

<p style="text-align: center;">Texas WIC Health and Human Services Commission</p>

Effective November 1, 2021

Policy No. WV:02.0

Least Expensive Brand Declaration

Purpose

To improve vendor compliance with selling declared least expensive brand (LEB) food items, to promote cost-efficiency, and to reduce vendor/participant confusion when identifying LEB foods.

Authority

7 C.F.R Section 246.12

Policy

At the time of initial authorization, all vendors must declare their LEB for each type and size of the following WIC authorized foods for each vendor outlet:

- Milk
- Fluid and Frozen Juice
- Cheese
- Whole Wheat Bread
- Wheat and Corn Tortillas

At least 85% of a vendor outlet's monthly WIC redemptions within each LEB food category must be the vendor outlet's declared LEB. Vendor outlets that do not redeem at least 85% of their declared LEB in each food category are subject to sanctions and termination of their Vendor Agreement. Vendors must label their declared LEBs with the State-agency (SA)-issued "WIC Approved Item" pink label or vendor-produced "WIC Approved Item" pink label approved by the SA.

Procedures

I. Declaring LEBs

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- A. At the time of initial authorization, and any time thereafter, each vendor must declare their LEB foods by completing the LEB Declaration Form.
- B. Only one LEB Declaration Form is necessary if the LEBs are the same for all vendor outlets within one account. If the LEB(s) varies between vendor outlets, then the vendor applicant must submit an LEB Declaration Form for each individual vendor outlet within an account.

II. Labeling LEBs

- A. Vendors are required to label declared LEB food items with SA-issued "WIC Approved Item" pink labels. The SA will supply "WIC Approved Item" pink labels to vendors upon request or vendors may download the label template from the Texas WIC website to print.
- B. Vendors may choose to produce their own "WIC Approved Item" pink labels/signage. Vendors must submit a written request with justification to the SA. The vendor must receive approval in writing prior to using the labels/signage. All costs associated with using vendor-produced labels/signage must be paid by the vendor. Upon reauthorization or at any time, the SA may require vendors who have produced their own "WIC Approved Item" pink labels/signage to submit them for approval.

Vendors must electronically submit the following for SA approval of vendor-produced LEB labels/signage:

- Clear color image
 - Size of fonts and dimensions
 - WIC-approved shade of pink
- C. The vendor is responsible to ensure the "WIC Approved Item" pink shelf labels are clearly placed designating the appropriate LEB food items.

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- D. Vendors may choose to label a non-LEB WIC food item with the "WIC Approved Item" pink label. However, all the WIC allowable food items within that food category must be labeled. For example, if one cereal has a "WIC Approved Item" pink label, then all WIC allowable cereals – private label and national brands - must have a "WIC Approved Item" pink label. Another example is if the vendor chooses to label contracted brands of infant formula, then all contracted brands of infant formula must be labeled with the "WIC Approved Item" pink label.

III. Changing Declared LEBs

- A. It is the vendor's responsibility to notify the SA of changes to its LEBs by submitting changes immediately. Failure to submit changes to LEBs could result in violations and sanctions.
- B. If a vendor needs to change a LEB food item for a vendor outlet(s), the vendor must submit changes to the SA. The newly declared LEB must be in the Authorized Product List (APL).

IV. LEB Compliance

- A. If a vendor outlet is out of stock of the declared LEB, the vendor outlet must sell the next least expensive brand of that food item available at that time. The next least expensive brand sold must be in the APL.
- B. A vendor outlet's failure to have its declared LEB be at least 85% of its WIC redemptions in each of the applicable WIC LEB food categories during a process month may result in violations and sanctions. The SA will include the redemptions of non-LEB brand(s) sold at equal to or less than the unit price of the declared LEB in the final computation as part of meeting the 85% compliance requirement. At the SA's discretion, a vendor's wholesale supply issues, interim changes to a vendor outlet's LEB declarations within

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a review month, and/or low volume of WIC sales may result in sanctions being waived on a case-by-case basis.

- C. A vendor outlet's failure to label LEB food items appropriately may result in violations and sanctions.
- D. The SA may perform a review of a vendor outlet's compliance with selling its declared LEBs at any time during the term of the Vendor Agreement.
- E. For a description of violations and sanction schedules, see WV: 1.0 Section VI (T) (*LEB Labeling*) and Section VIII (D) (*LEB Cost Containment*).
- F. A vendor who is actively working with the SA's EBT Operations Branch on changes to its WIC EBT point-of-sale system may be exempt from sanctions. To qualify for this exemption, the vendor must contact the SA in advance of the 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.