

Texas WIC Health and Human Services Commission

Effective October 1, 2022

Policy No. WV:10.0

WIC Vendor Authorization

Purpose

This policy provides information on the types of vendors authorized by the United States Department of Agriculture Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program and the requirements for becoming an authorized vendor; competitive pricing; and vendor agreement details.

Authority

7 CFR Sections 246.2 and 246.12

I. Definitions

The following definitions are provided to assist in explaining various acronyms and/or details of certain processes. These definitions do not constitute a comprehensive listing of all terms nor do they replace definitions in the regulations at 7 CFR Part 246. In the event of conflict between the definitions listed in this policy and in 7 CFR Part 246, the latter shall prevail with the exception of definitions only listed in this policy.

Approved Product List (APL) – A comprehensive listing of WIC approved food items which list Universal Product Code (UPC) and/or Price Look-Up (PLU) information. Information is separated by food category/subcategory.

Arms-Length Transaction – A transaction in which the buyers and sellers of a product act independently and have no relationship to each other. The concept of an arms-length transaction is to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

Authorized Distributor of Record (ADOR) – Distributors with whom a manufacturer has established an ongoing relationship to distribute the manufacturer’s products.

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Category/subcategory – A category is a group of similar food items (e.g. whole milk, regular milk, infant cereal, infant foods); and a subcategory is the further division of the category based on certain characteristics. For example, whole milk is divided into different subcategories based on size (e.g. gallon, half gallon, and quart).

Competitive Pricing Classification – A method to determine peer group designation for WIC authorized vendors based upon the amount of WIC sales and geographical locations.

Continuous Basis – On any given day of operation, a retail grocery store offers for sale, and normally displays in a public area, a variety of food items.

Contract Brand Infant Formula – All infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract. If under a single solicitation the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas. If a State agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula. For example, all of the milk-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the milk-based contract are considered contract brand infant formulas. Similarly, all of the soy-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the soy-based contract are also considered to be contract brand infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the contract is awarded.

Drop Shipment – The shipping of exempt infant formula and/or WIC-eligible nutritionals from a supplier directly to the WIC LA.

Durable Medical Equipment (DME) Retailer - A business entity, wholesaler, or supplier that sells exempt infant formula and/or WIC-eligible nutritionals but does not hold a pharmacy license.

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Electronic Benefit Transfer (EBT) – Offline system that utilizes a smart card with an embedded microchip that permits electronic access to WIC participants’ food benefits. A point-of-sale system equipped with a smart card reader checks the WIC benefits to be purchased against the benefits on the chip, authorizes the transaction, and uploads the day’s transactions to a host.

EBT Capable – The WIC vendor demonstrates that their cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases.

Exempt Infant Formula – Any infant formula which is represented and labeled for use by an infant (1) who has an inborn error of metabolism or a low birth weight, or (2) who otherwise has an unusual medical or dietary problem, in accordance with 21 U.S.C. 350a(h).

Full-Line Grocer – A retailer that stocks and offers for sale, on a continuous basis, a variety of food products. Vendor types are defined in Section III of this policy.

Least Expensive Brand (LEB) – Vendors must declare and sell their least expensive brand (LEB) for each type and size of WIC authorized milk, fluid and frozen juice, cheese, and whole wheat bread. At least 85% of an outlet’s WIC monthly redemptions within these food types (category/subcategories) must be the vendor’s declared traditionally least expensive brands (LEB).

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

Local Agency (LA) – An agency established at the local level that represents various clinics within a specified jurisdiction and is responsible for issuing benefits to WIC participants.

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Maximum Allowable Reimbursement (MAR) – A price limit derived monthly by the WIC Program’s end-of-process month analysis of claims paid. MAR limit varies by competitive pricing classification. The MAR for Traditional WICs (TWIC) is 125% of the average prices paid to TWICs in each price region and sales volume band for the various WIC authorized food types by category/subcategory. The MAR for Predominantly WICs (PWIC) is 100% of the statewide average prices paid to TWICs for the various WIC-authorized food types by category/subcategory.

Military Commissary – A store that sells food and supplies to personnel or workers in a military post. As authorized WIC vendors, a military commissary has to adhere to the same selection criteria and minimum stocking requirements as a Full-Line Grocer; however, commissaries are not subjected to monitoring activities as outlined in the Memorandum of Understanding with the Department of Defense.

Minimum Stocking Requirement – A vendor must stock minimum food types and quantities, as described by the United States Department of Agriculture (USDA) 7 CFR 246.12.

Minimum Stocking Requirement for Full-Line Grocer – Vendor must maintain a minimum stock of food in the following categories: as defined in Section III of this policy: (1) fresh vegetables, (2) fresh fruits, (3) frozen vegetables, (4) frozen fruits, (5) canned fruits, (6) canned vegetables, (7) fresh and frozen fish, poultry, and meats, (8) bread, (9) canned fish, (10) dairy, (11) whole grains, (12) eggs, (13) beans, (14) peanut butter, (15) juice, (16) infant food items, and (17) infant formula (elective).

Minimum Stocking Requirement for Pharmacy and Durable Medical Equipment Retailers- A pharmacy or durable medical equipment retailer is exempt from minimum stocking requirements.

