

902 KAR 18:050. Vendor Authorization Criteria.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor authorization criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Vendor Authorization Criteria.

- (1) Only a vendor authorized by the state WIC agency shall redeem a food instrument.
- (2) Each store operated by a business entity shall be authorized separately from other stores operated by the business entity.
- (3) Each store shall have a single, fixed location and redeem the WIC food instruments and provide the WIC foods within the four (4) walls of the establishment.
- (4) A retailer authorized as a pharmacy shall only redeem food instruments for exempt infant formulas and medical foods.
- (5) Food vendors shall be authorized in sufficient numbers and with distribution adequate to ensure:
 - (a) Participant convenience and access; and
 - (b) Effective management of vendor review by the cabinet and the local agency.
- (6) In order to be an authorized WIC vendor, a vendor shall:
 - (a) Complete the application process, meet authorization criteria, and be approved by the state agency in accordance with the Kentucky WIC Manual for Applying Retailers;
 - (b) Provide information required by the WIC Manual, including sales volume and an updated application, requested by the state WIC agency;
 - (c) Stock, at all times, minimum inventory in accordance with the Quantified Minimum Inventory Requirements outlined in the Kentucky WIC Manual for Applying Retailers:
 1. The stock shall be in the store or in the store's stockroom;
 2. Expired foods shall not count towards meeting the minimum inventory requirement; and
 3. A pharmacy shall supply exempt formula or medical foods within forty-eight (48) hours of the state WIC agency request;
 - (d) Obtain infant formula only from the listing of Kentucky WIC Program Authorized Suppliers of WIC Approved Infant Formulas, <http://chfs.ky.gov/dph/mch/Vendor+Management.htm>;
 - (e) Except for a pharmacy, be in compliance with the Kentucky Food Code, 902 KAR 45:005, and have a valid retail food establishment or retail food store permit in the current owner's name;
 - (f) Except for a pharmacy, be an authorized SNAP retailer;
 - (g) Have competitive prices with other authorized WIC vendors in the area, compared according to the policy outlined in the WIC Manual for Applying Retailers and the Manual for Contracted WIC Vendors;
 - (h) Display the prices of WIC approved food items on each item or on the shelf or display case where the items are located. A cost plus ten (10) percent store shall post the final price (WIC price) on the shelf or on the signage in aisle;

- (i) Be in compliance with the other Food and Nutrition Service programs or the Medicaid program, including:
 - 1. Not be disqualified or withdrawn by the United States Department of Agriculture from participation in another Food Nutrition Service program or the Medicaid program;
 - 2. Not be denied application to participate in SNAP or Medicaid;
 - 3. Not be currently paying a civil money penalty to SNAP or Medicaid; or
 - 4. Not have been assessed a civil money penalty by SNAP or Medicaid, and the disqualification period that would otherwise have been imposed has not expired;
 - (j) Request authorization for a business whose primary purpose is to be a retail grocery.
 - 1. A direct distribution outlet or wholesale food establishment shall not be eligible.
 - 2. A vendor who derives more than fifty (50) percent of annual food sales revenue from the sale of food items that are purchased with WIC food instruments shall not be eligible.
 - 3. A retail grocery shall:
 - a. Have a separate and distinct grocery department in a stationary location which stocks staple food items in addition to WIC approved foods; and
 - b. Have fifteen (15) percent of gross sales in nontaxable food sales, excluding specialty items such as bakery goods for a bakery or produce for a fruit and vegetable stand.
 - 4. A dairy or home delivery grocery shall not be approved if it operates solely as a mobile operation.
 - 5. The use of drive-up windows shall not be approved;
 - (k) Be registered with the Secretary of State and be in good standing, if a corporation or partnership;
 - (l) Be open for business year round at least eight (8) hours per day, six (6) days per week;
 - (m) Be accessible to monitoring by state and federal officials without prior notice;
 - (n) Not be indebted to the WIC program for an unpaid claim or a civil money penalty against a store owned or previously owned by the applying owners; and
 - (o) Have the capability to accept WIC program benefits electronically. A store shall have the use of an internet cable or a currently Food and Nutrition Services certified system to accept online WIC EBT.
- (7) The WIC program shall not authorize a vendor applicant if, during the last six (6) years, an applicant current owner, officer, or manager has been convicted of or had a civil judgment for:
- (a) Fraud;
 - (b) Antitrust violation;
 - (c) Embezzlement, theft, or forgery;
 - (d) Bribery;
 - (e) Falsification or destruction of records;
 - (f) Making false statements or claims;
 - (g) Receiving stolen property;
 - (h) Obstruction of justice; or
 - (i) Another act reflecting on the business integrity and reputation of the applicant, such as removal from other federal or state programs.
- (8) The WIC program shall not authorize a store that has attempted to circumvent a period of disqualification from the program, including a store that has undergone a sale or changes of operation if the transaction involved the following parties:
- (a) The seller or transferor is an owner, operator, or manager currently suspended, sanctioned, or disqualified from WIC, SNAP, or Medicaid; and

- (b) The buyer or transferee is related to the seller by marriage or consanguinity within the fourth degree, or was a manager or employee of the seller when the sanction, suspension, or disqualification was issued or the violation occurred.
- (9) A contract shall not be entered into with a vendor if the contract would cause a conflict of interest, real or apparent.
- (10) The WIC program shall terminate a vendor contract if it determines the vendor or vendor's employee provided false information in connection with the vendor application.
- (11) An authorized WIC vendor shall send appropriate employees (owner, manager or head cashier) to attend state WIC agency required training.
- (12) If an applying retailer does not meet the criteria upon review by either the local or state WIC agency:
 - (a) The applying retailer shall be notified in writing;
 - (b) After two (2) reviews, the applying retailer shall not apply for the program for sixty (60) days from the date of denial;
 - (c) After three (3) reviews, the applying retailer shall not apply for 120 days from the date of the denial;
 - (d) Each subsequent denial shall result in an additional sixty (60) day denial.
- (13) A person aggrieved by a decision of the cabinet may file a written request for a hearing with the cabinet within fifteen (15) days after receipt of notice of the adverse action. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Procedures for Authorized Vendors. Authorized vendors shall comply with the Manual for Contracted WIC Vendors.

Section 3. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Kentucky WIC Manual for Applying Retailers", October 2013; and
 - (b) "Manual for Contracted WIC Vendors", October 2013.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
(40 Ky.R. 501; 832; eff. 10-16-2013; Crt eff. 4-13-2020.)