



Bureau of Nutrition Services Louisiana WIC Program (LA WIC)	
<b>Content:</b>	LA WIC Vendor Policies and Procedures
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### Policy Statement

The policies found within this Manual follow the requirements of the CFR and the LAC and are intended to guide LA WIC Vendor Operations.

### Policy Purpose

LA WIC shall follow the policies within this Manual when administering the LA WIC program. These policies apply to all LA WIC Authorized Vendors.

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## 7.01 VENDOR AUTHORIZATION BY TRADE AREA

- I. Federal Regulations give the Louisiana WIC Program (LA WIC) the discretion to execute Vendor Agreements for a period of up to three (3) years (See 7 CFR § 246.12 (h)(1)(i)).
  - A. LA WIC uses three (3) year Vendor Agreements to the largest extent possible.
- II. LA WIC has divided Louisiana into three geographical areas (See Procedure I, below).
  - A. Vendor Agreements will expire on September 30<sup>th</sup> in a three (3) year cycle depending on the Trade Area.
- III. Vendor applicants that apply and are approved for initial authorization, will enter into an agreement with LA WIC for a length of time that corresponds to their Trade Area's schedule, unless the processing of the Vendor Application would result in WIC Authorization of less than four (4) months (See Procedure II, below).
- IV. Authorized WIC Vendors (Vendors) that apply and are approved for reauthorization, will enter into an agreement with LA WIC for three (3) years (See Policy and Procedure 7.03 - Reauthorization).

### TRADE AREA INFORMATION:

LA WIC will reevaluate the distribution of parishes into Trade Areas once every three (3) years or as needed for administrative efficiency. LA WIC will strive to maintain as close to a 1/3 distribution of Vendors in each Trade Area, while maintaining Trade Areas as groupings of contiguous parishes. The current Trade Areas are defined below.

- I. **Trade Area One (1)** will consist of the following State Regions: two (2), four (4) and five (5) and the following parishes: Acadia, Allen, Ascension, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Pointe Coupee, St. Landry, St. Martin, Vermilion, West Baton Rouge, and West Feliciana.
- II. **Trade Area Two (2)** will consist of the following State Regions: six (6), seven (7) and eight (8) and the following parishes: Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Vernon, Webster, West Carroll, and Winn.
- III. **Trade Area Three (3)** will consist of the following State Regions: one (1), three (3) and nine (9) and the following parishes: Assumption, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Washington.

## 7.02 INITIAL AUTHORIZATION

- I. A vendor applicant that applies and is approved for initial authorization will be accepted, processed and enter into an agreement with the Louisiana WIC Program (LA WIC) in accordance with the Vendor Authorization Schedule (See Policy and Procedure 7.01 - Vendor Authorization Schedule by Geographic Trade Area).
  - A. Vendor Agreements will expire on September 30<sup>th</sup> in a three (3) year cycle according to the vendor applicant's Trade Area.
    - i. Approved Vendor Agreements will be assigned an expiration date according to the vendor applicant's Trade Area (See Policy and Procedure 7.01 - Vendor Authorization Schedule by Geographic Trade Area).
  - B. Between June 1 - October 1 of every federal fiscal year, initial authorization Vendor Applications only be processed if
    - i. the vendor applicant is needed to satisfy a participant access issue and
    - ii. the vendor applicant is not in a Reauthorization Trade Area for that federal fiscal year (See Policy and Procedure 7.01 - Vendor Authorization Schedule by Geographic Trade Area).
- II. Vendor applicants must submit a complete and notarized Vendor Application and any supplemental documentations that may be required by LA WIC (herein referred to as an "Application Packet").
- III. Prior to becoming an Authorized WIC Vendor (Vendor), vendor applicants must:
  - A. Meet all vendor selection criteria in order to be WIC Authorized (See Policy and Procedure 7.05 - Vendor Selection Criteria).
  - B. Vendor applicants must undergo an LA WIC on-site Initial Monitoring Visit prior to becoming WIC Authorized.
  - C. Vendor applicants must undergo Initial Authorization Training prior to becoming WIC Authorized (See Policy and Procedure 7.07 - Vendor Training).
- IV. In accordance with Federal regulations at 7 CFR §246.12(g)(3), LA WIC will not authorize a vendor applicant if LA WIC determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction.

### 7.03 REAUTHORIZATION

- I. Authorized WIC Vendors (Vendors) that apply and are approved for reauthorization will enter into an agreement with the Louisiana WIC Program (LA WIC) in accordance with the Vendor Authorization Schedule (See Policy and Procedure 7.01 - Vendor Authorization Schedule by Geographic Trade Area).
  - A. Vendor Agreements will expire on September 30<sup>th</sup> in a three (3) year cycle according to the Vendor's Trade Area (See Policy and Procedure 7.01 - Vendor Authorization Schedule by Geographic Trade Area).
- II. All Vendors in a Trade Area whose Vendor Agreements expire in the current year and who are seeking reauthorization must:
  - A. Undergo a reauthorization process and submit a complete and notarized Vendor Application and any supplemental documents that may be required by LA WIC (herein referred to as a "Reauthorization Application Packet").
  - B. Vendors seeking reauthorization must meet all current vendor selection criteria, in order to be reauthorized by LA WIC (See Policy and Procedure 7.05 - Vendor Selection Criteria).

#### 7.04 VENDOR ADVISORY COMMITTEE

- I. In order to maintain a mutually beneficial relationship with Authorized WIC Vendors (Vendors), the Louisiana WIC Program (LA WIC) will establish and maintain an LA WIC Vendor Advisory Committee (VAC).
- II. The VAC will:
  - A. Consist of LA WIC staff, Vendors and other stakeholders including but not limited to Suppliers, retail associations, WIC Participants and/or WIC local agency clinic staff.
  - B. Meet quarterly, or as needed, to discuss Vendor-related aspects of LA WIC.
  - C. Only serve in an advisory capacity: Any decisions reached by the majority of VAC members may be accepted, modified or rejected by LA WIC.
- III. LA WIC and the VAC Chair shall ensure staffing and scheduling of the VAC meetings.

## 7.05 VENDOR SELECTION CRITERIA

- I. Federal Regulations mandate the following:
  - A. WIC State agencies must develop and implement selection criteria to select only qualified Authorized WIC Vendors (Vendors) to provide WIC Approved Food Items to WIC Participants (See 7 CFR § 246.12)
  - B. Specific selection criteria must be addressed while allowing WIC State agencies to identify additional selection criteria to further enhance services to WIC Participants (See 7 CFR § 246.12(g)(3))
- II. The Louisiana WIC Program (LA WIC) established vendor selection criteria in conjunction with, and approval from, the USDA.
- III. Authorized WIC Vendors (Vendors) and vendor applicants seeking authorization or reauthorization, must meet current vendor selection criteria in order to be WIC Authorized or reauthorized (See Policy and Procedure 7.02 - Initial Authorization and Policy and Procedure 7.03 - Reauthorization).
- IV. Once authorized, all Vendors shall continue to meet the vendor selection criteria of this Policy and Procedure and any changes thereto, at all times.
  - A. A Vendor found to be out of compliance with LA WIC Vendor Rules and Regulations (Provisions that control Vendor participation within LA WIC including but not limited to affirmations made in the Vendor Application and the Vendor Agreement, and federal and state rules, regulations, guidance and policy governing LA WIC as well as the Vendor Guide, Memorandums and the Policy Manual), at any time during the authorization period, may be subject to sanction (See Policy and Procedure 7.18 - Sanctions).
  - B. LA WIC may reassess any Vendor, at any time, during the Vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment. A Vendor that fails to meet vendor selection criteria, may be subject to sanction (see Policy and Procedure 7.18 - Sanctions).
  - C. Certain vendor selection criteria may be waived if the Vendor and/or vendor applicant is determined to be necessary for participant access (See Policy and Procedure 7.19 - Participant Access Determination and Procedure II, below).
- V. LA WIC vendor selection criteria are published in the Louisiana Administrative Code (LAC 48:V.4503) and are also provided in the Vendor Guide and Policy Manual.
  - A. LA WIC vendor selection criteria are as follows:
    - i. Vendor must submit a complete and notarized Vendor Application, including any required supporting documentation, to LA WIC within applicable timeframes set by LA WIC.
    - ii. Vendor must be currently authorized and participating in the USDA Supplemental Nutrition Assistance Program (SNAP) and cannot have

- received a SNAP Civil Money Penalty (CMP) for which the disqualification period, if it had been imposed, would not yet have expired.
- iii. Vendor must have a grocery class permit to operate issued under the Bureau of Sanitarian Services of the Office of Public Health for the current State fiscal year.
  - iv. Vendor must maintain the establishment in a clean, orderly and safe condition, with no current sanctions for violations of the Louisiana State Sanitary Code (LAC 51), the International Plumbing Code as amended by the Louisiana State Uniform Construction Code Council (LAC 17:I.111), or local health code ordinances.
  - v. Vendor must be open a minimum of six days and at least 48 hours, per week.
  - vi. Vendor must have prices that do not exceed the current competitive price criteria (CPC) for each food item within the Vendor's peer group (See Policy and Procedure 7.08 – Competitive Prices).
  - vii. Vendor must display prices for WIC Approved Food Items on the foods or on the shelves/display area in immediate proximity to the foods.
  - viii. Vendor must stock and maintain sufficient quantities and varieties of all WIC Approved Food Items in accordance with LA WIC's Minimum Stock Requirements, which can be found in the Minimum Stock Requirements section of the Vendor Guide.
  - ix. Vendor must purchase infant formula only from Suppliers included on LA WIC's Infant Formula Supplier List.
  - x. Vendor must not have been denied WIC Authorization or had a prior WIC Authorization terminated by LA WIC within the past year for any reason other than the expiration of the Vendor Agreement, store closing, or store relocation.
  - xi. Vendor current owners, officers, or managers shall not have been formerly employed by any Vendor that was disqualified from any USDA food program within the past year.
  - xii. Vendor current owners, officers, or and managers shall not have been convicted of any felony within the past six (6) years.
  - xiii. Vendor current owners, officers, or and managers shall not have been convicted of any federal, state, or local tax violations within the past six (6) years.
  - xiv. Vendor owners, officers, or managers shall not have a criminal conviction or civil judgment entered against them within the past six (6) years for any activity indicating a lack of business integrity (including but not limited to fraud, antitrust violations, embezzlement, theft, forgery, bribery,



falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice).

- xv. Vendor must be in good standing with no unpaid or overdue balances owed to LA WIC.
- xvi. Vendor must not have had a Vendor Agreement terminated due to false or inaccurate information provided to LA WIC within the past six (6) years.
- xvii. Vendor must have access to a computer, with internet access, and shall have an e-mail account that can be used to send messages to and receive messages from LA WIC, and shall be able to download and upload electronic documents sent/received via email or posted/requested on the Vendor Portal or any other online application used by LA WIC.
- xviii. Vendor must utilize a cash register system that is EBT capable and at a minimum, performs split tender transactions and produces itemized receipts showing date of purchase, items purchased, price of items purchased, and the total sale amount.
- xix. Vendor must redeem or expect to redeem at least fifty (50) WIC Transactions per month within six months of WIC Authorization.
- xx. Unless necessary for participant access, Vendor must not derive or expect to derive more than 50% of annual food sales revenue from WIC Transactions.
- xxi. When LA WIC determines a Vendor is necessary for participant access, Vendors deriving or expecting to derive more than 50% of their annual food sales revenue from WIC Transactions must agree to be placed in a vendor peer group with other above-50-percent (A50) Vendors. Vendors within this peer group shall maintain WIC Approved Food Item prices at a level such that the average payment per FI for above-50-percent (A50) Vendors does not exceed the average payment per FI to regular Vendors.
- xxii. When LA WIC determines a Vendor is necessary for participant access, Vendors deriving or expecting to derive more than 50% of their annual food sales revenue from WIC Transactions (A50 Vendors), must agree to neither provide nor advertise nor indicate an intent to provide customers with any incentive items. LA WIC shall make a determination on what constitutes a violation of the meaning of the previous sentence; however, incentive items definitively prohibited include but are not necessary limited to:
  - 1. Goods or services which result in a conflict of interest or the appearance of such conflict for the above-50-percent Vendor, such as assistance with applying for WIC Benefits;
  - 2. Lottery tickets at no charge or below face value;
  - 3. Cash gifts in any amount for any reason;



4. Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;
5. An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit would not exceed the less-than-\$2 nominal value limit;
6. Food, merchandise or services of greater than the less-than-\$2 nominal value provided to the customer;
7. Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;
8. Any kind of prohibited incentive item which incurs a liability for LA WIC; and
9. Any kind of prohibited incentive item which violates any federal, state, or local law or regulations.

xxiii. Vendor must be a full-line grocery store, as defined by LA WIC. The LA WIC definition of a full-line grocery store can be found in the “Definitions” section of the Vendor Guide or the Louisiana Administrative Code (LAC).

