to establish a pattern of noncompliance, the number of incidents shall be aggregated by type. The most severe sanction applicable among all the violation types shall be imposed.
- XIII. Disqualification from the Food Stamp Program shall result in an automatic disqualification of the same duration from the WIC Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, may begin at a later date than the Food Stamp Program disqualification, and is not subject to administrative or judicial review under the WIC Program.
- XIV. The SA shall disqualify a vendor who has been assessed a CMP in the Food Stamp Program based on hardship, as provided by Food Stamp Program regulations, 7 CFR §278.6.
 - A. The length of the disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program.
 - B. If the SA determines that inadequate participant access would result, no disqualification shall be imposed.
- XV. A vendor's disqualification from the WIC Program may result in disqualification of the vendor's food stamp authorization, which is not subject to administrative or judicial review under Food Stamp Program regulations, 7 CFR §278.6(e)(8).
- XVI. A vendor being disqualified shall be given at least 15 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 participation as defined in 25 TAC, §31.36, with the

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following exceptions:

1. The validity or appropriateness of the SA's vendor limiting or selection criteria, including the cost competitiveness of a vendor;
 2. The validity or appropriateness of the SA's participant access criteria and the SA's participant access determination.
 3. 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 conduction of the violation;
 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;
 6. Disputes regarding food instrument payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other errors, as permitted by 7 CFR §246.12(k)(3));
 7. SA disqualification of a vendor based on a disqualification or CMP imposed by the Food Stamp Program; and
- B. Disqualifications which take effect upon receipt by the vendor of the notice of disqualification from the SA and which do not require 15 days prior notice include the following:
1. Conviction for trafficking in food instruments;
 2. 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 shall provide the SA with a written request for a hearing within 15 days of receipt of the adverse action disqualification notice. The request for appeal must be received by the SA on or before the 15th day after receipt of the adverse action notification to the vendor. The request shall, at a minimum, describe the action that is being appealed.

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XVII. The Vendor Agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current Vendor Agreement, the vendor must reapply for authorization. If a vendor is disqualified, the SA will terminate the Vendor Agreement, and the vendor will have to reapply in order 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 the reapplication.

XVIII. 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.

XIV. 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 signs, pamphlets, posters, or brochures. For violations pertaining to the use of the acronym "WIC" or the WIC logo, the SA shall issue a written warning. For a subsequent violation after having received a written warning, the SA shall 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. State issued posters, signs, labels or other items.
- B. Vendors may have a sign, pamphlet, poster or brochure

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indicating that WIC food instruments are accepted as long as the letters are printed in the same size and in the same print style.

- C. Vendors are required to use state-furnished "WIC Approved Item" labels on shelves of declared traditionally least expensive brands and may use them on shelves of all WIC authorized foods.

Under certain conditions, the State may approve store-supplied labels. Stores must send a written request and justification to the State to supply their own labels. Stores must submit an actual sample to the State WIC Office in the same pink color used for state-produced labels, and must receive approval in writing prior to the use of any store-supplied label. The approval is not perpetual; stores will have to submit the request for approval on an annual basis. If approval is granted, it will expire when the Vendor Agreement expires. All costs associated with developing, printing, storing, supplying and using store-supplied labels must be paid by the store.

XX. 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)(ii) through 246.12(l)(iv), receives another sanction for any of these violations, the SA must double the third sanction and all subsequent sanctions. The SA may not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for these violations.

XXI. Expiration of a Vendor Agreement Without Renewal

- A. If the SA allows the Vendor Agreement to expire because the volume of the vendor's WIC sales has fallen below \$500 a month for three consecutive months, the SA shall not consider the vendor's application to participate for six months after the expiration of the vendor's prior Vendor Agreement.

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- B. If the SA allows the 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 consider the vendor's application to participate for six months after the expiration of the vendor's prior Vendor Agreement.

- C. If the SA allows the Vendor Agreement to expire because the vendor or a representative of the vendor has failed to attend WIC vendor classroom or video teleconferencing training for a period of more than three years, the SA will not consider the vendor's application to participate until the vendor or the vendor's representative attends WIC vendor classroom or video teleconferencing training provided by the SA.

10-5-07