



January 2, 2020

Vendor News Flash

WV: 01.0 Policy Revision Vendor Agreement/Policy Violations

Effective January 1, 2020, state policy WV: 01.0 Vendor Agreement/Policy Violations is revised. The policy revisions are designed to improve compliance with easier to understand plain language and consistent terminology.

The summary of changes is listed below:

- Removed redundant statements throughout and converted passive voice to active voice.
- Re-numbered Sections as needed.
- No changes to state-mandated sanction schedules.
- Identified which violations have Federally-mandated sanction schedules. All other sanctions are state-mandated.
- Corrected all Federally-mandated sanction schedules to align with Federal regulations.

For example, this is a **previous** Federally-mandated sanction schedule:

For acceptance of the WIC EBT card at an unauthorized vendor outlet and submitting the transaction to the SA for payment through an alternate authorized vendor outlet:

1. The transaction 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 unauthorized vendor outlet's receipt of SA notification; or

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- b. if the unauthorized 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 from the authorized vendor outlet in lieu of disqualification unless it determines inadequate participant access to WIC supplemental foods through other authorized vendors in the area will result from such a disqualification.
5. If the authorized vendor outlet 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.

This is the *same* Federally-mandated sanction schedule as above, but reformatted:

For acceptance of the WIC EBT card at an unauthorized vendor outlet or by an unauthorized person and submitting the transaction to the SA for payment through an alternate authorized vendor outlet, a Federal violation:

1. The transaction will be recouped.
2. One incident will result in a single written warning to the vendor.
3. Two or more incidents of noncompliance will constitute a pattern.
4. A pattern of violations will result in disqualification for three years.
5. The unauthorized vendor outlet will not be eligible to apply for WIC authorization for:
 - a. three years from the date of the unauthorized vendor outlet's receipt of SA notification; or
 - b. if the unauthorized vendor outlet is currently disqualified from the Program for a period in excess of three years, the longer period will apply.
6. The SA will not accept a CMP from the authorized vendor outlet in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.
7. If the authorized vendor outlet receives a second sanction

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for any Federal violation, the SA will double the disqualification period. The SA will not accept a CMP in lieu of disqualification unless it determines inadequate participant access. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed and doubled.

8. If the vendor receives a third or subsequent sanction for any Federal violation, the disqualification period will be doubled with no possibility of a CMP.

- Changed the word "shall" to "will" throughout policy.
- **Purpose Section Revisions:** Added italicized words - To inform WIC vendors *of the violations and the...*
- **Authority Section Revisions:** Removed "WIC Vendor Agreement," as 7 CFR Section 246.12 is the only source authority.
- **Policy Section Revisions:** Added the following statements:
 - If a vendor's sanction results in a disqualification, the SA will terminate the Vendor Agreement.
 - The vendor will have to reapply to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the SA's vendor selection criteria and any vendor limiting criteria in effect at the time of authorization.
- **Procedure Section Revisions:**
 - Added: *The SA and/or SA representative may assess any authorized vendor outlet at any time during the Vendor Agreement period using the selection criteria in effect at the time of the reassessment (See WV:10.0). In addition to assessing selection criteria (to include competitive pricing selection criteria), the assessment may also include compliance with selling declared traditionally LEBs.*
 - Invoice Audit is now correctly referred to as "Inventory Audit."
 - The term "positive pass" is now defined as an "incident of noncompliance" which is a compliance buy and/or on-site review in which evidence of a sanctionable violation of the Vendor Agreement, program policies, and/or rules is obtained. Sanctionable violations identified during any compliance monitoring activity, may be aggregated to constitute a pattern.

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- Added the following clarification: *After receiving a written warning of noncompliance and when a violation requires a pattern, follow-up will be conducted until two monitoring activities are found with no sanctionable violations.*
- Added the following clarification: *All compliance monitoring activity relevant to an investigation must be completed within a 24-consecutive month period. If a pattern has not been established within a 24-consecutive month period, the investigation will be closed.*
- Explained all civil money penalties (CMP) will be calculated in accordance with Section XI.B unless an amount is specified.
- For state-mandated sanction schedules requiring a pattern, the vendor will receive a written warning for the first and second incidents of noncompliance, when applicable.
- Separated labeling violations into two groups: LEB and non-LEB. Both types of labeling violations carry the same sanction schedule.
- More clearly defined the split tender violation - *For failing to allow the participant to pay the remaining balance for fruits and vegetables...*
- Added violation: *Failing to seek [EBT capable] recertification when the vendor's [Point of Sale] system is altered or revised.*
- Revised the Remaining Competitively Priced Section for clarity and consistency.
- Added Vendor Agreement Termination Section.
- Revised Civil Money Penalty Section for clarity and consistency.
- Explained CMPs are imposed, *not waived*, when inadequate participant access is determined by the state agency.
- Revised Section XII: *For violations requiring more than one incident to establish a pattern of noncompliance, the number of incidents will be aggregated by type. All of the incidences of a violation occurring during the first monitoring activity must constitute only one incidence of that violation The SA must disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the SA must include all violations in the notice of administrative action. If a mandatory sanction is not upheld on appeal, then the SA may impose a SA-established sanction.*

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- Added Section XVI: *The SA may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another state agency's WIC program for a mandatory Federal vendor sanction. The disqualification period will be equal to the other state agency's WIC program disqualification period. The SA will accept a CMP in lieu of disqualification, if inadequate participant access is determined. In that case, the CMP will be calculated in accordance with Section XI.B of this policy up to the Federal maximum allowed.*
- Added to Section XX:
 - WIC vendors are also not permitted to use the WIC acronym or the WIC logo on advertising or promotional materials. Advertising may be used to inform the public that a vendor is WIC-authorized, but the WIC acronym must not be used in a manner which states or implies that the vendor itself is affiliated with or sponsored by the SA, USDA, or the WIC Program.
 - All changes and alterations to store-supplied labels must be submitted to the SA for approvals.
- Added to Section XXII: *the SA must double the third sanction and all subsequent sanctions up to the regulatory limits of \$15,041 per monitoring activity and \$61,061 per investigation.*
- Section XXIII:

Added: the SA will not authorize the vendor until the vendor is in good standing, if applicable, and meets all selection and limiting criteria.

Removed: Six-month waiting period to reapply to the WIC program after a Vendor Agreement terminates.

Removed: If the vendor allows its Vendor Agreement to expire because the vendor or a representative of the vendor has failed to

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complete WIC vendor 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 completes WIC vendor training.

Vendor Management Operations (VMO) policies are posted online. Click [here](#) to access the revised WV: 01.0 policy.

VMO's home page has a new look. Check it out at bit.ly/TexasWICVendors.

VMO is ready to assist you should you have any questions or need further information about this Vendor News Flash. Please contact us WICVendorInfo@hhsc.state.tx.us.