Minimum Stocking Requirement for PWIC Grocer – Vendor must maintain a minimum stock of food in the following categories as defined in Section III of this policy: (1) fresh fruits and vegetables, (2) eggs,

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(3) beans, (4) peanut butter, (5) juice, (6) canned fish, (7) dairy, (8) whole grains, (9) infant food items, and (10) infant formula (elective).

Not to Exceed (NTE) Amount – The maximum price that the State Agency will pay for a food type (e.g. milk, juice, cereal, eggs, etc.). The NTE amount is set at a reasonable limit, set high enough so that the food type can be purchased anywhere in the state. The NTE amount is shown in the APL sent electronically to WIC authorized vendor through their EBT system. The NTE amount is enforced as a pre-payment edit and is NOT the end-of-process month MAR limitation defined elsewhere. NTE adjustments reduce the reimbursement total to the vendor prior to payment by the State Agency (SA), without regard to TWIC or PWIC status, and do not affect the MAR pricing calculations. The NTE will be evaluated quarterly.

On-Site Evaluation – An evaluation that is conducted on-site at the vendor outlet location to determine ongoing compliance. See Section VI for more information.

Pharmacy – A facility at which a prescription drug or medication order is received, processed, or dispensed under Texas Health and Safety Code. A vendor type as defined in Section III of this policy.

Preauthorization Process for New Vendors – An on-site evaluation, during initial authorization, to verify that the physical location and signage of a vendor applicant are consistent with the information stated on the vendor application. The SA or LA representative must conduct this visit prior to authorizing the vendor. In addition, the SA must review vendor documentation for food items, or the actual food items meeting federal and state minimum stocking requirements during the preauthorization process.

For existing vendor accounts adding an outlet during the preauthorization process:

- the vendor will certify that the new outlet currently meets federal and state minimum stocking requirements
- the vendor will provide documentation for food items for federal minimum stocking requirements plus contract brand

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infant formula, if vendor elects to carry formula; the SA may require additional food invoices for all state Minimum Stocking Requirement foods.

- at the State's discretion, the SA will review the actual food items meeting federal and state minimum stocking requirements plus contract brand infant formula, if the vendor elects to carry formula

Predominantly-WIC (PWIC) Grocer – A vendor type and competitive pricing classification given to an outlet that has or is expected to have WIC food sales above 50% of the outlet's total sales of foods that are eligible for purchase using benefits issued by the Supplemental Nutrition Assistance Program (SNAP). A PWIC is also known as an Above-50-percent vendor as described in 7 CFR Part 246.

Price Region – A geographic area comprised of designated zip codes or one or more counties. Such areas may or may not be contiguous.

Primary Contract Brand Infant Formula - The specific infant formula for which manufacturers submit a bid to the State Agency (SA) in response to a rebate solicitation and for which a contract is awarded by the State Agency as a result of that bid.

Sales Volume Band – A competitive pricing grouping determined by the SA and based on monthly WIC sales volume. Sales volume bands consist of (1) Band 1: \$0.00 - \$1,999.99, (2) Band 2: \$2,000.00 - \$5,999.99, (3) Band 3: \$6,000.00 – \$19,999.99, and (4) Band 4: \$20,000.00 or greater.

SNAP – The Supplemental Nutrition Assistance Program, formerly the Food Stamp Program.

Special Supplemental Nutrition Program for Women, Infants, & Children (WIC) – Federal assistance program of the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) for supplemental foods, healthcare referrals, and nutrition education for low- income pregnant women, breastfeeding and non-

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

Split Tender – The cash register allows the participant, authorized representative, or proxy to pay the difference when a fruit and vegetable purchase exceeds the value of the cash-value benefit.

State Agency (SA) - Texas Health and Human Services Commission in its role as administrator of the WIC Program.

Statewide Average Price Paid – The average price paid to TWICs for a WIC approved food type by category/subcategory. This function is used in competitive pricing.

Traditional WIC (TWIC) – A competitive pricing classification given to an outlet that has or is expected to have, WIC food sales that constitute up to 50% of the outlet’s total sales of foods that are eligible for purchase using benefits issued by the SNAP. Types of TWICs may include but are not limited to full-line grocers, military commissaries, and mass merchandisers.

United States General Services Administration (USGSA) – Provides centralized procurement for the federal government, offering products, services, and facilities that federal agencies need to serve the public. USGSA oversees and manages the System for Award Management.

Vendor Agreement – The formal and legally binding agreement between the Texas Health and Human Services Commission and a WIC authorized vendor.

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

Vendor Outlet – A retail grocery store which operates and transacts WIC food benefits at a fixed location, has an electric utility hook-up, is a store structure situated on a cement or pier-and-beam foundation that is not used simultaneously as a residence, has a minimum business area of 1,000 square feet, has clearly identifying signage that closely

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matches the retail store name (abbreviated version acceptable) listed on the WIC Vendor Application, and is accessible directly from the street or parking lot.

Vendor Type – A distinct group that a WIC authorized vendor is identified under based on physical attributes and food stock of the vendor outlet.

WIC EBT Benefits – WIC food package benefits issued to a WIC participant onto a WIC smart card, which is used at a WIC authorized vendor outlet for redemption.

WIC EBT Transaction – One or more items purchased at one time using an EBT card.

WIC-Eligible Nutritionals - Certain enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible nutritionals must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding (e.g., Pediasure); and may not be a conventional food, drug, flavoring, or enzyme. WIC-eligible nutritionals include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

WIC Authorized Vendor - A sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the SA to provide authorized supplemental foods to WIC participants under a retail food delivery system.