VI. The vendor selection criteria found in Policy V.A.i - V.A.xxiii, above, may be referred to elsewhere in this LA WIC Policy Manual by their “short title” as found in the table below:

Criterion Number from Policy and Procedure 7.05 -Vendor Selection Criteria	Short Title from Policy and Procedure 7.05 - Vendor Selection Criteria
1	Complete Application
2	SNAP Authorization
3	Grocery Class Permit
4	Store Condition
5	Hours of Operation
6	Competitive Prices
7	Shelf Prices
8	Minimum Stock Requirements
9	Infant Formula Supplier
10	Denial or Termination
11	Business Integrity: USDA Program Disqualification
12	Business Integrity: Felony



## Chapter 7

### LA WIC Vendor Policies

13	Business Integrity: Taxes
14	Business Integrity: Conviction or Civil Judgement
15	Good Standing
16	Truthful and Accurate
17	Technology Access
18	Cash Register System
19	WIC Transactions
20	A50: Prohibited
21	A50: Reimbursement Agreement
22	A50: Incentives
23	Full-line Grocery

## 7.06 MINIMUM STOCK REQUIREMENTS – UPDATES EFFECTIVE 2.16.22

- I. Federal Regulations require the Louisiana WIC Program (LA WIC) to establish minimum requirements for the variety and quantity of WIC Approved Food Items (Minimum Stock Requirements) that Authorized WIC Vendors (Vendors) and vendor applicants must stock (See 7 CFR § 246.12(g)(3)(i), LAC 48:V.4503.B.8., and Policy and Procedure 7.05 - Vendor Selection Criteria).
- II. The Minimum Stock Requirements (MSR) established by LA WIC are published as the “WIC Approved Food List (WIC-23)” and will also appear within the Vendor Guide.
  - A. MSR must include at least two different fruits, two different vegetables, and at least one whole grain cereal (See 7 CFR § 246.12(g)(3)(i)).
  - B. LA WIC may establish different minimums for different vendor peer groups.
  - C. LA WIC may, in its sole discretion, establish temporary alternative MSR in response to statewide shortages and/or in response to an Emergency-Disaster as long as the alternative MSR meets or exceeds the federal minimum requirements outlined in II.A, above.
- III. LA WIC will assess a Vendor or vendor applicant’s adherence to MSR by examining store shelves and storage areas within the physical structure of the store.
- IV. LA WIC will assess adherence to MSR during but not limited to, the following:
  - A. Initial Monitoring Visits for stores seeking WIC Authorization (See Policy and Procedure 7.02 - Initial Authorization).
  - B. Routine Monitoring Reviews, and/or Compliance Investigations (See Policy and Procedure 7.15 - Routine Monitoring, Policy and Procedure 7.16 - Compliance Buys, and Policy and Procedure 7.17 - Inventory Audits).
- V. LA WIC reserves the right to assess adherence to MSR at any time throughout the federal fiscal year.
- VI. LA WIC shall reevaluate the appropriateness of MSR every two (2) years or as needed.

## 7.07 VENDOR TRAINING

- I. Federal Regulations require Authorized WIC Vendors (Vendors) and vendor applicants be trained prior to initial authorization and at least once annually after WIC Authorization (See 7 CFR § 246.12(i)(1)).
- II. Training(s) shall be conducted to improve service of the Louisiana WIC Program (LA WIC) and prevent LA WIC noncompliance.
  - A. Training(s) can be administered by LA WIC, WIC local agency staff, and/or an LA WIC contractor (See 7 CFR § 246.12(i)(3)).
- III. Federal Regulations require that the Vendor or vendor applicant inform and train cashiers and other store staff on LA WIC requirements (See 7 CFR § 246.12(h)(1)(3)(xiii)).
  - A. The Vendor or vendor applicant is responsible for ensuring that the Training(s) received by the Vendor representative is disseminated to all appropriate staff at the store location.
- IV. Annual Vendor Training:
  - A. Federal regulations require the following:
    - i. Annual Vendor Training must be in an interactive format at least once every three (3) years, including a contemporaneous opportunity for questions and answers (See 7 CFR § 246.12(i)(1)).
    - ii. At least one Vendor representative must participate in Annual Vendor Training (See 7 CFR § 246.12(h)(1)(3)(xii)).
    - iii. LA WIC must document the content of and Vendor participation in, Annual Vendor Training (See 7 CFR § 246.12(i)(4)).
  - B. The content of Annual Vendor Training must include but is not limited to the following: the purpose of the Program, the LA WIC Approved Food Items, Minimum Stock Requirements and other selection criteria, WIC EBT Transaction Procedures and claims reimbursement process, Sanctions, the Vendor complaint process, LA WIC's policy regarding the use of incentive items, and any changes to program requirements since the last Training (See 7 CFR § 246.12(i)(2), Policy and Procedure 7.05 – Vendor Selection Criteria, Policy and Procedure 7.11 - Vendor In-Store Protocols, Policy and Procedure 7.18 - Sanctions, The WIC Approved Food List (WIC-23), and WIC EBT Transaction Procedures (WIC-33)).
  - C. LA WIC has the sole discretion to designate the date, time, and location, if applicable, of Annual Vendor Training. A Vendor that does not complete Annual Vendor Training will be provided with at least one (1) additional opportunity to complete such Training (See 7 CFR § 246.12(i)(1)).
  - D. A Vendor that does not complete Annual Vendor Training will be subject to sanction (See Policy and Procedure 7.18 - Sanctions and LAC 48:V.4509.D.4).
- V. Initial Authorization Training



- A. The content of Initial Authorization Training may include but is not limited to the following: the purpose of the Program, the LA WIC Approved Food Items, Minimum Stock Requirements and other selection criteria, WIC EBT Transaction Procedures and claims reimbursement process, Sanctions, the Vendor complaint process, and LA WIC's policy regarding the use of incentive items (See Policy and Procedure 7.05 - Vendor Selection Criteria, Policy and Procedure 7.11 - Vendor In-Store Protocols, Policy and Procedure 7.18 - Sanctions, The WIC Approved Food List (WIC-23), and WIC EBT Transaction Procedures (WIC-33)).
  - B. LA WIC has the sole discretion to designate the date, time, and location, if applicable, of Initial Authorization Training. A vendor applicant that does not complete Initial Authorization Training will be provided with at least one (1) additional opportunity to complete such Training.
  - C. A vendor applicant that does not complete Initial Authorization Training will be denied WIC Authorization (See Policy and Procedure 7.02 - Initial Authorization).
- VI. Corrective Action Training
- A. LA WIC may require a Vendor to participate in Corrective Action Training when a Compliance Investigation(s), Routine Monitoring Review(s) and/or other circumstances reveal a Vendor violation(s).
  - B. LA WIC has the sole discretion to designate the date, time, and location, if applicable, of Corrective Action Training. A Vendor that does not complete Corrective Action Training will be provided with at least one (1) additional opportunity to complete such Training.
  - C. A Vendor that does not complete Corrective Action Training will be subject to sanction (See Policy and Procedure 7.18 - Sanctions, and LAC 48:V.4509.D.8).

## 7.08 COMPETITIVE PRICES

- I. In accordance with Federal Regulations, the Louisiana WIC Program (LA WIC) must establish Competitive Price Criteria (CPC) for each vendor peer group (See 7 CFR §246.12(g)(4)).
- II. The CPC is the price level at or below which WIC Approved Food Items must be priced in order for a vendor applicant to be considered for WIC Authorization and for an Authorized WIC Vendor (Vendor) to maintain its authorization (See Policy and Procedure 7.05 - Vendor Selection Criteria).
- III. CPC is a vendor selection criterion. After WIC Authorization, all Vendors shall continue to meet all vendor selection criteria and any changes thereto, at all times. LA WIC may reassess any Vendor at any time during the Vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and may sanction those Vendors that fail to meet them (See Policy and Procedure 7.18- Sanctions)
- IV. LA WIC establishes CPC for a Market Basket of WIC Approved Food Items based on redemption amounts gathered from the WIC data system or price reports, as needed.
- V. LA WIC may establish different CPC levels for individual Vendors that are needed to fulfill a participant access need.
- VI. Except where required by rule or law, the Competitive Price Criteria Market Basket Price Form (7.08\_VF1) is not intended for public dissemination and must be kept confidential to the Bureau of Nutrition Services. Each document contains the following warning:

**The information contained in this document is not for publication and must be kept confidential. The information is intended only for the internal use of the Bureau of Nutrition Services and its designees. If you are not in this group, you are hereby notified that any review, disclosure/re disclosure, copying, storing, distributing or the taking of action in reliance on the content of this document and any attachments thereto, is strictly prohibited. If you have received this document in error, please notify the Bureau of Nutrition Services immediately and destroy the contents of this document and its attachments by deleting any and all electronic copies and any and all hard copies regardless of where they are maintained or stored.**

- VII. Publication of Statewide Average: At its discretion, LA WIC may publish the Statewide Average Prices for all WIC Approved Food Item(s) from the time period of the previous Competitive Pricing Criteria Analysis (CPC Analysis).

### 7.09 MAXIMUM ALLOWABLE REIMBURSEMENT LEVELS – NOT-TO-EXCEED AMOUNT (NTE)

- I. In accordance with Federal Regulations, the Louisiana WIC Program (LA WIC) must establish and apply limits on the amount of reimbursement allowed for WIC Approved Food Items based on a Vendor's peer group and price competitiveness (See 7 CFR § 246.12(h)(3)(viii))
- II. The Maximum Allowable Reimbursement Level (MARL), also known as the Not-to-Exceed Amount or NTE, is the reimbursement amount above which LA WIC will make price adjustments on WIC Transactions at the subcategory level to ensure no WIC Approved Food Item is paid above a reasonable level.
  - A. The MARL will be applied to each WIC Approved Food Item at the subcategory level during the transaction settlement process.
  - B. Any WIC Approved Food Item presented for payment during the transaction settlement process that exceeds the MARL will have the reimbursement for that particular WIC Approved Food Item reduced to the MARL level.



## 7.10 EBT TRANSACTION DISPUTES

- I. Authorized WIC Vendors (Vendors) are required to ensure the submission and upload of WIC Claim Files to the Louisiana WIC Program’s (LA WIC) EBT processor FTP server.
  - A. Vendors are required to access the WIC EBT banking/processor FTP server within a continuous 48-hour period of time for the purpose of submitting Claim Files, downloading the current Authorized Product List (APL), the Hot Card List (HCL), the Acknowledgement (ACK) File, and the Auto-Reconciliation (ARF) File. Failure to do so may result in financial liability to the Vendor.
- II. A Vendor may dispute the payment for WIC EBT Transactions (hereinafter referred to as a “Dispute”) resulting from, but not limited to the following:
  - A. A late submission of WIC EBT Transaction batch files
  - B. Submission of subsequently corrected malformed claim(s) and WIC EBT Transaction(s)
  - C. Claim Files submitted with an invalid electronic signature error.
- III. Each Dispute will be evaluated based on its merit as provided in this Policy. The burden of proof rests with the Vendor and there is no guarantee that the Dispute will be resolved in favor of the Vendor.
  - A. LA WIC is the sole arbiter of Disputes submitted for resolution under this Policy. LA WIC’s assessment and determination of the Dispute are final and not subject to further appeal.
- IV. LA WIC requires that all Disputes be received within sixty (60) calendar days of the Transaction Date.
- V. Disputes involving \$500 or more require approval from the USDA before payment can be authorized.
- VI. LA WIC will consider Disputes that fall into the following three categories:
  - A. **Disputes related to the submission of Late Claims.** A Late Claim is a Vendor’s failure to submit its WIC EBT Transaction batch files by the 15th day of the month following the month in which the transaction occurred.
  - B. **Disputes related to the submission of Malformed Claims Subsequently Corrected and Resubmitted.** A Malformed Transaction is a transaction in the WIC EBT Transaction batch files that contains incorrect or incomplete information. Malformed Claims must be corrected and resubmitted successfully to the WIC EBT banking/processor prior to review by LA WIC.
  - C. **Disputes related to Invalid Electronic Signature Error.** Errors related to electronic signatures on WIC EBT Transactions within a Claim file may be caused by many factors and may require considerable investigation and assessment by the Vendor, their POS provider, and LA WIC.
- VII. LA WIC will not consider Disputes relative to the following:



## Chapter 7 LA WIC Vendor Policies

- A. WIC EBT Transactions submitted more than sixty (60) calendar days past the date of the Transaction.
  - B. WIC EBT Transactions for which no electronic record exists on either the Vendor's or LA WIC's EBT system(s).
  - C. Malformed EBT claims that have not been corrected and resubmitted by the Vendor within the time frame established in Policy IV, above.
  - D. Payments of WIC EBT Transactions adjusted by LA WIC due to Vendor Overcharge, sales that exceed the Maximum Allowable Reimbursement Levels (MARLs), and sales that exceed the Not to Exceed Amounts (NTE).
- VIII. At its sole discretion, LA WIC reserves the right to consider reimbursements for circumstances other than those identified in Policy VI, above. LA WIC also reserves the right to make adjustments to Vendor payments in the Vendor's favor when it comes to LA WIC's attention that a Vendor(s) has been underpaid.

