

4617.0067 VENDOR ELIGIBILITY REQUIREMENTS.

Subpart 1. **Applicability to vendor applicants.** A pharmacy vendor applicant shall at all times comply with the requirements in subparts 2, item C; 4; and 6. A retail food vendor applicant shall at all times comply with the requirements in subparts 2, item A, and 3 to 6, and shall comply with the requirements in subpart 2, item B, no later than the date the applicant signs any vendor agreement.

Subp. 2. Location, licensing, and registration requirements.

- A. A retail food vendor must be a retail food store located in Minnesota, unless:
- (1) the retail food vendor is located in a state adjacent to Minnesota;
 - (2) there is a clinic town with no retail food vendors; and
 - (3) the distance from the clinic town to the retail food vendor is less than the distance from the clinic town to any other retail food vendor.
- B. A retail food vendor must:
- (1) be licensed by all government entities that require a license for the vendor to be open to the public for business;
 - (2) be authorized by the United States Department of Agriculture to accept SNAP benefits; and
 - (3) not have any restriction placed on its license that would preclude it from meeting the requirements of subpart 3.
- C. A pharmacy vendor must be a pharmacy located in Minnesota which is registered by the Minnesota Board of Pharmacy according to Minnesota Statutes, chapter 151.

Subp. 3. Minimum in-stock food requirements for retail food vendors.

- A. A retail food vendor located in a Tier 2 county shall at all times have in stock and available for purchase, at a minimum:
- (1) except as provided in item D, ten containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;
 - (2) 24 ounces of WIC-allowed plain, dry, infant cereal;
 - (3) ten gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:
 - (a) skim or nonfat;
 - (b) one percent milkfat; and

- (c) two percent milkfat;
 - (4) four pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two varieties;
 - (5) four one-dozen containers of WIC-allowed fresh eggs;
 - (6) three packages in sizes up to 16 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;
 - (7) 128 ounces of WIC-allowed canned beans or legumes, in any combination of at least three varieties;
 - (8) three containers in sizes up to 18 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;
 - (9) 24 pounds of WIC-allowed fresh fruits and vegetables in at least five varieties, two of which must be bananas and carrots;
 - (10) 30 ounces of WIC-allowed canned fish;
 - (11) 12 containers of any combination of the following, as long as at least four containers are 100 percent citrus juice:
 - (a) 11.5- to 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent juice; or
 - (b) 64-ounce containers of WIC-allowed pure and unsweetened 100 percent juice;
 - (12) nine boxes or bags of whole grain WIC-allowed cereal in any combination of at least five varieties;
 - (13) 128 ounces of WIC-allowed baby food fruits and vegetables in at least two varieties of baby food fruits and two varieties of baby food vegetables; and
 - (14) three pounds of WIC-allowed whole grains of at least three of the following varieties: whole grain bread, whole grain tortillas, oatmeal, and brown rice.
- B. A retail food vendor located in a Tier 1 county shall at all times have in stock and available for purchase, at a minimum:
- (1) except as provided in item D, 18 containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;
 - (2) 48 ounces of WIC-allowed plain, dry, infant cereal;

(3) 15 gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:

- (a) skim or nonfat;
- (b) 1 percent milkfat; and
- (c) 2 percent milkfat;

(4) six pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least three varieties;

(5) six one-dozen containers of WIC-allowed fresh eggs;

(6) four packages in sizes up to 16 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;

(7) 192 ounces of WIC-allowed canned beans or legumes, in any combination of at least three varieties;

(8) four containers in sizes up to 18 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;

(9) 30 pounds of WIC-allowed fresh fruits and vegetables in at least seven varieties, two of which must be bananas and carrots;

(10) 30 ounces of WIC-allowed canned fish;

(11) 18 containers of any combination of the following, as long as at least six containers are 100 percent citrus juice:

(a) 11.5- to 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent juice; or

(b) 64-ounce containers of WIC-allowed pure and unsweetened 100 percent juice;

(12) 12 boxes or bags of whole grain WIC-allowed cereal in any combination of at least six varieties;

(13) 256 ounces of WIC-allowed baby food fruits and vegetables in at least three varieties of baby food fruits and three varieties of baby food vegetables; and

(14) five pounds of WIC-allowed whole grains of at least three of the following varieties: whole grain bread, whole grain tortillas, oatmeal, and brown rice.

C. In determining the amounts and varieties of foods in stock and available for purchase, a retail food vendor may not include any expired or damaged foods or any food that originated from the Commodity Supplemental Food Program.

D. If the vendor has been a vendor for more than six months and, during the most recent six months for which data are available, has not redeemed any voucher for the infant formula specified in item A, subitem (1), or B, subitem (1), the vendor does not need to maintain in stock and available for purchase any of that type of infant formula.

E. If a WIC customer requests one of the following products, the vendor must ensure that a sufficient quantity of the product is in stock and available for purchase at the vendor's location within one week of the WIC customer's request:

- (1) an infant formula approved by the commissioner under part 4617.0171;
- (2) WIC-allowed soy beverage;
- (3) WIC-allowed tofu;
- (4) WIC-allowed baby food meats;
- (5) WIC-allowed canned fruits and vegetables;
- (6) WIC-allowed frozen fruits and vegetables; and
- (7) other WIC-allowed products authorized under Code of Federal Regulations, title 7, part 246, as amended.

Subp. 4. **Additional requirements.** A vendor shall comply with the following requirements.