II. Vendor Selection

All vendor applicants seeking initial authorization to the WIC Program must meet all selection criteria contained in this policy.

A. Selection Criteria

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1. The SA will approve a vendor applicant for authorization as a WIC authorized vendor or authorized vendor outlet if the following items are met:
 - a. The SA receives an accurate and completed WIC vendor application from the vendor applicant.
 - b. The SA receives a completed and properly signed "Gross Food Sales Certification Form" indicating the vendor applicant's estimated gross food sales, defined as foods that can be purchased with SNAP benefits, and the percent estimated to be derived from WIC food sales.
 - c. Vendor applicant has no apparent conflict of interest with the vendor outlet designated LA or with the SA.
 - d. Vendor applicant, who has previously been an authorized vendor, has a history of compliance with WIC Program rules, policies, and procedures.
 - e. The vendor applicant must meet competitive pricing selection criteria (CPSC). According to Section IV, this selection criterion may be waived per Federal regulation if the SA determines the vendor is needed to ensure adequacy of participant access to supplemental foods. (See Policy WV:3.0.)
 - i. For Full-line Grocer: First-time Applicant/New Vendor Account

The SA will compare submitted shelf prices against sales volume band 1 price averages within the applicant's price region of the most recent month. The vendor applicant's shelf prices collectively must not exceed the CPSC of 110%. After the vendor applicant is authorized, the vendor is placed in that price region and sales volume band 1 during the first process month they incur sales. The SA's peer group assignment process will apply after the first process month of sales.

- ii. For Full-line Grocer: Existing Vendor Account – New Vendor Outlet

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Using the most recent month of sales, the monthly sales average of the other associated stores is used to calculate the sales volume band within the vendor applicant's respective geographic price region. The vendor applicant's shelf prices collectively must not exceed the CPSC of 110%. After the vendor applicant is authorized, the vendor is placed in that price region and calculated sales volume band during the first process month they incur sales. The SA's peer group assignment process resumes after the first process month of sales.

iii. Mass Merchandiser:

Mass merchandiser vendor applicants are assigned to the mass merchandiser price region. Using the most recent month of sales, the monthly sales average of the other associated stores is used to determine the sales volume band the applicant is assigned to determine pricing competitiveness. The vendor applicant's shelf prices collectively must not exceed the CPSC of 110%. After the mass merchandiser vendor applicant is authorized, the vendor is assigned the same peer group from the application process during the first process month they incur sales. The SA's peer group assignment process resumes after the first process month of sales.

iv. For Military Commissaries:

Using the most recent month of sales, military commissary vendor applicants are measured against military commissaries in determining compliance with the CPSC. The vendor applicant's shelf prices collectively must not exceed the CPSC of 110%. Once authorized, the military commissary is compared to all other commissaries.

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v. For PWIC:

Using the most recent month of sales, PWIC vendor applicants are measured against the TWIC cost containment statewide averages in determining compliance with the CPSC. The vendor applicant's shelf prices collectively must not exceed the CPSC of 8% recoupment. Once authorized, PWICs are compared to the monthly TWIC statewide averages. See WV: 10.0 Section VII. B. d.

- f. Vendor applicant certifies its outlet exists at the stated address on the vendor application, the facility has a minimum business area of 1,000 square feet, and signage closely matches the applicant vendor name listed on the vendor application. The SA or LA representative will verify the physical location by making a preauthorization on-site visit to evaluate the location. In addition, the SA must review vendor documentation for food items, or the actual food items meeting federal and state minimum stocking requirements during the preauthorization process.

For existing vendor accounts adding an outlet during the preauthorization process:

- the vendor will certify that the new outlet currently meets federal and state minimum stocking requirements.
- the vendor will provide documentation for food items for federal minimum stocking requirements plus contract brand infant formula, if vendor elects to carry formula; the SA may require additional food invoices for all state Minimum Stocking Requirement foods.
- at the State's discretion, the SA will review the actual food items meeting federal and state minimum stocking requirements plus contract brand infant formula, if the vendor elects to carry formula.

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- g. Vendor applicant certifies that an arms-length transaction has occurred if the vendor applicant purchases or acquires a vendor outlet that was in the process of being disqualified or was disqualified from the WIC Program at the time of purchase/acquisition.
- h. Vendor applicant self-declares vendor type on application (see section III): Full-Line Grocer, Predominantly WIC Grocer, Military Commissary, Pharmacy/Durable Medical Equipment Retailer.
- i. Vendor applicant submits a valid retail food operations permit, food manufacturer's permit, or pharmacy license from the applicable city, county, district, or state authority.
- j. Vendor applicant submits a valid Texas Sales and Use Tax Permit from the Texas Comptroller of Public Accounts.
- k. Vendor applicant submits declared prices, also known as shelf prices, of WIC approved foods. Declared prices refer to prices a vendor will submit for claims on WIC authorized foods which will not exceed actual shelf prices. The vendor applicant certifies that the submitted declared pricing must not exceed the NTE contained in the APL.
- l. Vendor applicant agrees to maintain Minimum Stocking Requirements on an ongoing basis, as detailed in Section III of this policy.
- m. Vendor applicant agrees to have business integrity and certifies that during the last 6 years, current owners, officers, or managers have not been convicted of nor had a civil judgment for any activity indicating a lack of business integrity. According to Section IV, this selection criterion may be waived per Federal regulation if the SA determines the vendor is needed to ensure adequacy of participant access to supplemental foods. (See Policy WV:3.0.)
- n. Vendor applicant certifies that it does not appear on a USGSA or State of Texas suspension or debarment list.
- o. Vendor applicant certifies that it is not currently disqualified from SNAP and has not been assessed a SNAP Civil Money Penalty for hardship for which a disqualification period that would otherwise have been imposed has not expired.