## 7.11 IN-STORE POLICIES

- I. **WIC Acronym and Logo.**
  - A. Authorized WIC Vendors (Vendors) may use the acronym “WIC” and the WIC logo only in the following, specified circumstances:
    - i. On tender-type signs, to identify the types of payment accepted by the store;
    - ii. On shelf-talkers placed near WIC Approved Foods Items in the store (see Policy II, below);
    - iii. On the decal provided by the Louisiana WIC Program (LA WIC), which *must be placed in the front window of the store.*
  - B. Any other use of the acronym “WIC” and the WIC logo by Vendors is prohibited, including but not limited to the following:
    - i. In the name of the Vendor’s registered entity or the name the Vendor is doing business as (d/b/a); and
    - ii. On any food products, including those stocked in the store by a distributor.
- II. **Shelf Talkers.** Vendors have the option to use shelf talkers (i.e., labels, flags, channel strips, or clings) on shelves to indicate which food items are WIC Approved Food Items. If a Vendor elects to use shelf talkers, the Vendor must use only the shelf talker image(s) provided by LA WIC.
- III. **Least Expensive Brand (LEB).** Certain categories of WIC Approved Food Items are subject to the Least Expensive Brand (LEB) requirement; that is, Vendors must offer WIC Participants the sale of only the LEB of certain WIC Approved Food Items as stated in the WIC Approved Food List (WIC-23). If the LEB is temporarily unavailable, a Vendor must offer the WIC Participant the sale of the next, lowest priced WIC Approved Food Item within that category. A Vendor who fails to comply with the LEB requirements, may be subject to sanction (See Policy and Procedure 7.18 - Sanctions)
- IV. **Same Courtesies.** Federal Regulations at 7 CFR § 246.12(h)(3)(iii) require Vendors to offer WIC Participants the same courtesies that are offered to other (non-WIC) customers.
  - A. **Equitable Treatment.** Vendors may not treat WIC Participants differently from other customers by excluding them from in-store promotions—this includes disallowing the use of coupons or other Vendor discounts in WIC Transactions that are allowed in non-WIC Transactions. Similarly, Vendors may not treat WIC Participants differently by offering them incentive items, Vendor discounts, coupons or other promotions that are not offered to other customers.
  - B. **Same Courtesies.** Vendors must offer WIC Participants the same treatment as other customers such as, but not limited to helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting the customer with loading the food into a vehicle. Vendors must treat WIC Participants with the same courtesies as other customers with respect to both WIC Approved Food Item prices and services. Vendors may not treat WIC Participants

differently from other customers by conducting the WIC Transaction indiscreetly or commenting negatively or offering opinions relative to the WIC Participant's use of WIC Benefits, or engaging in verbal abuse of any kind (i.e., yelling or loudly announcing "WIC").

- V. **In-Store Promotions.** Federal Regulations at 7 CFR § 246.12(h)(3)(iii) require Vendors to offer WIC Participants the same courtesies that are offered to other (non-WIC) customers.
- A. Vendors are prohibited from excluding WIC Participants from promotions (i.e., in-store promotions, including coupons, Vendor and manufacturer discounts, and Vendor incentive items). Vendors are also prohibited from offering WIC Participants promotions that are not also offered to other customers.
  - B. Vendors may offer WIC Participants lower prices for WIC Approved Food Items than other customers.
  - C. Cash back is not permitted as a result of any type of in-store promotion in any WIC Transaction at any type of Vendor. All discounts must be applied to the Transaction.
  - D. Allowable Discounts and Promotions by Regular and A-50 Vendors:
    - i. **Buy One, Get One Free (BOGO):** when a Vendor sells one WIC Approved Food Item and provides a second, identical WIC Approved Food Item or a different food item (that may or may not be a WIC Approved Food Item) at no additional cost. If the free item in a buy one, get one free promotion is a WIC Approved Food Item, it should not be deducted from the Participant's WIC EBT card or reported to LA WIC. If a WIC Approved Food Item is advertised as BOGO, with the disclosure that each item is sold for half the advertised price, both WIC Approved Food Items shall be redeemed using WIC Benefits and shall reflect an item price of half the advertised price in the WIC Transaction.
      - 1. For example, a Vendor offers a free box of WIC Approved cereal with each box of WIC Approved cereal that is purchased. This is a quantity discount. Using a *buy one, get one free* promotion allows WIC Participants to get additional quantities of WIC Approved Food Items or non-WIC food items at no cost. The WIC Participant, whose WIC EBT Card is loaded with 18 ounces of cereal, selects one (1), 18 ounce box of WIC Approved cereal. The Vendor deducts one (1), 18 ounce box of cereal from the Participant's WIC EBT Card, and gives the Participant one (1) additional 18 ounce box of WIC Approved cereal for free without deducting the additional box of WIC Approved cereal from the Participant's WIC EBT Card.
    - ii. **Buy One, Get One at a Reduced Price:** when a Vendor sells one WIC Approved Food Item at full price and sells either a second, identical WIC



Approved Food Item or a different food item (that may or may not be a WIC Approved Food Item) at a reduced price.

1. If the WIC Participant has at least two of the WIC Approved Food Items remaining on their WIC EBT card, the Vendor shall deduct both WIC Approved Food Items from their WIC EBT card. LA WIC will reimburse the Vendor for the full price of the first WIC Approved Food Item and the reduced price for the second WIC Approved Food Item.
  2. If the WIC Participant has only one of the WIC Approved Food Items remaining on their WIC EBT card, the Vendor shall deduct the WIC Approved Food Item from their WIC EBT card and the WIC Participant must use cash or other payment to purchase the second WIC Approved Food Item at the reduced price. LA WIC will reimburse the Vendor for the full price for the first WIC Approved Food Item.
  3. If the WIC Participant's CVB balance on their WIC EBT card covers at least two of the WIC Approved fruits and/or vegetables selected, the Vendor shall deduct the full price of one WIC Approved fruit and/or vegetable and the reduced price of the other WIC Approved fruit and/or vegetable from the WIC EBT card. LA WIC will reimburse the Vendor for the full price for the first WIC Approved fruit and/or vegetable and the reduced price for the second WIC Approved fruit and/or vegetable.
  4. If the WIC Participant's CVB balance on their WIC EBT card covers one of the WIC Approved fruits and/or vegetables selected, the Vendor shall deduct the full price of one WIC Approved fruit and/or vegetable and the WIC Participant must use cash or other payment to purchase the second WIC Approved fruit and/or vegetable at the reduced price. LA WIC will reimburse the Vendor for the full price for the first WIC Approved fruit and/or vegetable.
  5. If the WIC Participant prefers to preserve WIC Benefits and purchase the reduced price WIC Approved Food Item with cash or some other form of payment, the Vendor shall allow that option.
- iii. **Bonus Size Items (Free Ounces Added to Food Item by Manufacturer):** when a food manufacturer adds extra ounces to a product at no extra cost to the consumer. The packaging must clearly state the number of ounces being provided for free. Any additional ounces included in the package shall not be deducted from the Participant's WIC EBT card.

1. For example, instead of offering 16 ounces of cereal in a box, a manufacturer may temporarily offer a bonus size 18-ounce box of cereal at the same price. This promotion is a quantity discount. When a bonus size food item is purchased by a WIC Participant, the Vendor should redeem the WIC EBT card as if the original size (16 ounce) item were purchased.
- iv. **Transaction Discounts:** when a Vendor applies a fixed-amount discount or a discount percentage to the total dollar amount of the purchase. A transaction discount is a price discount on the total purchase. In a transaction that only includes WIC Approved Food Items, LA WIC would benefit from the discount being applied to the WIC Transaction. In a split-tender transaction, LA WIC and the WIC Participant would benefit proportionally based on the amount purchased with WIC Benefits and another method of payment.
  1. For example, the Vendor offers customers \$10 off of \$100 or more in grocery purchases. The Vendor must deduct \$10 from the WIC Participant's total transaction amount if it is \$100 or more.
- v. **Store Loyalty or Rewards Cards:** when a Vendor provides a card or token to its frequent or regular customers, with which they qualify for additional Vendor discounts. Store loyalty/rewards cards may provide a variety of quantity and/or price discounts. The Vendor must process the discounts according to the type of discount or promotion, as stated in Policy V.D.i.-iv., above.
  1. Note: WIC Participants are not required to sign-up and/or use loyalty or rewards cards, and Vendors are not required to scan a placeholder loyalty or rewards card for WIC Participants who do not have their own loyalty or rewards cards unless that is store policy for all customers.
- vi. **Manufacturer's Cents-off Coupons:** when a manufacturer offers coupons for the purchase of certain items at a lower price.
  1. For example, a manufacturer's coupon offers a discount of 50¢ off a box of cereal. The Vendor must apply the discount amount from the coupon to the WIC Participant's purchase of the box of cereal and deduct only the remaining amount for the box of cereal from the Participant's WIC EBT Card. If sales tax must be collected on a manufacturer's coupon, a Vendor must (1) subtract the sales tax on the coupon from the face value of the coupon; and (2) subtract the remainder of the coupon value from the retail price of the WIC Approved Food Item.



- E. **Above-50-percent (A50) Vendors:** Pursuant to Federal Regulations at 7 CFR §246.12(g)(3)(iv)(B), A50 Vendors (Vendors deriving or expecting to derive more than 50% of their annual food sales revenue from WIC Transactions) are prohibited from providing or advertising or indicating the intent to provide customers with any incentive items. Above-50-percent Vendors may **not** provide discounts to customers when the food sales or specials (vendor discounts) exceeded more than \$2.00 in cost to the vendor for the food items involved, subject to documentation. Such discounts cannot result in a charge to a WIC Transaction for foods in excess of the prescribed foods..
- VI. **Vendors owned or managed by WIC Participants and/or their relatives.** If a Vendor has a store owner, co-owner, manager and/or their relatives who receive WIC Benefits, they may not redeem their WIC Benefits at the Vendor location that they and/or their relatives own or manage. The WIC Participant, who is an owner or operator, or the relative of an operator or owner of the Vendor, may request an exception from this policy as described in Procedure II, below. Upon request, LA WIC may grant an exemption to this policy if there is no other Vendor within ten (10) miles of the Vendor at issue.