A. A vendor must operate at one business site, located at a fixed and permanent location.

B. One or more of the controlling persons of the vendor must own or lease the real estate on which the vendor is located.

C. Employees who accept vouchers and cash-value vouchers for the vendor must be able to demonstrate their ability to process vouchers and cash-value vouchers according to this chapter.

D. A vendor must ensure that the price charged for each WIC-allowed food stocked by the vendor is displayed for easy viewing or marked on the food. If the vendor charges WIC customers less than the vendor's usual and customary charge, the WIC customer price must be displayed for easy viewing or marked on the food.

E. A vendor must ensure that no controlling person of the vendor and no spouse, child, or parent of any controlling person of the vendor:

- (1) is employed by the Minnesota Department of Health in connection with the WIC program;
- (2) is employed by a local agency in a capacity that allows the employee access to WIC vouchers or cash-value vouchers; or

(3) has a direct or indirect financial interest in a local agency.

F. At each check-out lane, a vendor must use a cash register that generates receipts including the date, the total price, and the price of each item received by the customer.

G. The vendor must be open for business at least 40 hours each week and must be open during the business hours that the vendor has reported to the WIC program.

Subp. 5. **Vendor prices.** With the exception of the authorized foods in subpart 3, items A, subitem (9), and B, subitem (9), a retail food vendor's price for each of the authorized foods in subpart 3 must not be more than 115 percent of the average price charged by retail food vendors. The commissioner shall determine the average price charged by retail food vendors based on the most recent price information available to the commissioner on prices charged by retail food vendors and according to Code of Federal Regulations, title 7, part 246, and approved by USDA in the annual state plan submitted by the commissioner. A change in the manufacturer's price of an authorized food in subpart 3 is grounds for the commissioner to change the commissioner's calculation of the average price charged by retail food vendors. If the commissioner determines that there is a religious need for a vendor to charge a specific price greater than 115 percent of the average price charged by retail food vendors, the vendor may charge that specific price.

Subp. 6. **Special requirements for vendor applicants.**

A. Within one year immediately preceding the date the commissioner received the vendor application, and at any time on or after the date the commissioner received the application, a vendor applicant must not have accepted a WIC voucher or cash-value voucher when the vendor applicant did not have a fully executed vendor agreement, unless the voucher or cash-value voucher was never paid by the WIC program's bank.

B. An applicant must not be disqualified from any WIC program or food assistance program at any time between the commissioner's receipt of the vendor application and the commissioner's execution of a vendor agreement with the vendor applicant. If a vendor applicant is subjected to a civil money penalty by a WIC program or food assistance program, and:

(1) the notice of the civil money penalty specifies that the penalty is in lieu of disqualification for a specific period of time, then the vendor applicant is not eligible to become a vendor if there is any overlap between that period of time and the period of time between the date the commissioner received the vendor application and the commissioner's execution of a vendor agreement with the vendor applicant; or

(2) the notice of the civil money penalty does not specify that the penalty is in lieu of disqualification for a specific period of time, then the vendor applicant is not eligible to become a vendor if the date the commissioner received the vendor application is

before the date of the notice of the civil money penalty or is less than six months after the date of the notice of the civil money penalty.

C. This item applies only to vendor applicants that are not vendors on the date the commissioner receives the application.

(1) The vendor applicant must not have as a controlling person someone who is, or has been, within the year immediately preceding the date the commissioner receives the vendor application, a controlling person of another retail food store or pharmacy at any location in the United States which:

(a) is disqualified from a WIC program or food assistance program; or

(b) within one year before the date the commissioner received the vendor application or at any time on or after the date the commissioner received the application, accepted a voucher or cash-value voucher when the retail store or pharmacy did not have a fully executed vendor agreement and the voucher or cash-value voucher was then paid by the WIC program's bank.

(2) A vendor applicant must not have as a controlling person someone with a business-related violation which occurred within ten years before the date the commissioner receives the vendor application or at any time on or after the date the commissioner receives the application.

(3) Based on criteria approved by the secretary of the United States Department of Agriculture, the vendor applicant's likely annual WIC sales must not be greater than 50 percent of the vendor applicant's total annual food sales.

D. The vendor applicant must not have as a controlling person someone who was, at the time of the WIC disqualification or civil money penalty, a controlling person of another retail food store or pharmacy at any location in the United States that was disqualified from the WIC program for six years or more or that received a civil money penalty in lieu of disqualification from the WIC program for six years or more.

E. The vendor applicant must not have as a controlling person someone who was, at the time of the SNAP disqualification or civil money penalty, a controlling person of another retail food store or pharmacy at any location in the United States that:

(1) was permanently disqualified from the SNAP; or

(2) received a civil money penalty in lieu of permanent disqualification from the SNAP.

F. The vendor applicant must have paid all money, including interest, owed to the commissioner under part 4617.0090, subpart 4.

G. The previous owner or owners of the retail food store or pharmacy must not have transferred it to the owner or owners of the vendor applicant in an attempt to circumvent a WIC sanction.

H. This item applies only to vendor applicants that are vendors on the date the commissioner receives the application. During each 12-month period of the current vendor agreement, the dollar amount of the vendor applicant's WIC sales must have been 50 percent or less of the vendor applicant's total food sales.

Statutory Authority: *MS s 144.11; 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164; 22 SR 266; 25 SR 555; 29 SR 1202; 34 SR 790*

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