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According to Section IV, this selection criterion may be waived per Federal regulation if the SA determines the vendor is needed to ensure adequacy of participant access to supplemental foods. (See Policy WV:3.0.)

- p. Vendor applicant must be determined EBT Capable, which includes split tender functionality, by the SA.
- q. The vendor applicant submits, and the SA receives, an accurate and completed LEB form.
- r. Vendor applicant has participated in vendor interactive training.
- s. Applicable to PWIC Vendors Only: The vendor applicant does not provide and/or offer incentive items solely to WIC program participants in accordance with WV: 9.0.

B. Data Collection of SNAP Authorization

- 1. At the time of application, the SA must collect vendor applicant's SNAP authorization number if the vendor applicant is authorized in that program per 7 CFR 246.12(g)(9).
- 2. The vendor must provide the SNAP authorization number if at any time during the Agreement period the vendor becomes SNAP-authorized.

III. Vendor Type

An applicant vendor will self-declare a vendor type on the WIC vendor application. The SA will verify and validate the self-declared vendor type during the vendor selection and on-site evaluation.

A. Full-Line Grocer

- 1. A Full-Line Grocer must have posted hours of operation reflecting a minimum of 6 days per week between 9:00 am and 6:00 pm daily.
- 2. A Full-Line Grocer stocks and offers for sale a variety of food products on a continuous basis in all of the following food groups: Fresh Vegetables, Fresh Fruits, Frozen Vegetables, Frozen Fruits, Canned Fruits, Canned Vegetables, Fresh and Frozen Fish, Poultry, Meats, Bread, Canned Fish, Dairy, Whole Grains, Eggs, Beans, Peanut Butter, Juice, and Infant Food Items.

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- a. *Fresh Vegetables*: 2 pounds each of at least 5 different varieties of dark green and orange/red vegetables. Examples: broccoli, collard greens, mustard greens, kale, romaine lettuce, spinach, turnip greens, acorn squash, butternut squash, carrots, hubbard squash, red peppers, and/or sweet potatoes.
- b. *Fresh Fruits*: 2 pounds each of at least 5 different fresh fruits. Examples: apples, bananas, oranges, pears, peaches, plums, grapes, tomatoes, and/or grapefruit.
- c. *Frozen Vegetables*: 24 packages of vegetables, minimum of 4 different varieties of frozen vegetables. Examples: mixed vegetables, corn, corn on the cob, peas, broccoli, carrots, cauliflower, green beans, squash, and/or spinach.
- d. *Frozen Fruits*: 24 packages of fruit, with a minimum of at least 3 different varieties of frozen fruits. Examples: strawberries (sliced or whole), peaches, blueberries, mixed fruit, blackberries, raspberries, pineapple, fruit medley, and/or mixed berries.
- e. *Canned Fruits*: 24 cans of fruit, with a minimum of 3 different varieties. Examples: peaches, pears, pineapple, mixed fruit and fruit cocktail.
- f. *Canned Vegetables*: 24 cans of vegetables, with a minimum of 3 different varieties. Examples: peas, green beans, corn (cream or niblet), beets, carrot, spinach or beans.
- g. *Fresh and Frozen Fish, Poultry, and Meats*:
 - i. 3 pounds of at least 2 types of fresh and/or frozen fish from the following: Salmon, Trout, Herring, Mackerel, Tilapia, Tuna, Cod, Red Fish, Halibut, or Flounder.
 - ii. 5 pounds of fresh and/or frozen poultry consisting of at least 3 types of cuts. Examples of cuts include whole, halves, leg quarters, wings, etc. of chicken and/or turkey.
 - iii. 5 pounds of fresh and/or frozen beef and/or pork with at least 3 types of cuts (i.e. chops, steaks, hamburger, roasts, bacon, sausage, etc.). NOTE: Luncheon and deli style meats and sausages do not apply.
 - iv. A vendor may substitute additional quantities of fresh and/or frozen fish from the types cited in g(i) above in place of stocking fresh and/or frozen beef and pork up to the entire 5 pounds of required meats.