## 7.12 CHANGE OF OWNERSHIP

- I. The Louisiana WIC Program (LA WIC) Authorization and the ability to conduct WIC Transactions does not transfer to a new owner when a change of ownership occurs.
- II. A change of ownership occurs when all of the assets of the store are sold or transferred to a new owner or business entity, as follows:
  - A. Sole Proprietorship (unincorporated): The transfer of assets or a property interest in the store from the previous owner to a new owner or another party;
  - B. Corporation:
    - i. The merger of a corporation that owns the Vendor into another corporation;
    - ii. The consolidation of two or more corporations, one of which is owner of the Vendor, resulting in the creation of a new corporation;
    - iii. The acquisition of the corporation that owns the Vendor by another entity whereby the corporation that owns the Vendor ceases to exist;
  - C. Limited Liability Company: The removal or addition of a member in a limited liability company where a new member owns the majority of interest within the LLC;
  - D. Partnership (including limited partnerships and limited liability partnerships): The addition of a partner or the dissolution of the partnership.
- III. Authorized WIC Vendors (Vendors) must notify LA WIC in writing at least fifteen (15) days prior to or immediately upon knowledge of (whichever occurs first) a change in Vendor ownership.
- IV. Vendors are not required to notify LA WIC when the following occurs in a Corporation, as this does not constitute a change of ownership:
  - A. Transfer of corporate stock;
  - B. The acquisition of the corporation that owns the Vendor by another entity whereby the corporation that owns the Vendor continues to exist under ownership of the acquiring entity;
  - C. Admission or dismissal of an officer to the board of directors of a corporation.
- V. If LA WIC learns of a change of ownership and verifies the change has occurred, the Vendor Agreement shall be null and void and immediately terminated as of the date the change in ownership occurred. Moreover, LA WIC shall not be required to provide the Vendor with fifteen (15) calendar day written notice. Instead, LA WIC will notify the Vendor that its Vendor Agreement was terminated as a result of its change in ownership and specify the date the change occurred.
- VI. Once the Vendor Agreement is terminated, neither the previous owner nor the new owner will be authorized to conduct WIC Transactions. WIC business shall immediately cease and WIC Transaction batch files shall be promptly submitted.





## Chapter 7

### LA WIC Vendor Policies

- VII. Any WIC Transactions conducted after the date the Vendor Agreement is terminated, will be subject to recoupment by LA WIC. LA WIC shall hold the previous owner and the new owner solidarily liable for any monies owed.

### 7.13 CHANGE IN AVAILABILITY OR LOCATION

- I. The Louisiana WIC Program (LA WIC) Authorization shall not extend to new store locations opened or acquired by an existing Authorized WIC Vendor (Vendor).
- II. Pursuant to 7 CFR § 246.2, each store location operated by a business entity, constitutes a separate Vendor and must be WIC Authorized separately from other stores operated by the business entity. Each store must have a single, fixed location.
- III. A Vendor must notify LA WIC in writing at least fifteen (15) calendar days prior to or immediately upon knowledge of (whichever occurs first) cessation of vendor operations or a change of store location.
- IV. If LA WIC learns of a change in availability or location from a source other than the Vendor, LA WIC will notify the Vendor to verify the cessation of vendor operations or change of store location.
- V. If LA WIC learns of a change in availability or location from a source other than the Vendor and verifies the change, the Vendor Agreement shall be null and void and immediately terminated on the date of the cessation of vendor operations, or a change in store location of two or more miles walking distance from the previous store location.
- VI. If LA WIC learns of a change in availability or location from a source other than the Vendor and verifies the change, LA WIC shall not be required to provide the Vendor with fifteen (15) calendar days prior to or immediately upon knowledge of (whichever occurs first) cessation of vendor operations or a change of store location. Instead, LA WIC will notify the Vendor its Vendor Agreement was terminated as a result of its change in availability or location and specify the date the change occurred.
- VII. Once the Vendor Agreement is terminated, the Vendor is no longer authorized to transact WIC. WIC business shall immediately cease and WIC EBT Transaction batch files shall be promptly submitted.
- VIII. Any WIC Transactions conducted after the Vendor Agreement is terminated will be subject to recoupment by LA WIC.

## 7.14 HIGH RISK IDENTIFICATION

- I. In accordance with Federal Regulations, the Louisiana WIC Program (LA WIC) must:
  - A. Identify high-risk Authorized WIC Vendors (Vendors) at least once a year using its established high-risk criteria (See 7 CFR § 246.12(j)(3)).
    - i. LA WIC may, at its discretion, identify high-risk Vendors more frequently throughout the federal fiscal year.
  - B. Conduct Compliance Investigations on a minimum of five percent (5%) of the number of Vendors authorized as of October 1 of each year (See 7 CFR § 246.12(j)(4)(i)).
- II. LA WIC defines a high-risk Vendor as a Vendor identified as having a high probability of committing a Vendor violation(s), including but not limited to fraud and abuse, through application of LA WIC's established high-risk criteria (indicators).
- III. Vendors that meet specified high-risk indicator(s) will appear on the High-Risk Indicator List(s), from which LA WIC will generate the High-Risk Investigation List or the Investigation List (depending on whether or not the number of high-risk Vendors exceed the five percent (5%) minimum). Any Vendor that appears on any High-Risk Indicator List(s) may be placed on the High-Risk Investigation List or the Investigation List and be subject to a Compliance Investigation and/or Routine Monitoring Review.
  - A. LA WIC shall conduct Routine Monitoring Reviews on a random selection of those Vendors that have not been identified for Compliance Investigation as stated in Policy I, above. Nothing herein prevents LA WIC from conducting both a Routine Monitoring Review and a Compliance Investigation on the same Vendor (See Policy and Procedure 7.15 - Routine Monitoring).
- IV. At any time, LA WIC may, at its discretion:
  - A. Subject a Vendor to a Routine Monitoring Review and/or a Compliance Investigation during the current federal fiscal year; and/or
  - B. Identify a Vendor as high-risk and place it on the High-Risk Investigation List or the Investigation List for the following federal fiscal year.

## 7.15 ROUTINE MONITORING

- I. Routine Monitoring is defined as an overt, on-site monitoring visit during which Program representatives identify themselves to Vendor personnel.
- II. In accordance with Federal Regulations, the Louisiana WIC Program (LA WIC) shall:
  - A. Conduct Routine Monitoring Reviews on a minimum of five percent (5%) of the total number of Vendors authorized as of October 1<sup>st</sup> of each federal fiscal year in order to survey the types and levels of abuse and errors among Authorized WIC Vendors (Vendors) and to take corrective actions, as appropriate (See 7 CFR § 246.12(j)(2)).
- III. LA WIC will conduct Routine Monitoring Reviews on a random selection of those Vendors that have not been identified for a Compliance Investigation. Nothing herein prevents LA WIC from conducting both a Routine Monitoring Review and a Compliance Investigation on the same Vendor.
- IV. A Routine Monitoring Review will be conducted on a Vendor until:
  - A. The Vendor is determined to be compliant,
  - B. The Vendor has a violation(s) that does not require a pattern (See Policy and Procedure 7.18 – Sanctions)
  - C. The Vendor has violations that establish a pattern of a particular abuse,
  - D. The Vendor has violations that have not established a pattern of particular abuse and the Vendor has received a Warning Letter and request for a Corrective Action Plan (CAP), or
  - E. A pattern or sanctionable offense has not been established within a twenty-four (24) consecutive month period
- V. Any violation identified through any means will count toward the establishment of a pattern for purposes of sanction (for those sanctions that require a pattern of violations) as long as the violation(s) occurs within a twenty-four (24) consecutive month period of another such violation.
- VI. Compliance Investigations and/or Routine Monitoring Reviews should be completed within a twenty-four (24) consecutive month period. If a pattern or a sanctionable offense has not been established within a twenty-four (24) consecutive month period, the Investigation and/or Review may be closed administratively.
  - A. Any violation identified during the course of those Investigations and/or Reviews or other analysis of data and records will count towards establishing a pattern of violations for sanction as indicated in Policy V, above.

## 7.16 COMPLIANCE BUYS

- I. A Compliance Buy is a covert, on-site investigation in which a representative of the Louisiana WIC Program (LA WIC) poses as a WIC Participant, transacts WIC Benefits, and does not reveal during the visit that he or she is an LA WIC representative.
- II. LA WIC will conduct Compliance Investigations on Authorized WIC Vendors (Vendors) as identified through the use of Policy and Procedure 7.14 - Vendor High Risk Identification.
- III. LA WIC shall conduct Compliance Investigations on a minimum of five percent (5%) of the number of Vendors authorized as of October 1 of each year.
- IV. In accordance with Federal Regulations, LA WIC shall conduct Compliance Investigations on all high-risk Vendors on at least the five percent (5%) minimum.
- V. Compliance Buys will be conducted on the Vendor until:
  - A. The Vendor has a violation(s) that does not require a pattern (See Policy and Procedure 7.18 – Sanctions)
  - B. The Vendor has violations that establish a pattern of a particular abuse,
  - C. Two (2) Compliance Buys have been conducted in which no program violations were found (sometimes referred to as “two Clean Buys”), or
  - D. A pattern or sanctionable offense has not been established within a twenty-four (24) consecutive month period.
- VI. For an initial instance of a violation requiring a pattern to impose sanctions, Vendors will be provided notice of and given an opportunity to correct violations identified through a Compliance Buy unless the WIC Vendor Manager or designee determines, in their discretion and on a case-by-case basis, that notifying the Vendor would compromise an investigation. Documentation of the reason for non-notification shall be placed in the Vendor’s file.
  - A. If notice of violation(s) is provided, such notice may include a request for a Corrective Action Plan (CAP) and a follow-up Compliance Buy(s) will not occur until at least ten (10) calendar days have passed after the notice of the acceptance of the CAP was received or was presumed to be received by the Vendor.
- VII. If a Vendor violation occurring during a Compliance Investigation affects the amount paid to the Vendor (e.g., WIC Transaction for Foods Not Received, a Vendor Overcharge, allowing the purchase of an Unauthorized Food Item), LA WIC shall establish a claim against the Vendor at the end of the investigation. The claim against the Vendor will be in the total amount of all WIC Transactions for Foods Not Received, Vendor Overcharges, and Unauthorized Food Items as identified during the investigation.
  - A. *WIC Transaction for Food Not Received* occurs when LA WIC reimburses a Vendor for a WIC Approved Food Item(s) not received by the WIC Participant. For example, the Vendor includes three lemons in the WIC Transaction but provides the WIC Participant with only two lemons.



- B. *Vendor Overcharge* means intentionally or unintentionally charging LA WIC more for WIC Approved Food Item(s) than is permitted under the Vendor Agreement, such as a Vendor charging more for a WIC Approved Food Item in the WIC Transaction than the shelf price of the item. WIC Transactions submitted by the Vendor for redemption that are adjusted by LA WIC to meet cost containment measures are not considered Vendor Overcharges.
  - C. *Unauthorized Food Item* means allowing the purchase of a food item that is not a WIC Approved Food Item, or allowing the purchase of a WIC Approved Food Item not prescribed for that WIC Participant, or allowing the purchase of a WIC Approved Food Item in excess of available WIC Benefits. For example, the Vendor allows the WIC Participant to purchase a candy bar using WIC Benefits or the Vendor allows the WIC Participant to purchase whole milk using WIC Benefits when low-fat milk was prescribed.
- VIII. Any violation identified through any means will count toward the establishment of a pattern for purposes of sanction (for those sanctions that require a pattern of violations) as long as the violation(s) occurs within a twenty-four (24) consecutive month period of another such violation.
- IX. Compliance Investigations and/or Routine Monitoring Reviews should be completed within a twenty-four (24) consecutive month period. If a pattern or a sanctionable offense has not been established within a twenty-four (24) consecutive month period, the Investigation and/or Review may be closed administratively.
- A. Any violation identified during the course of those Investigations and/or Reviews or other analysis of data and records will count towards establishing a pattern of violations for sanction as indicated in Policy VIII, above.

