

1 10A NCAC 43D .0707 is proposed for amendment as follows:

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3 **10A NCAC 43D .0707 VENDOR APPLICANTS**

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

5 (1) A vendor applicant shall complete a WIC Vendor Application, a WIC Price List, as set forth in Item
6 (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor
7 applicant shall submit its current highest shelf price for each WIC supplemental food listed on the
8 WIC Price List, as set forth in Item (4) of this Rule.

9 (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit
10 all completed forms to the local WIC agency, except that a corporate entity operating under a WIC
11 corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists
12 to the State agency and a separate WIC Vendor Application for each store to the local WIC agency.
13 A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List
14 for those stores that have the same prices for WIC supplemental foods in each store, rather than
15 submitting a separate WIC Price List for each store.

16 (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible
17 nutritionals directly from:

- 18 (a) The sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference
19 with all subsequent amendments and editions;
- 20 (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of
21 this Item; or
- 22 (c) A source on another state's list of approved infant formula sources as verified by that state's
23 agency.

24 A vendor applicant shall make available to the State or local WIC agency invoices or receipts
25 documenting purchases of all infant formula, exempt infant formula, and WIC-eligible nutritionals.
26 Receipts and invoices shall satisfy the requirements of Sub-items ~~(32)(a)(24)(a)~~ through ~~(32)(e)~~
27 (24)(c) of Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last
28 year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase
29 infant formula, exempt infant formula, or WIC-eligible nutritionals from the sources specified in
30 this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had
31 a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula,
32 or WIC-eligible nutritionals to WIC customers that was not purchased from the sources specified in
33 this Item.

34 (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC
35 Price List shall not exceed the maximum price set by the State agency for each supplemental food
36 within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The
37 maximum price for each supplemental food shall be established as follows:

- 1 (a) The most recent ~~WIC Price Lists~~ prices submitted through the EBT system by authorized
2 vendors within the same peer group shall be used to determine the maximum price for each
3 supplemental food. The maximum price shall be ~~the 97th percentile of two standard~~
4 deviations above the average current highest shelf ~~prices for price~~ of each supplemental
5 food within a vendor peer group. The State agency shall reassess the maximum price set
6 for each supplemental food at least four times a year. ~~For two of its price assessments, the~~
7 ~~State agency shall use the WIC Price Lists which shall be submitted by all vendors by April~~
8 ~~1 and October 1 each year in accordance with Item (34) of Rule .0708 of this Section. The~~
9 ~~other two price assessments shall be based on WIC Price Lists requested from a sample of~~
10 ~~vendors within each peer group in January and July of each year.~~
- 11 (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s)
12 set by the State agency for that applicant's peer group, the agency shall send the applicant
13 written notice. Within 30 days of the date of the written notice, the vendor applicant may
14 resubmit price(s) that it will charge the State WIC Program for those foods that exceeded
15 the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the
16 maximum prices set by the State agency, the vendor applicant shall be deemed to have met
17 the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices
18 still exceed the maximum prices set by the State agency, or the vendor applicant does not
19 resubmit prices within 30 days of the date of written notice, the agency shall send the
20 applicant a written notice of denial. The vendor applicant shall wait 90 days from the date
21 of receipt of the written denial to reapply for authorization.
- 22 (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to
23 determine whether the store has minimum inventory of supplemental foods as specified in Item
24 ~~(25)~~(17) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a
25 second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both
26 reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date
27 of the second monitoring review before submitting a new application.
- 28 (6) A vendor applicant shall either attend, or cause a manager or another authorized store representative
29 to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization
30 and ensure that the vendor applicant's employees receive instruction in WIC program procedures
31 and requirements.
- 32 (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have
33 the prices posted on the shelf or display case at all times.
- 34 (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the
35 address indicated on the WIC vendor application and shall be the site where WIC supplemental
36 foods are selected by the WIC customer.

- 1 (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are
2 deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- 3 (10) The store shall be open throughout the year for business with the public at least six days a week for
4 at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- 5 (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part,
6 in the official name under which the business is registered or in the name under which it does
7 business.
- 8 (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to
9 become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC
10 agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had
11 a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading
12 information.
- 13 (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a
14 spouse, child, or parent who is employed by the State WIC program, or the local WIC program
15 serving the county where the vendor applicant conducts business. A vendor applicant shall not have
16 an employee who ~~handles, transacts, deposits, or stores WIC food instruments or cash value~~
17 ~~vouchers~~ handles or transacts WIC food benefits who is employed, or has a spouse, child, or parent
18 who is employed by the State WIC program or the local WIC program serving the county where the
19 vendor applicant conducts business. Such situations present a conflict of interest.
- 20 (14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current
21 owners, officers, or managers have been convicted of or had a civil judgment entered against them
22 for any activity indicating a lack of business integrity, including fraud, antitrust violations,
23 embezzlement, theft, forgery, bribery, falsification or destruction of records, making false
24 statements, receiving stolen property, making false claims, and obstruction of justice, as set out in 7
25 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
- 26 (a) a plea of guilty;
- 27 (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or
28 official, either civilian or military;
- 29 (c) a plea of no contest, nolo contendere, or the equivalent; or
- 30 (d) entry of a prayer for judgment continued following a conviction as defined in this Item is
31 the same as a conviction for purposes of this Item.
- 32 (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental
33 Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for
34 hardship and the disqualification period that otherwise would have been imposed has not expired.
- 35 (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a
36 separate manager on site for each store, shall not have an owner who holds a financial interest in
37 any of the following:

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

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

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

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

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32 *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.*
33 *246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786;*
34 *Eff. February 1, 2013;*
35 *Amended Eff. October 1, 2017;*
36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
37 *23, 2017; 2017.*