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- h. *Bread*: 10 loaves of 20-24 ounce bread in at least 2 varieties and/or brands.
- i. *Canned Fish*: 12 cans of salmon, tuna, sardines, and/or mackerel.
- j. *Dairy*:
 - i. 3 pounds of domestic cheese.
 - ii. 13.5 gallons of milk, some of which must be available in half-gallon and 1-quart containers and include any combination of the following types of milk: whole milk, 1%, ½%, skim, fat-free milk, lactose-free milk, or buttermilk.
- k. *Whole Grains*:
 - i. 108 ounces of breakfast cereal, including 36 ounces each of a whole grain cereal and at least 2 of the following types of cereal: oat, corn, wheat, rice, and multi-grain.
 - ii. 4 pounds of at least 2 types of whole grain foods. One type must be 16-ounce 100% whole wheat bread. Whole grain foods include whole grain bread, brown rice, oatmeal, corn tortillas, and wheat tortillas.
- l. *Eggs*: 3, 1-dozen Grade A or AA large, medium, or small size eggs.
- m. *Beans*: 3, 1-pound bags of dry beans.
- n. *Peanut Butter*: 3, 16—18-ounce jars of peanut butter.
- o. *Juice*: 12 containers of authorized juice of at least 2 flavors. Each flavor shall be available in both a 48-ounce and 64-ounce fluid container.
- p. *Infant Food Items*
 - i. 64, 4-ounce containers of single ingredient infant fruits and vegetables.
 - ii. 24, 2.5-ounce containers of single ingredient infant meat.
 - iii. 2, 8-ounce boxes of infant cereal (contract brand if applicable).
- q. *Infant Formula (elective)*:
 - i. Vendors that accept WIC Infant Formula transactions must stock the following quantities of food products, at a minimum, on a continuous basis.
 - a) 7 cans of milk concentrate infant formula (contract brand).
 - b) 7 cans of soy concentrate infant formula (contract brand).

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- c) 9 cans of milk-based powder formula (contract brand).
 - d) 9 cans of soy powder formula (contract brand).
 - ii. Specifics on Formula - If a WIC authorized vendor elects to provide infant formula, vendor shall purchase all its infant formula directly from:
 - a) Food wholesalers currently licensed in Texas in accordance with the Health and Safety Code, Chapter 431, the Texas Food, Drug, and Cosmetic Act, and 25 Texas Administrative Code, Chapter 229, who are Authorized Distributors of Record (ADOR)
 - b) Food manufacturers registered with the U.S. Food and Drug Administration, or
 - c) Retail food stores holding permits in accordance with the Health and Safety Code, Chapter 437 that purchase infant formula directly from ADOR. Vendors can consult the Approved Distributor List online or may contact the SA for a list of approved distributors.
- B. Military Commissary- Same requirements and minimum stocking requirements as a Full-Line Grocer.
- C. Predominantly WIC (PWIC) Grocer:
 - 1. PWIC Grocers consist of retailers who have or are expected to have WIC food sales above 50% of the outlet's total sales of foods that are eligible for purchase. PWIC classification is verified through the SA's cost containment methodology.
 - 2. PWIC Retailers stock and offer for sale on a continuous basis all of the following food groups and associated quantities: Fresh Fruits and Vegetables, Eggs, Beans, Peanut Butter, Juice, Canned Fish, Dairy, Whole Grains, and Infant Food Items.
 - 3. PWIC Retailers must stock the following quantities of food products at a minimum on a continuous basis.
 - a. *Fruits and Vegetables*
 - i. 10 pounds of at least 2 types of fresh vegetables (e.g., broccoli, squash, etc.).

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- ii. 10 pounds of at least 2 types of fresh fruits (e.g., apples, oranges, etc.).
- b. *Eggs*: 3, 1-dozen Grade A or AA large, medium, or small size eggs.
- c. *Beans*: 3, 1-pound bags of dry beans.
- d. *Peanut Butter*: 3, 16—18-ounce jars of peanut butter.
- e. *Juice*: 12 containers of authorized juice of at least 2 flavors. Each flavor shall be available in both a 48-ounce and 64-ounce fluid container.
- f. *Canned Fish*: 12 cans of salmon, tuna, sardines, and/or mackerel.
- g. *Dairy*:
 - i. 3 pounds of domestic cheese.
 - ii. 13.5 gallons of milk, some of which must be available in half-gallon and 1-quart containers and include any combination of the following types of milk: whole milk, 1%, ½%, skim, fat-free milk, lactose-free milk, or buttermilk.
- h. *Whole Grains*:
 - i. 108 ounces of breakfast cereal, including 36 ounces each of a whole grain cereal and at least 2 of the following types of cereal: oat, corn, wheat, rice, and multi-grain.
 - ii. 4 pounds of at least 2 types of whole grain foods. One type must be 16-ounce 100% whole wheat bread. Whole grain foods include whole grain bread, brown rice, oatmeal, corn tortillas, and wheat tortillas.
- i. *Infant Food Items*—
 - i. 64, 4-ounce containers of single ingredient infant fruits and vegetables.
 - ii. 24, 2.5-ounce containers of single ingredient meat.
 - iii. 2, 8-ounce boxes of infant cereal (contract brand if applicable).
 - iv. *Infant Formula (elective)*: If selling infant formula, vendors must stock the following quantities of food products, at a minimum, on a continuous basis.
 - a) 7 cans of milk concentrate infant formula (contract brand).
 - b) 7 cans of soy concentrate infant formula (contract brand).
 - c) 9 cans of milk-based powder formula (contract brand).
 - d) 9 cans of soy powder formula (contract brand).

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- v. A WIC authorized vendor that elects to provide infant formula must purchase all its infant formula directly from:
 - a) Food wholesalers currently licensed in Texas in accordance with the Health and Safety Code, Chapter 431, the Texas Food, Drug, and Cosmetic Act, and 25 Texas Administrative Code, Chapter 229, who are Authorized Distributors of Record (ADOR)
 - b) Food manufacturers registered with the U.S. Food and Drug Administration, or
 - c) Retail food stores holding permits in accordance with the Health and Safety Code, Chapter 437 that purchase infant formula directly from ADOR. Vendors can access a list of approved distributors on the SA website.