## 7.17 INVENTORY AUDITS

- I. The Louisiana WIC Program (LA WIC) defines an Inventory Audit as a process whereby LA WIC examines food invoices to determine if an Authorized WIC Vendor (Vendor) has claimed reimbursement for the sale of an amount of a WIC Approved Food Item(s) that exceeds the store's documented inventory of that WIC Approved Food Item(s) for a specific period of time.
- II. LA WIC will conduct Compliance Investigations on Vendors as identified through the use of Policy and Procedure 7.14 - Vendor High- Risk Identification.
- III. LA WIC shall conduct Compliance Investigations on a minimum of five percent (5%) of the number of Vendors authorized as of October 1 of each year. As stated in Policy and Procedure 7.14 - Vendor High-Risk Identification, the calculation of the five percent (5%) shall include military commissaries.
- IV. In accordance with Federal Regulations, LA WIC shall conduct Compliance Investigations on all high-risk Vendors on at least the five percent (5%) minimum. Compliance Investigations will not be conducted on military commissaries (see FNS Instruction 806-4, Rev. 1).
- V. If a Vendor has claimed reimbursement for the sale of an amount of a WIC Approved Food Item(s) that exceeds the store's documented inventory of that WIC Approved Food Item(s) at the category level, the audit shall reflect a shortage, herein referred to as a "Deficiency".
- VI. For some violations, Federal Regulations require a documented pattern of the violation before sanctioning a Vendor. LA WIC considers each identified Deficiency as a violation which may count toward the establishment of pattern, provided that the Deficiency is identified at the WIC Approved Food Category level. LA WIC defines a pattern for each violation as indicated in the Sanction Schedule (See Policy and Procedure 7.18 - Sanctions).
- VII. Any violation identified through any means will count toward the establishment of a pattern for purposes of sanction (for those sanctions that require a pattern of violations) as long as the violation(s) occurs within a twenty-four (24) consecutive month period of another such violation.
- VIII. Compliance Investigations and/or Routine Monitoring Reviews should be completed within a twenty-four (24) consecutive month period. If a pattern or a sanctionable offense has not been established within a twenty-four (24) consecutive month period, the Investigation and/or Review may be closed administratively.
  - A. Any violation identified during the course of those Investigations and/or Reviews or other analysis of data and records will count towards establishing a pattern of violations for sanction as indicated in Policy VII, above.
- IX. A Compliance Investigation using Inventory Audits will be closed after any of the following occurrences (Note: LA WIC may complete the Inventory Audit prior to sanctioning a Vendor.):

- A. The Vendor is determined to be compliant,
  - B. The Vendor has a violation(s) that does not require a pattern (See Policy and Procedure 7.18 – Sanctions)
  - C. The Vendor has violation(s) that establish a pattern of a particular abuse,
  - D. An Inventory Audit has been completed and revealed violation(s) that do not establish a pattern of a particular abuse.
  - E. A pattern or sanctionable offense has not been established within a twenty-four (24) consecutive month period
- X. Vendors will **not** be provided notice of and given an opportunity to correct violations identified through an Inventory Audit.
- XI. LA WIC shall request inventory records at the appropriate point in the Inventory Audit process.
- A. Invoices shall be reviewed by LA WIC to determine that the invoices are
    - i. within the period requested,
    - ii. for the Vendor being investigated,
    - iii. from an inventory record showing all WIC purchases from permitted wholesalers, that contains the following information:
      - 1. the name of the Vendor being investigated
      - 2. the date of purchase,
      - 3. the wholesaler’s name,
      - 4. invoice number, and
      - 5. the WIC item size, quantity and brand of each specific WIC Approved Food Item purchased.
    - iv. from a source that appears on the LA WIC Infant Formula Supplier List (“Supplier List”).
  - B. Any invoices submitted by the Vendor not meeting the criteria in Policy XII.A, above, shall be excluded from the upcoming calculation and could lead to required recoupment from the Vendor and/or sanctions. LA WIC may refer Vendors that submit invoices from improper Suppliers without an LDH permit to operate to Sanitarian Services.
- XII. If an Inventory Audit reveals Deficiencies, LA WIC shall establish a claim against the Vendor by the end of the Investigation. The claim against the Vendor will be the total amount of all Deficiencies identified over the course of the Audit.
- XIII. LA WIC shall request a Corrective Action Plan (CAP) in response to any identified Deficiency that does not establish a pattern. The CAP process does not relieve a Vendor of the obligation to pay a claim for such Deficiencies nor does the CAP process remove the obligation to serve a disqualification or pay a Civil Money Penalty (CMP) in lieu of a disqualification.



## 7.18 SANCTIONS

- I. The Louisiana WIC Program (LA WIC) shall pursue adverse action against an Authorized WIC Vendor (Vendor) that fails to meet vendor selection criteria, commits a Federal Mandatory Vendor Sanction Violation(s), and/or commits a State Agency Vendor Sanction Violation(s). See LAC 48:V.4503 and LAC 48:V.4509.
- II. Federal Regulations at 7 CFR §246.12(l)(2)(i) and guidance from the USDA WIC Vendor Management & Food Delivery Handbook (Sept. 2017, section 9.1.2., pg. 35) mandate that LA WIC develop a definition of a pattern of violations. Some Federal Mandatory Vendor Sanctions and all State Agency Vendor Sanctions must be based on a pattern of violations (See 7 CFR §246.12(l)(1) and §246.12(l)(2)(i)). The definition of a pattern of violations may be different for different types of violations (e.g., to account for severity). LA WIC defines a pattern for each violation as indicated in the Sanction Schedule below.
- III. Unaddressed violations will carry from one agreement period to the next.
- IV. Any violation identified through any means will count toward the establishment of a pattern for purposes of sanction (for those sanctions that require a pattern of violations) as long as the violation(s) occurs within a twenty-four (24) consecutive month period.
- V. Compliance Investigations and/or Monitoring Reviews should be completed within a twenty-four (24) consecutive month period. If a pattern or a sanctionable offense has not been established within a twenty-four (24) consecutive month period, the investigation and/or review may be closed.
  - A. Any violation identified during the course of those investigations and/or reviews or other analysis of data and records will count towards establishing a pattern of violations for sanction as indicated in Policy IV, above.
- VI. When LA WIC determines a Vendor has committed multiple violations (which may include violations subject to Mandatory Federal Vendor Sanctions and/or State Agency Vendor Sanctions), LA WIC must disqualify the Vendor for the period corresponding to the most serious violation. However, LA WIC must include all violations in the notice of adverse action and enter all such violations into the vendor record. If a Federal Mandatory Vendor Sanction is not upheld on appeal, then LA WIC may impose an established State Agency Vendor Sanction.
- VII. Corrective Action Plan (CAP)
  - A. For State Agency Vendor Sanction Violation(s) that require a pattern of abuse prior to disqualification or termination of the Vendor Agreement, such violations may be subject to a Corrective Action Plan (CAP) at LA WIC's discretion. CAPs must be implemented by Vendors when required and can include, but are not limited to, store employee training, stock rotation training, and/or training on WIC EBT Transaction Procedures.
- VIII. Effect on Other Stores Under Same Ownership

- A. If an individual, partner, corporation, limited liability company, or other business structure is convicted of a criminal offense involving WIC, SNAP, or any other program funded and administered by the Food and Nutrition Service of the U.S. Department of Agriculture, all grocery stores wholly or partially owned or managed by the convicted individual, partnership, corporation, limited liability company, other business structure, or by a partner of a convicted partnership or an officer, director of a convicted corporation, or a convicted limited liability company, shall be terminated from WIC Authorization and shall be ineligible for future WIC Authorization for the maximum period allowed by federal law and regulations.
  - i. This termination and period of ineligibility shall occur whether or not the grocery store was the location at which the crime occurred, and regardless of whether or not a penalty was imposed upon the convicted party by the court of competent jurisdiction.
- IX. Legal Remedies Not Precluded by Sanction
  - A. Sanctions for Vendor violations or Program abuse shall not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state statute or local ordinance. Where appropriate, LAWIC will refer Vendors who abuse the Program to federal, state and local authorities for prosecution.
- X. Notification to FNS
  - A. Federal Regulations at 7 CFR §246.12(l)(1)(xi) mandate that LA WIC notify FNS that it has either disqualified or imposed a civil money penalty in lieu of disqualification for any of the Federal Mandatory Sanction Violations listed in §4509.B.1-4. Disqualification from WIC may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP) and such SNAP disqualification is not subject to administrative or judicial review under the SNAP. See 7 CFR §246.12(h)(3)(xxvi).
- XI. SNAP Disqualification and Civil Money Penalty (CMP)
  - A. SNAP Disqualification
    - i. A Vendor who is disqualified from SNAP will be disqualified from LA WIC, unless such disqualification would result in inadequate participant access. The disqualification shall be for the same length of time as SNAP disqualification, may begin at a later date than SNAP disqualification, and is not subject to administrative or judicial review under LA WIC (See Policy and Procedure 7.23 - Administrative Hearings).
      - 1. If participant access is at issue, LA WIC must impose a Civil Money Penalty (CMP) in lieu of disqualification.
  - B. SNAP CMP

- i. A Vendor who receives a CMP for hardship by SNAP will be disqualified from LA WIC, unless such disqualification would result in inadequate participant access. The length of such disqualification will correspond to the period for which the Vendor would otherwise have been disqualified in SNAP.
  - 1. If participant access is at issue, LA WIC may not disqualify the Vendor or impose a CMP in lieu of disqualification.

**XII. Mandatory Sanction by Another WIC State Agency**

- A. A Vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC State agency for a Federal Mandatory Vendor Sanction(s) will be disqualified from LA WIC, unless such disqualification would result in inadequate participant access. The length of the disqualification will be for the same length of time as the disqualification by the other WIC State agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC State agency, for the same length of time for which the Vendor would otherwise have been disqualified.
  - i. The disqualification may begin at a later date than the sanction imposed by the other WIC State agency.
  - ii. If LA WIC participant access is at issue, LA WIC must impose a CMP in lieu of disqualification, except that if the other WIC State agency has imposed a CMP in lieu of disqualification, LA WIC may not impose a CMP in lieu of disqualification.

**XIII. LA WIC Sanction Schedule:**

<b>Federal Mandatory Vendor Sanction Violation (See LAC §4509.A.-A.4.b)</b>	<b>Pattern of Violations Required?</b>	<b>Number of incidences required to establish a pattern</b>	<b>Federal Sanction - Disqualification Period</b>	<b>SNAP Notification Required?</b>
Conviction of trafficking in Food Instruments (FIs) or Cash-Value Vouchers (CVVs) or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for FIs or CVVs.	No	1	Permanent	Yes
One incidence of buying or selling a WIC FI or CVV for cash (trafficking).	No	1	6 years	Yes
One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended, in exchange for a WIC FI or CVV.	No	1	6 years	Yes
One incidence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for a WIC FI or CVV.	No	1	3 years	Yes



<b>Federal Mandatory Vendor Sanction Violation (See LAC §4509.A.-A.4.b)</b>	<b>Pattern of Violations Required?</b>	<b>Number of incidences to establish a pattern</b>	<b>Federal Sanction - Disqualification Period</b>	<b>SNAP Notification Required?</b>
A pattern of claiming reimbursement for the sale of an amount of a specific WIC Approved Food Item (at the category level) that exceeds the store’s documented inventory of that WIC Approved Food Item at the WIC Approved Food Category level for a specific period of time.	Yes	2	3 years	Yes
A pattern of vendor overcharges.	Yes	3	3 years	Yes
A pattern of receiving, transacting and/or redeeming FIs or CVVs outside of authorized channels, including the use of an unauthorized Vendor and/or an unauthorized person;	Yes	2	3 years	Yes
A pattern of charging for WIC Approved Food Items not received by the WIC Participant.	Yes	3	3 years	Yes
A pattern of providing credit or non-food items—other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended — in exchange for FIs or CVVs.	Yes	2	3 years	Yes
A pattern of providing unauthorized food items in exchange for FIs or CVVs, including charging for WIC Approved Food Items provided in excess of those listed on the FI.	Yes	3	1 year	Yes
A pattern of an above-50-percent Vendor providing prohibited incentive items to WIC Participants as set forth in Federal Regulations, 7 CFR § 246.12(g)(3)(iv) and LAC Title 48:V.4503.B.21.	Yes	3	1 year	Yes

<b>State Agency Vendor Sanction Violation (See LAC §4509.D.-D.9)</b>	<b>Pattern of Violations Required?</b>	<b>Number of incidences to establish a pattern</b>	<b>State Agency Sanction - Disqualification Period</b>	<b>SNAP Notification Required?</b>
Providing cash for returned WIC Approved Food Items purchased with WIC FIs/CVVs.	Yes	3	1 year	No
Failing to comply with FI and CVV processing and redemption procedures, as described in the Vendor Agreement (also outlined in this WIC Vendor Guide).	Yes	3	1 year	No
Stocking or selling WIC Approved Food Items that are expired or otherwise not fresh, as determined by LA WIC.	Yes	3	1 year	No
Failing to participate in and complete training, as scheduled and required by LA WIC.	Yes	2	1 year	No



State Agency Vendor Sanction Violation (See LAC §4509.D.-D.9)	Pattern of Violations Required?	Number of incidences to establish a pattern	State Agency Sanction - Disqualification on Period	SNAP Notification Required?
Failing to maintain or provide the State agency with required information by the due date identified by LA WIC.	Yes	2 (of the same request)	1 year	No
Failing to notify LA WIC of instances in which a WIC Participant or proxy has failed to comply with WIC Program requirements.	Yes	3	1 year	No
Failing to provide to WIC Participants or proxies the same courtesies as offered to other customers.	Yes	3	1 year	No
Failing to implement a corrective action plan imposed by LA WIC.	Yes	3	1 year	No
Failing to adhere to any other requirements of the Vendor Agreement or this Vendor Guide except those for which a longer disqualification period is required by Federal Regulation.	Yes	3 (of the same requirement)	1 year	No

