

10A NCAC 43D .0707 VENDOR APPLICANTS

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall complete a WIC Vendor Application, a WIC Price List, as set forth in Item (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the State agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible nutritionals directly from:
 - (a) The sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
 - (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or
 - (c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the State or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible nutritionals. Receipts and invoices shall satisfy the requirements of Sub-items (32)(a) through (32)(c) of Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible nutritionals from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC-eligible nutritionals to WIC customers that was not purchased from the sources specified in this Item.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List shall not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:
 - (a) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The State agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the State agency shall use the WIC Price Lists which shall be submitted by all vendors by April 1 and October 1 each year in accordance with Item (34) of Rule .0708 of this Section. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.
 - (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the State agency for that applicant's peer group, the agency shall send the applicant written notice. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the State WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the State agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the State agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the agency

shall send the applicant a written notice of denial. The vendor applicant shall wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (25) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall either attend, or cause a manager or another authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.
- (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part, in the official name under which the business is registered or in the name under which it does business.
- (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
- (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.
- (14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including 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, as set out in 7 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;
 - (c) a plea of no contest, nolo contendere, or the equivalent; or
 - (d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
- (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:

- (a) a SNAP vendor that is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
- (b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.

- (17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.
- (18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.
- (19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a third party processor certified according to criteria established by the State WIC Program's EBT processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.

For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the State agency. If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786; Eff. February 1, 2013; Amended Eff. October 1, 2017; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017.