D. Pharmacy, and Durable Medical Equipment Retailer

1. A Pharmacy is a retail location at which a prescription drug or medication order is received, processed, or dispensed under Texas Health and Safety Code, Chapter 483 or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).
2. A Durable Medical Equipment (DME) retailer is a business entity, wholesaler, or supplier that sells exempt infant formula and/or WIC-eligible nutritionals. DME retailer does not hold a pharmacy license.
3. Pharmacies and DME retailers may only provide exempt infant formula and/or WIC-eligible nutritionals and will not be authorized to redeem WIC EBT Benefits for other WIC authorized foods, including all contract brand infant formulas. These types of vendors are exempt from minimum stocking requirements and square footage requirements.
4. Upon request, a Pharmacy or DME retailer will make available to SA inspectors invoices or receipts documenting the purchase of its exempt infant formulas and/or WIC-eligible nutritionals.
5. Specifics on WIC-Eligible Nutritionals
 - a. If the vendor outlet offers WIC-eligible nutritionals on its shelves, prices must be posted along with proper labeling.

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- b. WIC-eligible nutritionals are defined in Section I of this policy and provides additional details on types, requirements, and items not allowed.

IV. Authorization Decision

Once the application is complete and selection criteria have been verified by the SA, the vendor applicant will receive WIC vendor authorization via a WIC Vendor Agreement as detailed in Section V. If the vendor applicant is not authorized, they receive a written notice of denial as detailed in Section VIII. In addition, the vendor applicant will receive notice of appeal rights as outlined in Texas WIC policy WV: 13.0.

A vendor applicant initially deemed ineligible for authorization may be authorized on a case-by-case basis, if the vendor is needed to address inadequate participant access to WIC authorized supplemental foods as outlined in Texas WIC Policy WV: 3.0.

V. Vendor Agreement

- A. If a vendor applicant meets all selection criteria, the SA will authorize the vendor and provide a WIC Vendor Agreement for a period of up to three years, which will include all authorized outlets. If a vendor does not meet all selection criteria, the vendor will not be authorized unless the SA determines that the vendor is needed to ensure adequacy of participant access to supplemental foods.
- B. A vendor applicant or WIC authorized vendor must not conduct WIC EBT transactions at the outlet for which application is submitted or WIC Vendor Agreement amended until the vendor or vendor applicant receives an executed WIC Vendor Agreement which encompasses that outlet.
- C. A Pharmacy or DME retailer that submits a claim for a WIC-eligible food item other than an exempt infant formula and/or WIC-eligible nutritionals will be disqualified as a WIC authorized vendor and may not apply for authorization until six months after the date of the SA's disqualification notification. Pharmacies and DME retailers with a

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current Vendor Agreement, who seek reauthorization, shall reapply, be evaluated for issuance of a subsequent Vendor Agreement under WIC Program procedures, policies, rules, and regulations, and be reauthorized unless notified in writing by the SA at least 15 days before expiration of the Vendor Agreement.

- D. A change of ownership of an authorized vendor outlet or account terminates the authorization of that vendor outlet under the Vendor Agreement. A change of ownership occurs when all, or most of the property or assets of a vendor are acquired by a purchaser in an arms-length transaction, as determined by the SA.
 - 1. If a store/location under previous ownership is not disqualified or is not in the process of being disqualified at the time of acquisition, and the acquiring party is in compliance with the rules, regulations, and vendor qualification criteria of the WIC Program, the acquiring party may, upon request, be considered for authorization as a WIC vendor. In order to request consideration for authorization, the acquiring party must submit a vendor application for the acquired or purchased store/location.
 - a. The applicant vendor must submit a written notification stating that a change of ownership has been affected and duly executed by the seller and purchaser or their duly authorized officers or other agents.
 - b. The notification will include, at a minimum, the following information and any other information the SA deems necessary: name and business address of the seller; name and business address of the purchaser; WIC vendor account number and outlet number, if applicable; name and street address of the vendor outlet location(s); effective date of ownership change; and State of Texas Comptroller tax ID number of the new owner.
 - 2. WIC authorized vendors will provide the SA with written notification prior to the sale, including the date the outlet being sold will cease to accept WIC EBT food benefits.
- E. Applications will be accepted and processed on an ongoing basis at least once every three years from all vendor applicants and all vendor types. The State agency will consider applications to

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ensure adequate participant access to supplemental foods. Within the three-year timeframe, the State agency may limit the period during which applications for vendor authorization will be accepted and processed; this is also known as a state-imposed moratorium.