<b>Vendor Selection Criteria (See LAC§4503.B.-B.23)</b>	
<ul style="list-style-type: none"> <li>• <b>Vendors must meet all Vendor Selection Criteria at all times</b></li> <li>• <b>Vendors who fail to meet any Selection Criteria at any time may have their Vendor Agreement with LA WIC terminated</b></li> <li>• <b>A pattern of non-compliance is NOT required prior to Sanction (termination)</b></li> <li>• <b>Vendors who are terminated for failing to meet Vendor Selection Criteria may not reapply for LA WIC Vendor Authorization for a year</b></li> <li>• <b>Each of the following constitutes cause for termination of the Vendor Agreement:</b></li> </ul>	
	Failure to be currently authorized and participating in the USDA Supplemental Nutrition Assistance Program (SNAP) and cannot have received a SNAP Civil Money Penalty (CMP) for which the disqualification period, if it had been imposed, would not yet have expired.
	Failure to have a grocery class permit to operate issued for the current state fiscal year (the Louisiana state fiscal year runs from July 1 – June 30).
	Failure to maintain the establishment in a clean, orderly and safe condition and comply with applicable health protection laws and ordinances as defined by Louisiana Department of Health’s Office of Public Health, located at <a href="http://ldh.louisiana.gov/index.cfm/page/448">http://ldh.louisiana.gov/index.cfm/page/448</a> .
	Failure to be open a minimum of six (6) days and at least 48 hours per week.
	Failure to have prices that are competitive with other Vendors in the Vendor’s LA WIC-designated peer group, as determined by LA WIC’s CPC.
	Failure to display prices for WIC Approved Food Items on the foods or on the shelves/display area in immediate proximity to the foods.
	Failure to stock and maintain sufficient quantities and varieties of all WIC Approved Food Items in accordance with LA WIC’s Minimum Stock Requirements.



<b>Vendor Selection Criteria (See LAC§4503.B.-B.23), cont.</b>	
	Failure to purchase infant formula only from sources included on LA WIC's list of infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula, and infant formula wholesalers, distributors, and retailers licensed via a permit to operate.
	Owners or management personnel have been formerly employed by Vendors disqualified from any USDA food program within the past six years.
	Have been denied WIC authorization or had a prior WIC authorization terminated by the State agency within the past year for any reason other than the expiration of the vendor agreement, store closing, or store relocation.
	Owners or management personnel have been convicted of any felony within the past six years.
	Owners or management personnel have been convicted of any federal, state, or local tax violations within the past six years.
	Owners or management personnel have had a criminal conviction or civil judgment entered against them within the past six years for any activity indicating a lack of business integrity (including but not limited to fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice).
	Failure to be in good standing with no unpaid or overdue balances owed to LA WIC.
	Failure to provide truthful and accurate information to LA WIC or have had any Vendor Agreement terminated due to false or inaccurate information provided to LA WIC within the past 6 years.
	Failure to have access to a computer, with internet access, have an e-mail account that can be used to send messages to and receive messages from LA WIC, and be able to download and upload electronic documents sent/received via email or posted/requested on the Vendor Portal or any other online application used by LA WIC.
	Failure to utilize a cash register system (with EBT capability) that performs split tender transactions and produces itemized receipts showing, date of purchase, items purchased, price of items purchased and the total sale amount, at a minimum.
	Failure, after six months of Program authorization, to redeem at least fifty (50) WIC FIs per month.
	Vendor derives or expects to derive more than 50% of annual food sales revenue from WIC Transactions.
	Failure to be a full-line grocery store, as defined in the Vendor Guide.
	Failure of an A-50 Vendor that is needed for participant access to agree to be placed in a Vendor peer group with other above-50-percent (A50) Vendors. Vendors within this peer group shall maintain WIC Approved Food Item prices at a level such that the average payment per FI for above-50-percent (A50) Vendors does not exceed the average payment per FI to regular Vendors.
	Failure of an A-50 Vendor that is needed for participant access to agree to neither provide nor advertise nor indicate an intent to provide customers with any incentive items, including the following prohibited incentive items: <ul style="list-style-type: none"> <li>i. Goods or services which result in a conflict of interest or the appearance of such conflict for the Above-50-Percent (A50) Vendor, such as assistance with applying for WIC benefits.</li> <li>ii. Lottery tickets at no charge or below face value.</li> <li>iii. Cash gifts in any amount for any reason.</li> <li>iv. Anything made available in a public area as a complimentary gift which may be consumed or taken without charge.</li> </ul>



## Chapter 7

### LA WIC Vendor Policies

	<ul style="list-style-type: none"><li>v. An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit would not exceed the less-than-\$2 nominal value limit;</li><li>vi. Food, merchandise or services of greater than the less-than-\$2 nominal value provided to the customer;</li><li>vii. Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;</li><li>viii. Any kind of prohibited incentive item which incurs a liability for LA WIC; and</li><li>ix. Any kind of prohibited incentive item which violates any federal, state, or local law or regulations.</li></ul>
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## 7.19 PARTICIPANT ACCESS DETERMINATIONS

- I. If a vendor applicant or an Authorized WIC Vendor (Vendor) fails to meet any of the vendor selection criteria noted in Policy I.A.i, below, the Louisiana WIC Program (LA WIC) may assess the adequacy of participant access prior to the termination of the Vendor Agreement and/or prior to the denial of a Vendor Application for WIC Authorization or reauthorization.
  - A. A participant access determination shall be conducted if the vendor applicant/Vendor fails to meet the following vendor selection criteria (See Policy and Procedure 7.05 - Vendor Selection Criteria, for a description of each of the criteria listed below):
    - i. SNAP Authorization, store condition, hours of operation, competitive prices, shelf prices, business integrity (USDA program disqualification, felony, taxes and conviction or judgement), good standing, WIC Transactions, A50 prohibited, full-line grocery, cash register system.
- II. LA WIC may assess the adequacy of participant access prior to disqualification, except where such disqualification results from a conviction for WIC Transaction trafficking or conviction for illegal sales or from a third or subsequent sanction for a Federal Mandatory Vendor Sanction Violation.
- III. Inadequate participant access will be determined at the sole discretion of LA WIC.
- IV. The validity or appropriateness of LA WIC's participant access criteria and determinations are not subject to administrative review.
- V. LA WIC, in its sole discretion, reserves the right to recruit Vendors in areas where participant access issues may exist.
- VI. All Vendors, including Vendors determined necessary for participant access, are subject to reassessment at all times throughout the authorization period.



## 7.20 CIVIL MONEY PENALTIES

- I. If the Louisiana WIC Program (LA WIC) determines that disqualification of a Vendor would result in inadequate participant access (See Policy and Procedures 7.19 - Participant Access Determination and Policy and Procedure 7.18 - Sanctions), LA WIC will impose a Civil Money Penalty (CMP) in lieu of disqualification, except where such disqualification results from
  - A. A conviction for WIC Transaction trafficking or conviction for illegal sales or from a third or subsequent sanction for Federal Mandatory Vendor Sanction Violation(s);
  - B. A SNAP CMP for hardship; or
  - C. Another WIC State agency's issuance of a CMP in lieu of disqualification for a Federal Mandatory Vendor Sanction.
- II. For each violation subject to disqualification, LA WIC will use the procedure below to calculate the CMP to be imposed in lieu of disqualification.
- III. After all administrative review/appeal rights have been exhausted, LA WIC will provide the appropriate FNS office with a copy of the notice of adverse action and information on Vendor(s) it has either disqualified or imposed a CMP in lieu of disqualification for any Federal Mandatory Vendor Sanction Violation(s). Disqualification from WIC may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP) and such SNAP disqualification is not subject to administrative or judicial review under SNAP.

### Civil Money Penalty Calculations

1. LA WIC will gather records pertaining to the sanction of the Vendor and determine if there were multiple violations. When a Vendor has committed multiple violations, LA WIC must impose a CMP for *each violation* that would otherwise result in a sanction.
2. For *each violation* that would otherwise result in disqualification, LA WIC will calculate the CMP as follows (See 7 CFR § 246.12(l)(1)(x)(C)):
  - a. Determine the Vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of adverse action is dated. If six full redemption months are not available, use the number of redemption months that are available.
  - b. Multiply the average of the Vendor's monthly redemptions by 10 percent (0.10); multiply the result from 2.a., above, by the number of months for which the Vendor would have been disqualified. Ensure that this amount does not exceed:
    - i. the maximum amount specified in 7 CFR § 246.12(l)(1)(x)(C) and 7 CFR § 3.91(b)(3)(v) for Federally Mandatory Vendor Sanction Violation(s).
    - ii. \$2500.00 for each State Agency Vendor Sanction Violation(s).
  - c. Total all CMPs. The total amount of the CMP imposed for violations may not exceed the maximum amount specified in 7 CFR § 246.12(l)(1)(x)(C) or 7 CFR § 3.91(b)(3)(v).

## 7.21 DISQUALIFICATIONS

- I. The Louisiana WIC Program (LA WIC) may disqualify an Authorized WIC Vendor (Vendor) that commits a Federal Mandatory Vendor Sanction Violation(s) and/or a State Agency Vendor Sanction Violation(s) (See LAC 48:V.4509).
- II. Disqualification shall be effective fifteen (15) calendar days after the date of the notice of adverse action, with the exception of disqualification due to
  - A. Permanent disqualification, which is effective on the date of receipt of the notice of adverse action (See 7 CFR § 246.129(l)(1)(i)).
- III. If a Vendor is disqualified, LA WIC will terminate the Vendor Agreement.
- IV. After all administrative review/appeal rights have been exhausted, LA WIC will provide the appropriate FNS office with a copy of the notice of adverse action and information on Vendor(s) it has either disqualified or imposed a CMP in lieu of disqualification for any Federal Mandatory Vendor Sanction Violation(s). Disqualification from WIC may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP); such SNAP disqualification is not subject to administrative or judicial review under SNAP.
- V. Voluntary withdrawal of a Vendor and non-renewal of the Vendor Agreement as an alternative to a LA WIC disqualification, will not be permitted. Documentation of the disqualification shall be entered into the record.
- VI. A Vendor that has been disqualified will not be automatically reinstated. Vendors who are disqualified must reapply after the disqualification period and meet all LA WIC requirements for WIC Authorization.
- VII. A Vendor that has been disqualified shall not transact WIC Benefits during the disqualification period. WIC Transactions that take place after the effective date of the disqualification and that have resulted in payment to the Vendor are subject to recoupment.
- VIII. Disqualification of a Vendor does not relieve the Vendor of the obligation to repay any monies claimed by and owed to LA WIC, including, but not limited to, Inventory Audit Deficiencies, WIC Transaction for Foods Not Received, a Vendor Overcharge, and allowing the purchase of an Unauthorized Food Item.

## 7.22 AGREEMENT TERMINATIONS

- I. The Louisiana WIC Program (LA WIC) may terminate a Vendor Agreement based on any of the following:
  - A. An Authorized WIC Vendor's (Vendor's) failure to meet vendor selection criteria at any time (See Policy and Procedure 7.05 - Vendor Selection Criteria);
  - B. A Vendor's change of ownership (See Policy and Procedure 7.12 - Change of Ownership);
  - C. A Vendor's change in availability or location (See Policy and Procedure 7.13 - Change in Availability or Location);
  - D. Identification of a conflict of interest between a Vendor and LA WIC and/or local agencies;
  - E. At the Vendor's request to terminate; or
  - F. At LA WIC's discretion after providing advance written notice of a period of not less than fifteen (15) calendar days to be specified by LA WIC (See 7 CFR § 246.12(h)(3)(xvii)).
- II. LA WIC must terminate the Vendor Agreement
  - A. When LA WIC disqualifies a Vendor (See Policy and Procedure 7.18 - Sanctions, and Policy and Procedure 7.21 - Disqualification); or
  - B. If LA WIC determines that the Vendor has provided false information in connection with its application for WIC Authorization (7 CFR § 246.12(h)(3)(xvii)).
- III. The termination of a Vendor Agreement will be effective fifteen (15) calendar days after the date of the notice of adverse action, with the exception of termination due to
  - A. Permanent disqualification at 7 CFR § 246.12(l)(1)(i), which is effective on the date of receipt of the notice of adverse action.
  - B. Change in Availability or Location, which is effective as of the date of the change in availability or location.
  - C. Change of Ownership, which is effective as of the date of the change in ownership
  - D. Providing false information, on the date of the notice of adverse action.
- IV. Voluntary withdrawal of a Vendor and non-renewal of the Vendor Agreement as an alternative to a LA WIC termination will not be permitted. Documentation of the termination shall be entered into the record.
- V. LA WIC will not accept a Vendor request to terminate the Vendor Agreement in lieu of a disqualification or a Civil Money Penalty (CMP).
- VI. LA WIC will not administer a Civil Money Penalty (CMP) in lieu of termination.
- VII. A Vendor that has been terminated from LA WIC will not automatically be reinstated. Vendors whose Vendor Agreements have been terminated must reapply and meet all LA WIC Vendor Rules and Regulations prior to WIC Authorization.



