



October 31, 2022

## **Vendor News Flash**

### **Vendor Policy Updates for WV: 01.0**

Texas WIC has revised the following vendor policy:

- [WV: 1.0 – WIC Vendor Agreement/Policy Violations](#)

Please see the *Summary of Changes* below.

#### **WV: 1.0 – WIC Vendor Agreement/Policy Violations**

<b>Section</b>	<b>Revisions - Effective November 1, 2022</b>
<b>Purpose</b>	No changes
<b>Authority</b>	No changes
<b>Policy</b>	Added: <ul style="list-style-type: none"><li>• Administrative Fines as a form of sanction</li></ul>
<b>Procedure</b>	See changes below



Previous Policy-April 1, 2022	Current Policy-November 1, 2022
<p><b>Procedures:</b></p>	<p><b>Procedures:</b></p>
<p><b>VI.O-Q Violations and Sanction Schedules</b></p> <p>O. For failing to prominently display the shelf prices of all WIC authorized foods within the store’s commercial area and/or in the drive-thru service area:</p> <p>P. For redemption of WIC EBT food instruments or cash-value benefits for brands that are not the vendor’s declared least expensive brand when the declared products are in stock:</p> <p>Q. For refusing to sell an authorized item in an authorized size when the price falls within the “not to exceed price”.</p> <ol style="list-style-type: none"> <li>1. The vendor will receive a written warning for the first and second incidents of noncompliance.</li> <li>2. Three or more incidents of noncompliance will constitute a pattern.</li> <li>3. A pattern of violations will result in disqualification for one month.</li> <li>4. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.A of this policy up to the Federal maximum allowed.</li> </ol>	<p><b>VI.O-Q Violations and Sanction Schedules</b></p> <p>O. For failing to prominently display the shelf prices of all WIC authorized foods within the store’s commercial area and/or in the drive-thru service area:</p> <p>P. For redemption of WIC EBT food instruments or cash-value benefits for brands that are not the vendor’s declared least expensive brand when the declared products are in stock:</p> <p>Q. For refusing to sell an authorized item in an authorized size when the price falls within the “not to exceed price”.</p> <ol style="list-style-type: none"> <li>1. The vendor will receive a written warning for the first and second incidents of noncompliance.</li> <li>2. Three or more incidents of noncompliance will constitute a pattern.</li> <li>3. A pattern of violations will result <b>in an AF. The AF will be calculated as follows:</b> <ol style="list-style-type: none"> <li>a. <b>The amount of 1% of the paid amount (net purchase discounts) during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals not to exceed \$1,000.</b></li> </ol> </li> </ol>



### VI.T Violations and Sanction Schedules

T. For improperly labeling WIC foods as follows:

1. The following are LEB labeling violations:

a. Failing to label three or more declared LEB items with SA-provided pink stickers or store stickers/signage authorized by the SA.

The following sanctions apply to labeling violations:

- a. The vendor will receive a written warning for the first and second incidents of noncompliance.
- b. Three or more incidences of noncompliance constitutes a pattern of violations.
- c. A pattern of violations will result in disqualification for one month.
- d. The SA will accept a CMP in lieu of disqualification. The CMP will be calculated in accordance with Section XI.A of this policy and will not exceed \$1,000.
- e. A subsequent violation within a 12-month period from the date of the first disqualification notification will result in disqualification for one month. The CMP will be calculated in accordance with Section XI.A of this policy and will not exceed \$2,000.
- f. An additional violation within 24 months from the date of the first disqualification notification will result in disqualification for one month. The CMP will be calculated in accordance with Section XI.A of this policy and will not exceed \$3,000.

### VI.T Violations and Sanction Schedules

T. For improperly labeling WIC foods as follows:

1. The following are LEB labeling violations:

a. Failing to label three or more declared LEB items with SA-provided pink **labels** or store stickers/signage authorized by the SA.