- F. The Vendor Agreement does not constitute a license, since a vendor does not require the SA's approval to engage in the retail grocery business in Texas and the vendor would not effectively be deprived of this right in the absence of WIC Program authorization.
- G. The Vendor Agreement does not convey any property interest, since federal law does not give rise to a legitimate claim of entitlement for vendors.
- H. The terms of authorization are established in the Vendor Agreement. The Vendor must comply with all applicable Federal and State statutes, regulations, policies, and procedures governing the WIC Program. The contractual relationship ends with the expiration or termination of the Vendor Agreement. Termination of the Vendor Agreement including a WIC authorized vendor's unilateral termination after receipt of notification of a violation, does not deprive the SA of jurisdiction to impose price adjustments, claims, or sanctions for vendor errors or WIC Program violations. Such notification will include appeal rights consistent with 7 CFR 246.18 as outlined in Texas WIC policy WV: 13.0. Pursuant to 7 CFR 246.12(h)(3)(xxvi) and as outlined in Texas WIC policy WV: 1.0, disqualification from the WIC Program may result in disqualification as a retailer in SNAP. Such disqualification may not be subject to administrative or judicial review under SNAP.
- I. The SA may amend a WIC vendor Policy or State of Texas Administrative Code rule during the term of the agreement with written notification to WIC vendors in a timely manner.
- J. The SA, as well as officers, agents, and employees of the State Agency, are not responsible for losses incurred by a vendor as a result of the disqualification, termination, and/or expiration of the Vendor Agreement.

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- K. Upon the WIC Vendor Agreement end date, the vendor must apply for reauthorization of the agreement to continue as a WIC vendor. In accordance with WV: 11.0 and the WIC Vendor Agreement, an on-site evaluation may be conducted at any time, including during the course of the Agreement period. Vendors must maintain compliance with selection criteria throughout the Agreement period and must meet the criteria effective at the time of application for reauthorization. At any time, the SA may request documentation to verify compliance with current selection criteria.
- L. Authorized Vendor must comply with vendor selection criteria throughout the Vendor Agreement period, including any changes to the criteria. The SA may reassess the vendor at any time during the Vendor Agreement period and will terminate the Vendor Agreement if the vendor fails to meet current vendor selection criteria.

VI. On-Site Evaluation

- A. An on-site evaluation is an aspect of the preauthorization process conducted to verify aspects of the application, the Vendor Agreement, and compliance with state and federal regulations. An on-site evaluation will be conducted at the vendor outlet site at least two weeks after the vendor outlet opening day. The on-site evaluation will observe prices, competitive pricing of WIC authorized food items, and proper labeling. The on-site evaluation will also confirm minimum stocking requirements. The SA will coordinate with the LA and the WIC authorized vendor to schedule the on-site evaluation. The vendor is required to comply with all criteria as described in this policy on day of opening vendor outlet.
- B. The on-site evaluation will be conducted by either the SA or LA representative. The SA or LA representative will:
 - 1. Collect WIC authorized food shelf prices. Prices will be verified against actual WIC EBT claim data for competitive pricing purposes.
 - 2. Verify and validate minimum stocking requirements by vendor type as defined in Section III of this policy.

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3. Verify and validate that the vendor outlet is clean, as determined by the SA or LA representative, with fresh foods (no expired items). Expired food dates on WIC authorized food products are prohibited.
 4. Verify and validate that the vendor outlet has posted prices for all WIC authorized food products along with proper labeling.
- C. The vendor will have the opportunity to review the information of the on-site evaluation. The SA or LA representative will provide a copy of the completed on-site evaluation form to the vendor outlet representative at the time of the on-site evaluation.
- D. If a representative from the SA or LA visits an applicant vendor outlet or WIC authorized vendor outlet to conduct the required on-site evaluation at a time previously agreed upon, and the vendor outlet cannot be evaluated and/or is not ready for the evaluation at the agreed upon time, the vendor outlet shall be deemed to have failed the evaluation.
- E. A vendor will receive up to two on-site evaluations. If the vendor fails both evaluations, the vendor will be terminated from the WIC Program. The vendor will receive notice of appeal rights as outlined in Texas WIC policy WV: 13.0.

VII. Vendor Competitive Pricing and Maximum Allowable Reimbursement

- A. Competitive Pricing Classification
1. The purpose of applying competitive price criteria is to manage food prices. Texas WIC determines competitive pricing classification and peer group designation for WIC authorized vendors based upon the following:

Traditional WIC grocer (TWIC):

- a. Sales Process Month
- b. Geographic Price Region
- c. Sales Volume Band

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- Predominantly WIC grocer (PWIC):
- a. Sales Process Month
 - b. TWIC Statewide Averages
2. WIC authorized vendors will be initially classified based on their vendor type, as verified by the SA during the on-site evaluation. A PWIC shall have above 50% in WIC sales. A TWIC shall have up to 50% in WIC sales. A Full-Line Grocer shall be classified as a TWIC unless the Full-Line Grocer indicates that (1) its store opening is dependent on WIC authorization, or (2) the Full-Line Grocer indicates it receives, or expects to derive, more than 50% of its annual food sales revenue from WIC sales. Pharmacies and DMEs will be classified as PWIC. These classifications will remain in effect until the vendor submits to the SA documentation substantiating SNAP-eligible food sales. [NOTE: Documentation consists of sales and use tax and/or fuel reports submitted to the State Comptroller.]
 3. WIC authorized vendors shall be reclassified after 4 months of WIC sales. An analysis of WIC sales will determine proper classification, which consists of examining a vendor outlet's SNAP sales to determine if they exceed WIC sales. If a vendor outlet's SNAP sales or sales of other foods eligible for sale under SNAP exceed WIC sales, then the vendor outlet will be classified as a TWIC. If WIC sales exceed SNAP sales, plus sales of other foods eligible for sale under SNAP, then the store will be classified as PWIC. WIC authorized vendors shall have the opportunity to provide documentation substantiating that WIC sales comprise 50% or less of gross SNAP-eligible food sales. [NOTE: Documentation consists of sales and use tax and/or fuel reports submitted to the State Comptroller. Documentation must show that WIC sales for the 4-month period were less than or equal to 50% of total gross food sales counting only foods eligible for sale under the SNAP in order to qualify as a TWIC.]
 4. Pharmacies and DME retailers are subject to the Not to Exceed amounts but may be exempt from competitive price criteria and maximum allowable reimbursement levels, as allowed under the provisions of 7 CFR 246.12(g)(4)(iv) for redemption of exempt infant formula and/or WIC-eligible nutritionals.