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- VIII. A Vendor whose Vendor Agreement is terminated for reasons other than expiration of the Agreement, change of ownership, store closing or store relocation cannot reapply to become an Authorized WIC Vendor until one (1) year from the date of termination.
- IX. A Vendor whose Vendor Agreement has been terminated shall not transact WIC Benefits during the termination period. WIC Transactions that take place after the effective date of the termination and that have resulted in payment to the Vendor are subject to recoupment.
- X. Termination of a Vendor's Vendor Agreement does not relieve the Vendor of the obligation to repay any monies claimed by and owed to LA WIC, including, but not limited to, Inventory Audit Deficiencies, WIC Transactions for Food Not Received, Vendor Overcharge, and Unauthorized Food Items.

### 7.23 ADMINISTRATIVE HEARINGS

- I. An Authorized WIC Vendor (Vendor) or vendor applicant that has an adverse action taken against it by the Louisiana WIC Program (LA WIC) will be provided written notification of the adverse action.
- II. If the adverse action is a denial of WIC Authorization or a permanent disqualification imposed under 7 CFR §246.12(l)(1)(i) and LAC 48:V.4509.A.1, the adverse action will be effective on the date of receipt of the notice of adverse action. Unless otherwise noted, the adverse action will be effective on the date noted in the notification and will remain in place during the administrative review.
- III. Some adverse actions taken by LA WIC that affect Vendors or vendor applicants may be subject to administrative review, if appealed.
- IV. If the Vendor or vendor applicant wishes to appeal the decision, the Vendor or vendor applicant must submit a request for appeal stating the reason for the appeal. The request must be submitted in writing and mailed to LA WIC within fifteen (15) calendar days after the receipt of LA WIC's written notification of adverse action. The notice of adverse action will include the mailing address to submit a request for appeal and the contact information of an LA WIC Staff member.
- V. Adverse actions subject to administrative review include the following:
  - A. Denial of WIC Authorization based on the application of the vendor selection criteria for minimum variety and quantity of WIC Approved Food Items.
  - B. Denial of WIC Authorization based on a determination that the Vendor is attempting to circumvent a sanction.
  - C. Termination of a Vendor Agreement for cause.
  - D. Disqualification, except as a result of a disqualification from SNAP.
  - E. Imposition of a fine or a Civil Money Penalty (CMP) in lieu of disqualification.
  - F. Denial of WIC Authorization based on the vendor selection criteria for business integrity.
  - G. Denial of WIC Authorization based on the vendor selection criteria for a current SNAP disqualification or Civil Money Penalty (CMP) for hardship.
  - H. Denial of WIC Authorization based on the application of the vendor selection criteria for competitive price.
  - I. The application of LA WIC's vendor peer group criteria and the criteria used to identify Vendors that are above-50-percent (A50) Vendors or comparable to above-50-percent (A50) Vendors.
  - J. Denial of WIC Authorization based on LA WIC established vendor selection criterion if the basis of the denial is a Vendor sanction or a SNAP withdrawal of authorization or disqualification.
  - K. Denial of WIC Authorization based on LA WIC's limiting criteria, if any.

- L. Denials of WIC Authorization because a Vendor submitted its application outside the timeframes during which applications are being accepted and processed.
  - M. Termination of an agreement because of a change in ownership or location or cessation of operations.
  - N. A Civil Money Penalty (CMP) imposed in lieu of disqualification based on a SNAP disqualification.
  - O. Disqualification based on the imposition of a SNAP Civil Money Penalty (CMP) for hardship.
  - P. Denial of an application based on a determination of whether a vendor applicant is currently authorized by SNAP.
- VI. Actions other than those listed in Policy V, above, are not subject to administrative review or appeal. Actions that are not subject to administrative reviews include, but are not limited to, the following:
- A. The validity or appropriateness of LA WIC's vendor limiting criteria, if any.
  - B. The validity or appropriateness of LA WIC's vendor selection criteria for minimum variety and quantity of WIC Approved Food Items, business integrity, and current SNAP disqualification or Civil Money Penalty (CMP) for hardship.
  - C. The validity or appropriateness of LA WIC's vendor selection criteria for competitive price, including, but not limited to, vendor peer group criteria and the criteria used to identify Vendors that are above-50-percent (A50) Vendors or comparable to above-50-percent (A50) Vendors.
  - D. The validity or appropriateness of LA WIC's participant access criteria and LA WIC's participant access determinations.
  - E. LA WIC's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list of businesses from which a Vendor may purchase infant formula pursuant to selection criteria.
  - F. The validity or appropriateness of LA WIC's prohibition of incentive items and LA WIC's denial of an above-50-percent (A50) Vendor's request to provide an incentive item to customers.
  - G. LA WIC's determination whether to notify a Vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction.
  - H. LA WIC'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 conduct of the violation.
  - I. Denial of WIC Authorization if LA WIC's Vendor authorization is subject to the procurement procedures applicable to LA WIC.
  - J. The expiration of a Vendor's Agreement.

- K. Disputes regarding WIC Transactions and Vendor claims (other than the opportunity to justify or correct a Vendor overcharge or other error).
  - L. Disqualification of a Vendor as a result of disqualification from SNAP.
- VII. A Vendor or vendor applicant who files a proper appeal request for those actions subject to administrative review will be provided:
- A. Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review and at least one opportunity to reschedule the administrative review date upon specific request.
  - B. The opportunity to examine, prior to the review, the evidence upon which LA WIC's action is based.
  - C. The opportunity to be represented by counsel.
  - D. The opportunity to cross-examine adverse witnesses (when necessary to protect the identity of witnesses, they may be cross-examined behind a protective screen or other device).
  - E. The opportunity to present its case.
  - F. An impartial decision-maker, whose determination is based solely on whether LA WIC has correctly applied federal and state statutes, regulations, policies, and procedures governing LA WIC, according to the evidence presented at the review.
  - G. Written notification of the review decision, including the basis for the decision, within ninety (90) calendar days from the date of receipt of a Vendor's request for an administrative review; however, this timeframe is only an administrative goal for LA WIC and, should a decision of the appeal review not be made within the specified time frame, such delay shall not provide a basis to overturn the adverse action.
- VIII. If the action being appealed by the Vendor or vendor applicant is a termination or denial of WIC Authorization due to the failure to meet the vendor selection criterion of price competitiveness (See Policy V.C or Policy V.H, above), pursuant to federal guidance, LA WIC will not provide the Vendor or vendor applicant with the analysis used to determine price competitiveness. Instead, LA WIC will provide the Administrative Law Judge with the analysis used to determine price competitiveness so that the Administrative Law Judge may make a determination of whether or not LA WIC followed policy and procedure in arriving at its conclusion regarding price competitiveness.
- IX. A Vendor who is permitted to continue its operations while its appeal is pending is not relieved of the continued responsibility of compliance with the terms of any written agreement with LA WIC.
- X. WIC Authorization does not constitute a license or property interest (See CFR §246.12(h)(3)(xxi)). A Vendor cannot claim and is not entitled to money for loss of WIC sales during the pendency of an appeal of an adverse action. If the Vendor is reinstated following a successful administrative review of an adverse action taken by LA WIC, the



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Vendor cannot claim and is not entitled to retroactive payments and/or compensation for revenues lost for the period of time the Vendor was not on the Program (See 7 CFR §246.12(l)(1)(i)).

- XI. Unless otherwise noted, administrative review decisions are the final action of LA WIC.
  - A. LA WIC reserves the right to file additional motions for reconsideration as well as motions for re-appeal. LA WIC is under no obligation to immediately reinstate the Vendor during ongoing proceedings
  - B. If the administrative review yields a decision in favor of LA WIC, the Vendor may pursue judicial review of the decision.
- XII. If the administrative review yields a decision in favor of the Vendor, the Vendor will be reinstated, provided the Vendor Agreement has not expired during ongoing proceedings.



## 7.24 ABOVE 50% (A50) VENDORS

- I. The Louisiana WIC Program (LA WIC) prohibits the WIC Authorization of an Above-50-Percent (A50) Vendor unless a Vendor's participation is required to address a participant access issue (See Policy and Procedure 7.19 - Participant Access Determinations).
- II. An A50 Vendor is an Authorized WIC Vendor (Vendor) that derives more than fifty percent (50%) of their annual food sales revenue from WIC Transactions, and new vendor applicants expected to meet this criterion under guidelines approved by FNS.
- III. For A50 Vendors, payment limitations ensure that the WIC Approved Food Item prices do not result in higher total food costs if WIC Participants choose to conduct their WIC Transactions with an A50 Vendor rather than a non-A50 Vendor (a Regular Vendor, a Vendor that does not meet the above-50-percent criterion). This is established by placing and maintaining all A50 Vendors in a separate peer group from non-A50 Vendors.
- IV. The A50 vendor peer group is required to keep WIC Approved Food Item prices at a level such that the average payments per food item for A50 Vendors does not exceed average payments per food item to non-A50 Vendors.
- V. If an A50 Vendor is WIC Authorized to address a participant access issue, the Vendor will be placed into a vendor peer group with all other A50 Vendors and properly notified of the vendor peer group assignment and restrictions on A50 Vendors, including the prohibition on advertising and providing incentive items.
- VI. LA WIC will periodically assess all Vendors and vendor applicants to determine A50 Vendor status.

## 7.25 EMERGENCY AND DISASTER PROCEDURES

- I. The Louisiana WIC Program (LA WIC) must seek approval from USDA/FNS in order to make WIC Approved Foods available, allow substitutions for WIC Approved Foods or take any other similar actions following an emergency, disaster, or public health crisis (hereinafter sometimes “Emergency-Disaster”).
- II. LA WIC will communicate to authorized vendors through standard communication methods regarding any temporary changes affecting established Policy and Procedure approved by USDA/FNS. If such communication methods are disrupted by the nature of the Emergency-Disaster, LA WIC may communicate to authorized vendors through any other reasonable communication method that remains available.
- III. When an Emergency-Disaster disrupts the supply of WIC Approved Foods or the ability of WIC participants to transact their WIC Benefits using normal channels, LA WIC must develop and present a plan to USDA/FNS for approval.
- IV. LA WIC may seek approval from USDA/FNS for temporary changes to its Policies, including, but not limited to: Compliance Investigations; Routine Monitoring; Selection Criteria; MARLs/CPC; Participant Access Determination; Vendor Disqualification, CMPs, and Termination; Submission of CAPs and Other Required Documents.

## 7.26 CONFIDENTIALITY

Confidential Vendor information collected by the Louisiana WIC Program (LA WIC) shall remain secure and will not be shared with persons, agencies or parties unless such disclosure is deemed appropriate. LA WIC shall continuously secure and protect all confidential Vendor information regardless of whether a Vendor is currently authorized or not.

- I. **Maintaining Confidentiality.** In the context of LA WIC, maintaining confidentiality means refraining from using or disclosing any confidential vendor applicant, WIC Participant or Vendor information gathered as a result of participation in LA WIC.
- II. **Confidential Vendor Information.** Pursuant to 7 CFR § 246.26(e), confidential Vendor information is any information about a Vendor (whether it is obtained from the Vendor or another source) that individually identifies the Vendor, except for a Vendor's name, address, telephone number, website/ e-mail address, store type, and authorization status.
  - A. Confidential Vendor information includes, but is not limited to, the following:
    - i. Bank account information;
    - ii. Peer group assignments;
    - iii. Pricing information; and
    - iv. WIC redemption information.
  - B. Examples of Vendor information that *is not* confidential include, but are not limited to, the following:
    - i. Store type and/or definitions used by LA WIC for the purposes of distinguishing peer groups;
    - ii. Aggregate data that does not individually identify a Vendor, including data regarding the number of Vendors in each peer group and price information;
    - iii. Altered Vendor information utilized in a case study by LA WIC for WIC Participant and/or vendor training; and
    - iv. When provided to the specific Authorized WIC Vendor, that Vendor's Peer Group assignment, and vendor-specific data regarding that Vendor's operations.
    - v. Information that meets this definition is confidential whether it is obtained directly from the Vendor or from another source.
- III. **Restricted use and disclosure.** Except as otherwise permitted, LA WIC must restrict the use or disclosure of confidential Vendor information to: Persons directly connected with the administration or enforcement of the WIC Program or SNAP or any federal or state law or local law or ordinance and Vendors that are subject to adverse action(s) or sanction(s).
  - A. **USDA and the Comptroller General.** Pursuant to 7 CFR § 246.26(g) and 7 CFR § 246.25(a)(4), LA WIC must provide the USDA/FNS and the Comptroller General of the United States access to all WIC Program records, including confidential Vendor, vendor applicant, and participant information.