3. The following sanctions apply to labeling violations:

- a. The vendor will receive a written warning for the first and second incidents of noncompliance. **The warning letter will specify a consecutive six-month assessment period during which subsequent assessments will be conducted.**
- b. Three or more incidences of noncompliance constitutes a pattern of violations.
- c. **If the vendor outlet fails to comply with LEB labeling requirements in a subsequent assessment (third violation) within the six-month period specified in the second noncompliance letter, it will result in an AF. The AF will be assessed in the amount of 1% of the paid amount (net purchase discounts) during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals not to exceed \$1,000.**
- d. **If the vendor outlet fails to comply with the LEB labeling requirements in a subsequent assessment (fourth violation) within the six-month period specified in the third noncompliance letter, it will result in an AF. The AF will be assessed in the amount of 2% of the paid amount (net purchase discounts)**



	<p>during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals not to exceed \$2,000.</p> <p>e. If the vendor outlet fails to comply with the LEB labeling requirements in a subsequent assessment (fifth violation) within the six-month period specified in the fourth noncompliance letter, it will result in an AF. The AF will be assessed in the amount of 3% of the paid amount (net purchase discounts) during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals not to exceed \$3,000.</p> <p>f. If the vendor outlet fails to comply with any LEB labeling requirements in a subsequent assessment, the vendor outlet will be subjected to the requirements stated in item e of this section. A new six-month period will be given for each additional violation.</p>
<p><b>VIII.C For failing to remain competitively priced:</b></p> <p>C. For failing to remain competitively priced:</p> <ol style="list-style-type: none"> <li>1. The vendor will receive a written warning for the first incident of noncompliance. The warning letter will specify a consecutive six-month assessment period during which subsequent assessments will be conducted.</li> <li>2. The second incident of noncompliance within the six-month period specified in the first warning letter will constitute a pattern. A pattern of violations will result in disqualification for one month. The SA will accept a CMP in lieu of disqualification in the amount of 1% of the paid amount (net purchase discounts) during the process month, excluding cash value, exempt infant formulas,</li> </ol>	<p><b>VIII.C For failing to remain competitively priced:</b></p> <p>C. For failing to remain competitively priced:</p> <ol style="list-style-type: none"> <li>1. The vendor will receive a written warning for the first incident of noncompliance. The warning letter will specify a consecutive six-month assessment period during which subsequent assessments will be conducted.</li> <li>2. If the vendor outlet fails to comply with competitive pricing in a subsequent assessment (second violation) within the six-month period specified in the first warning letter it will constitute a pattern. The SA will provide a second letter of noncompliance with a new assessment period of six months. An AF will be assessed in the amount of 1% of the paid amount (net purchase discounts) during</li> </ol>



and WIC-eligible nutritionals. If a CMP is accepted, the SA will provide a second letter of noncompliance with a new assessment period of six months.

3. If the vendor outlet fails to comply with the competitive pricing requirement on a subsequent assessment (third violation) within the six-month period specified in the second noncompliance letter, the SA will disqualify the vendor outlet for one month. The SA will accept a CMP in lieu of disqualification in the amount of 2% of the paid amount (net purchase discounts) during the process month, excluding cash value, exempt infant formulas, and WIC-eligible nutritionals. If a CMP is accepted, the SA will provide a third letter of noncompliance with a new assessment period of six months.

4. If the vendor outlet fails to comply with the competitive pricing requirement on a subsequent assessment (fourth violation) within the six-month period specified in the third noncompliance letter, the vendor outlet is disqualified for six months. The SA will not accept a civil money penalty (CMP) in lieu of disqualification.

5. Six (6) continuous process months of compliance with the competitive pricing requirement constitutes overall compliance and restarts the sanction cycle.

the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals.

3. If the vendor outlet fails to comply with competitive pricing in a subsequent assessment (third violation) within the six-month period specified in the second noncompliance letter, the SA will provide a third letter of noncompliance with a new assessment period of six months. An AF will be assessed in the amount of 2% of the paid amount (net purchase discounts) during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals.

4. If the vendor outlet fails to comply with the competitive pricing requirement on a subsequent assessment (fourth violation) within the six-month period specified in the third noncompliance letter, the vendor outlet is disqualified for six months.

5. Six (6) continuous process months of compliance with the competitive pricing requirement constitutes overall compliance and restarts the sanction cycle.