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B. Cost Containment Methods

1. Food prices by category/subcategory will be compared for competitive pricing purposes according to the criteria below.
 - a. TWICs pricing shall be compared utilizing price regions and sales volume bands. WIC sales volume bands are:
 - Band 1 = \$0.00 - \$1,999.99
 - Band 2 = \$2,000.00 - \$5,999.99
 - Band 3 = \$6,000.00 - \$19,999.99
 - Band 4 = \$20,000 or greater
 - b. Total payments by the SA to a TWIC vendor outlet for a process month's claims for all category/subcategories, excluding cash value benefits, exempt infant formulas, and WIC-eligible nutritionals, that collectively exceed 110% of the authorized amount (peer group price average multiplied by vendor outlet quantity sold) during the same process month constitutes non-competitive pricing.
 - c. PWIC pricing shall be compared utilizing the statewide average pricing of TWICs. The SA will confirm cost neutrality between TWICs and PWICs by ensuring that prices paid to PWICs do not exceed the statewide average price paid to TWICs (regardless of their price region or WIC sales volume band).
 - d. The SA will confirm that each PWIC vendor has not subsequently raised pricing to levels that would render the vendor ineligible for authorization. The SA will confirm through the end-of-process month analysis that the PWIC vendor's recoupments do not exceed 8% of the total dollar amount paid, for all WIC items, excluding cash value, exempt infant formulas, and WIC-eligible nutritionals, to that PWIC in the process month. If recoupments exceed 8%, vendors will be held to the sanction schedule in policy WV: 1.0 Section VIII. C.
 - e. The State agency may change a vendor's peer group whenever the State agency determines that placement in an alternate peer group is warranted. The SA will notify each vendor of its peer group assignment upon initial authorization and monthly thereafter.

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2. Not to Exceed (NTE) Pricing
 - a. An NTE amount is put in place across the board for all WIC approved foods by food category/subcategory and is applicable to all vendors.
 - b. NTE amounts are enforced as prepayment edits on each unit of food product (e.g. by ounce, pound, can, etc.) purchased within a calendar month for claims processing.
3. Maximum Allowable Reimbursement (MAR)
 - a. TWICs will be held to a MAR of 125% of the average price paid (after edits and recoupments) by peer group. When calculating average prices for each TWIC peer group, the SA excludes prices paid to other vendors outside the respective TWIC peer group.
 - b. PWICs will be held to a MAR equal to the statewide average price paid by food category/subcategory to TWICs. Prices paid to a national discount retailer and/or Military Commissaries will be included in the calculation.
 - c. At the end of each process month, an analysis shall determine the average payment totals in order to implement the MAR reimbursement calculation process. WIC approved food category/subcategory items, except cash value, exempt infant formula, and WIC-eligible nutritionals shall be analyzed. The MAR will be calculated by dividing the total price paid for a process month for a food category/subcategory by the total number of units redeemed by TWICs in the peer group.
 - d. TWICs that received reimbursement for an amount that exceeds the 125% of the average price of one or more category/subcategories for the vendor's peer group will have a recoupment adjustment of the difference (reimbursement amount less 125% of the average price amount) that will be applied against a subsequent month's claim(s).
 - e. PWICs that received reimbursement for an amount higher than the statewide average pricing of one or more category/subcategories of TWICs will have a recoupment adjustment of the difference (reimbursement amount less average amount) that will be applied against a subsequent month's claim(s).

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VIII. Vendor Selection Denials

- A. The SA will notify a vendor applicant in writing of any authorization disapproval(s). Such notification will include appeal rights consistent with 7 CFR 246.18 as outlined in Texas WIC policy WV: 13.0.
- B. A vendor applicant will be denied authorization or WIC authorized vendor shall be terminated for providing false information at any point during the vendor selection process or failing the selection criteria process, which includes but is not limited to the vendor application, and preauthorization on-site visit.
- C. The SA may not authorize a vendor applicant if the SA determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. The SA may consider such factors as whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.
- D. A vendor applicant may be denied authorization if involved in a previous disqualification or sanction for violating WIC Program Vendor Agreement procedures, policies, rules, or regulations. Involvement includes, but is not limited to, actions of an owner, partner, principal stockholder, officer, director, manager, or operator of the vendor applicant.
- E. New outlets for an existing WIC authorized vendor will be denied authorization if 50% or more of its vendor outlets are in a disqualification or termination status at the time of requesting authorization of new vendor outlets.
- F. A vendor applicant will be denied authorization or WIC authorized vendor will be terminated for failing to accurately provide certification of business integrity.
- G. A vendor applicant will be denied authorization or WIC authorized vendor will be terminated for appearing on a USGSA or State of Texas suspension or debarment list.