- B. **Request for Information from USDA/FNS.** In accordance with 7 CFR § 246.26(b)-(c), upon request by USDA/FNS, LA WIC will provide information including, but not limited to, the following:
    - i. Statistical information or information in another form which does not identify particular individuals; and
    - ii. Medical data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be at nutritional risk.
  - C. **Vendor Subject to Adverse Action/Sanction.** Pursuant to 7 CFR § 246.26(e)(3)-(4), LA WIC may at its sole discretion disclose confidential Vendor information regarding adverse action(s) pertaining to the Vendor subject to the adverse action(s). This information may only be disclosed to the Vendor that is the subject of the adverse action or sanction and to officials responsible for the administration and enforcement of the WIC Program and applicable federal, state, and local statute or ordinance as described above. LA WIC's covert investigative techniques are not subject to disclosure.
- IV. **Subpoenas and search warrants.** LA WIC may disclose confidential Vendor information pursuant to a valid subpoena or search warrant 7 CFR § 246.26(i)(1)-(2):
- A. **Subpoena.** If the request is in the form of a subpoena duces tecum (i.e., a subpoena for documents) or other subpoena for confidential Vendor information, LA WIC shall attempt to quash the subpoena unless the LA WIC determines, *in its sole discretion*, that disclosing the confidential information is in LA WIC's best interest. If LA WIC discloses confidential Vendor information, LA WIC shall seek to limit the disclosure. See Procedure I.B.ii.1.a, below.
  - B. **Search Warrant.** If the request is in the form of a search warrant, LA WIC shall comply with the search warrant and shall seek to limit the disclosure. See Procedure I.B.ii.1.b, below.
- V. **Records Requests.** Confidential Vendor information may not be shared as a part of any public records request, open records request, Freedom of Information Act (F.O.I.A.) request, or similar request.
- VI. **Confidentiality of SNAP retailer information.** Pursuant to 7 CFR § 246.26(f), LA WIC must restrict the use or disclosure of information about SNAP retailers obtained from SNAP, including information provided pursuant to Section 9(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2018(c)) and 7 CFR § 278.1(q), to persons directly connected with the administration or enforcement of the WIC Program.
- VII. **Confidential Participant Information.** For participant information, refer to the Nutrition Unit's LA WIC Policy & Procedure Manual, Chapter 24. Confidentiality (24:1



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Maintaining Confidentiality During WIC Services, 24:2 Confidentiality of Collected Information, and 24:3 Shared Information).

### 7.27 INFANT FORMULA SUPPLIER LIST

- I. Annually and as needed, the Louisiana WIC Program (LA WIC) will update and provide its LA WIC Infant Formula Supplier List (“Supplier List”), to Authorized WIC Vendors (Vendors).
- II. Vendors are only authorized to purchase, and have invoices for, infant formula from a source that appears on the Supplier List (See Policy and Procedure 7.05 - Vendor Selection Criteria).
- III. The Supplier List will only include infant formula manufacturers registered with the Food and Drug Administration (FDA) and Suppliers (wholesalers and distributors) that sell LA WIC’s contract-brand infant formula. LA WIC will also verify that the Supplier List is comprised of only infant formula Suppliers permitted by the State of Louisiana or, otherwise, authorized by another WIC State agency, as indicated on a State agency’s WIC infant formula supplier list.
- IV. LA WIC will, on a case by case basis, consider a Vendor’s request to add a Supplier to the Supplier List.
- V. Vendors must provide infant formula to WIC Participants only in exchange for WIC Benefits specifying infant formula.



7.28 RESERVED

## 7.29 VENDOR COMPLAINTS

- I. **Non-Discrimination:** The United States Department of Agriculture (USDA), its agencies, offices, employees, and institutions participating in or administering USDA Programs are prohibited from acting in a discriminatory manner (See CFR §246.8(a)). The USDA is an equal opportunity provider. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA,) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any Program or activity conducted or funded by USDA.
  - A. Persons with disabilities who require alternative means of communication for Program information (e.g., Braille, large print, audiotope, American Sign Language, etc.), should contact the Agency (state or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.
  - B. To file a Program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [How to File a Complaint](#), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:
    - i. Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410
    - ii. Fax: (202) 690-7442
    - iii. Email: [program.intake@usda.gov](mailto:program.intake@usda.gov)
- II. **Louisiana WIC Non-Discrimination:** The Louisiana WIC Program (LA WIC) must ensure that no persons be excluded from participation, denied benefits, or be otherwise subjected to discrimination under the Program based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any Program or activity conducted or funded by the USDA.
- III. **Unfair Treatment:** LA WIC also discourages intentional or unintentional acts of unfair treatment towards Authorized WIC Vendors (Vendors), vendor applicants, WIC Participants and participant applicants.



- IV. **Complaints Process:** If an accusation is submitted in the form of a complaint, LA WIC will take appropriate action when necessary on a case-by-case basis. Civil Rights will be addressed by LA WIC in conjunction with the USDA.
- V. **Classification of Complaints:** LA WIC distinguishes complaints into three separate categories: Vendor Complaints, Participant Complaints, and Civil Rights Complaints.
- A. **Vendor Complaints** (*Complaints about Vendors*) are complaints regarding adverse treatment or behavior committed by a Vendor against a WIC Participant including, but not limited to:
- i. Adverse treatment of a WIC Participant by a Vendor's owner, manager or employee.
  - ii. Charging more to WIC Participants than other customers.
  - iii. Providing outdated or spoiled food items.
  - iv. Refusal to accept manufacturers' coupons, or other store discounts.
  - v. Inadequate variety and/or quantity of WIC Approved Food Item(s).
  - vi. Failure to distribute WIC Approved Food Item(s) to intended WIC Participants.
- B. **Participant Complaints** (*Complaints about Participants*) are complaints regarding adverse treatment or behavior committed by a WIC Participant against a Vendor including, but not limited to:
- i. Adverse treatment of a Vendor's owner, manager or employees.
  - ii. Deliberate attempts to purchase unauthorized foods items.
  - iii. Deliberate attempts to purchase larger quantities of WIC Approved Food Item(s) than what is prescribed on a WIC Participant's EBT Card.
- C. **Civil Rights Complaints** are complaints submitted by an individual who believes and indicates they were treated differently based on their race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any Program or activity conducted or funded by the USDA.
- VI. **Multiple Classifications:** If based on the facts and circumstances written within the report, LA WIC determines that a complaint could be classified under more than one category outlined in Policy IV, above, LA WIC will address and document the complaint in accordance with the most severe accusation. **Example:** If a WIC Participant files a complaint against a Vendor, which reasonably illustrates discrimination based on race, LA WIC will follow its procedure for filing a Civil Rights Complaint rather than its Vendor Complaint Process.
- VII. **Validity and Merit:** A complaint will be considered to have merit if LA WIC or, for Civil Rights Complaints, the USDA in conjunction with LA WIC, determines the Vendor or WIC Participant violated any of the following:
- A. The Code of Federal Regulations,
  - B. Vendor Agreement,



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- C. The LA WIC Vendor Guide,
  - D. LA WIC Policies and Procedures,
  - E. Title VI of the Civil Rights Act of 1964,
  - F. Title IX of the Education Amendments of 1972,
  - G. Section 504 of the Rehabilitation Act of 1973,
  - H. The Age Discrimination Act of 1975,
  - I. Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b),
  - J. FNS instructions issued thereunder, or
  - K. State or local law.
- VIII. **Protection from Retaliation:** LA WIC will make every effort to protect individuals, agencies and representatives from retaliation based on the submission of a complaint(s).
- IX. **Record Maintenance:** LA WIC will retain a record of each complaint as well as the resolution of that complaint.

### 7.30 RECORDS RETENTION AND PUBLIC RECORDS REQUESTS

- I. **Federal Records Requirement.** Pursuant to 7 CFR § 246.25, the Louisiana WIC Program (LA WIC) must maintain full and complete records concerning Program operations.
- II. **LA WIC Records Defined.** LA WIC defines records as any books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by a representative of LA WIC exercising appropriate authority.
- III. **LA WIC Representative Defined.** An LA WIC Representative is any person who is an employee, attorney, legal agent or proxy authorized to act on behalf of LA WIC within the scope of their duties.
- IV. **Examples of LA WIC Records.** Records shall include, but not be limited to, documents that contain information pertaining to the following:
  - A. Financial operations
  - B. Food delivery systems
  - C. Food instrument issuance and redemption
  - D. Equipment purchases and inventory
  - E. Certification and recertification
  - F. Nutrition education, including breastfeeding promotion and support
  - G. Civil rights
  - H. Fair hearing procedures
- V. **Retention via Electronic Records.** LA WIC is only required to preserve one copy of any given record. In order to maintain efficient and economical records management system, LA WIC may preserve records utilizing an electronic digitizing process provided that process is capable of reproducing an unaltered image of an original source document.
- VI. **Retention of Source Document (original record).** LA WIC is not required to maintain the original source document if a document has been preserved utilizing electronic digitizing. Additionally, any electronically digitized copy which is an unaltered image of the source document is considered to be an original itself, and is admissible in all court or administrative proceedings.
- VII. **Location of Records.** At all times, LA WIC will store its records in a safe and secure location regardless of form (*electronic digitized form or original source document*). If for any reason LA WIC or USDA, in conjunction with LA WIC, determines a record must be

preserved in the form of the original source document, LA WIC will have the sole discretion to choose the exact place and location where the document(s) will be stored.

- VIII. **Records Maintained by Vendors.** As stated in the Vendor Agreement, Authorized WIC Vendors (Vendors) must retain certain records and make them available to LA WIC, FNS, and the Comptroller General of the United States, upon request. These records include but are not limited to the following:
- A. Inventory records used for federal tax reporting purposes
  - B. All Program-related records
  - C. Any other records specified in the Vendor Agreement
  - D. Food instrument issuance and redemption
- IX. **Retention Schedules.** LA WIC will preserve and maintain all records for a minimum of three years following the date of submission of the final expenditure report for the period to which the report pertains or, if for a longer period, according to the Records Retention Schedule for the Louisiana Department of Health / Office of Public Health / Public Health Services.
- X. **Records subject to pending litigation, claims, negotiation and audits.** If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records shall be kept until all issues are resolved, or until the end of the regular three-year period, whichever is later.
- XI. **Destruction of Records.** After the applicable retention period is satisfied, LA WIC may apply to destroy the records according to Procedure III, below.
- XII. **Records having Historical Interest.** If FNS deems any of the Program records to be of historical interest, upon request LA WIC or the WIC local agency may forward such records to FNS whenever either agency is disposing of them.
- XIII. **Public Records Requests.** Upon receipt of a request routed from the Public Records Request Department, LA WIC will process the request in accordance with the Procedure II, below, and provide any such records in the format that they are regularly kept.
- XIV. **Confidential Records.** Records that are private or confidential will not be subject to inspection, copying or reproduction (See Policy and Procedure 7.26 - Confidentiality of Vendor Information).
- XV. **No Duty to Release Records.** Absent a contradictory provision of this policy, subpoena, warrant, state or federal law, LA WIC has no obligation to release any records it has maintained to third parties and nothing herein shall be construed to require the disclosure of such information.
- XVI. **Absence of Record.** Pursuant to LA. R.S. 44:34, if the Public Records Request applied for is not in the custody or control of LA WIC, LA WIC shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of the staff's knowledge and belief, the reason for the absence of the record from LA WIC's custody or control, its



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location, what person then has custody of the record and the manner and method in which, and the exact time at which it was taken from LA WIC's custody or control.