**VIII.D Remaining Competitively Priced**

D. For not redeeming at least 85% of its declared traditionally least expensive brands (LEB) in the respective food categories as

**VIII.D Remaining Competitively Priced**

D. For not redeeming at least 85% of its declared traditionally least expensive brands (LEB) in the respective food categories as



defined by WIC Policy WV: 02.0, the vendor will be sanctioned according to the following:

1. The vendor will receive a written warning for the first and second incidents of noncompliance.
2. The third incident of noncompliance will constitute a pattern.
3. A pattern of violations will result in disqualification for one month.
4. The SA will accept a CMP in lieu of disqualification. In that case, the CMP will be calculated in accordance with Section XI.A of this policy and not exceed \$1,000.
5. A fourth violation within a 6-month period from the date of the original termination date will result in disqualification for one month. The SA will accept a CMP in lieu of disqualification. In that case, the CMP will be calculated in accordance with Section XI.A of this policy and not exceed \$2,000.
6. A fifth violation within 6 months from the date of the original termination date will result in disqualification for one month. The SA will accept a CMP in lieu of disqualification. In that case, the CMP will be calculated in accordance with Section XI.A of this policy and not exceed \$3,000.
7. A sixth violation within 6 months from the original termination date will result in termination for six months. There will be no option to pay a CMP in lieu of termination for a sixth violation.
8. A vendor who is actively working with the Program's WIC EBT Operations branch on

defined by WIC Policy WV: 02.0, the vendor will be sanctioned according to the following:

1. The vendor will receive a written warning for the first and second incidents of noncompliance. **Each warning letter will specify a consecutive six-month assessment period during which subsequent assessments will be conducted.**
2. **If the vendor outlet fails to comply with LEB requirements on a subsequent assessment (third violation) within the six-month period specified in the second noncompliance letter, it will constitute a pattern. An administrative fine will be assessed in the amount of 1% of the paid amount (net purchase discounts) during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals not to exceed \$1,000.**
3. **If the vendor outlet fails to comply with LEB requirements on a subsequent assessment (fourth violation) within the six-month period specified in the third noncompliance letter, an administrative fine will be assessed in the amount of 2% of the paid amount (net purchase discounts) during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible not to exceed \$2,000.**
4. **If the vendor outlet fails to comply with LEB requirements on a subsequent assessment (fifth violation) within the six-month period as stated in the fourth noncompliance letter an administrative fine will be assessed in the amount of 3% of the paid amount (net purchase discounts) during the process month, excluding CVBs, exempt infant formulas, and WIC-eligible nutritionals not to exceed \$3,000.**





changes to its POS system to automatically enforce LEB requirements may be exempt from sanctions. To qualify for this exemption to LEB enforcement sanctions, 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 (See WIC Policy WV:02.0).

5. If the vendor outlet fails to comply with LEB requirements in subsequent assessment, the vendor outlet will be subjected to the requirements stated in item 4 of this section. A new six-month period will be given for each additional violation.

6. A vendor who is actively working with the Program's WIC EBT Operations branch on changes to its POS system to automatically enforce LEB requirements may be exempt from sanctions. To qualify for this exemption to LEB enforcement sanctions, 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 (See WIC Policy WV:02.0).

**Added outline and definition for Administrative Fines**

**XII. Administrative Fines (AF)**

The outlet/vendor may choose to either pay the Administrative Fine or request a fair hearing. Following a hearing, the hearing examiner on behalf of the SA, may uphold an Administrative Fine 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 an Administrative Fine must be made within 15 days of receipt of the SA's written notification.

A. For violations resulting in an Administrative Fine, the AF will be calculated as stated in the specific violation section of this policy.



	<p>B. One or more violations of a single type during the first routine monitoring activity or initial compliance buy will be considered one violation for the purpose of establishing a pattern of violations.</p> <p>C. Failure to comply may subject the vendor to additional vendor monitoring, vendor training, and/or termination of their vendor agreement.</p> <p>D. The SA may agree to accept Administrative Fines paid in installments as appropriate. If the vendor does not pay, pays only partially, or fails to pay an Administrative Fine in a timely manner, the SA will disqualify the vendor for one year.</p>
<p><b>XXI.F</b></p> <p>F. Vendors may label their non-LEB WIC approved foods with the "Texas WIC Smart Choices Healthy Families" logo. The labeling of all or none within a food group is not mandated for non-LEB WIC approved foods when a vendor uses the "Smart Choices" label. A vendor would not be in violation of this policy if only one non-LEB WIC authorized brand within a food group such as cereal was labeled with "Texas WIC Smart Choices Healthy Families" and the other WIC-authorized cereal brands were not labeled.</p>	<p><b>XXI.F</b></p> <p>Removed</p>

Texas WIC is ready to assist our vendor partners. Should you have any questions regarding this Vendor News Flash, please contact the Vendor Management Unit's Vendor Outreach Branch at [WICVendorRelations@hhs.texas.gov](mailto:WICVendorRelations@hhs.texas.gov) or 1-800-252-9629. Find more WIC vendor resources on our [website](#).