

CHAPTER 4617

DEPARTMENT OF HEALTH

WIC PROGRAM

4617.0002	DEFINITIONS.	4617.0056	CONTENTS OF NUTRITION EDUCATION SESSIONS.
	LOCAL AGENCIES	4617.0058	INDIVIDUAL NUTRITION CARE PLAN.
4617.0005	NOTICE OF AVAILABILITY OF WIC PROGRAM FUNDS.		VENDORS
4617.0010	APPLICATION FOR WIC PROGRAM FUNDS.	4617.0060	GENERAL APPLICATION REQUIREMENTS.
4617.0015	AGENCY ELIGIBILITY CRITERIA.	4617.0061	INITIAL APPLICATIONS.
4617.0020	AGENCY APPLICATION REVIEW AND APPROVAL.	4617.0062	NEW OWNER APPLICATIONS.
4617.0025	DISQUALIFICATION.	4617.0063	REAPPLICATIONS.
4617.0030	LOCAL AGENCY CONTRACTS AND AGREEMENTS.	4617.0064	PRIOR VENDOR APPLICATIONS.
4617.0035	STAFF QUALIFICATIONS.	4617.0065	VENDOR ELIGIBILITY CRITERIA.
4617.0037	AUTHORIZED PARTICIPATION LEVELS.	4617.0070	VENDOR STAMPS.
4617.0040	ADMINISTRATIVE FUNDING.	4617.0075	VENDOR GUARANTEES.
4617.0042	REPORTING REQUIREMENTS.	4617.0080	IDENTIFYING AND MONITORING HIGH RISK VENDORS.
4617.0043	EVALUATIONS AND MONITORING.		SANCTIONS.
4617.0044	NUTRITION EDUCATION PLAN; REQUIREMENT.	4617.0085	RETURNING VOUCHERS TO VENDORS.
4617.0045	NUTRITION EDUCATION PLAN SUBMISSION DEADLINES.	4617.0090	REIMBURSEMENT OF VOUCHER OVERCHARGES.
4617.0049	APPROVAL OF NUTRITION EDUCATION PLAN.		APPEALS
4617.0050	ROLE OF NUTRITION EDUCATION COORDINATOR.	4617.0100	APPEALS BY VENDORS AND LOCAL AGENCIES.
4617.0052	QUALIFICATIONS OF NUTRITION EDUCATION INSTRUCTORS.		WIC-APPROVED FOODS
4617.0054	SCHEDULE OF NUTRITION EDUCATION SESSIONS.	4617.0171	INFANT FORMULA APPROVAL PROCESS.
		4617.0172	NONCOMPETITIVE FOOD APPROVAL PROCESS.
		4617.0173	COMPETITIVE FOOD APPROVAL PROCESS.
		4617.0174	GENERAL PROVISIONS.

4617.0002 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them in this part.

Subp. 2. **Agency.** "Agency" means:

- A. a public or private, nonprofit health or human service agency;
- B. a community health board established pursuant to Minnesota Statutes, chapter 145A;
- C. an Indian tribe, band, or group recognized by the United States Department of the Interior which operates a health clinic or is provided health services by an IHS service unit; or
- D. an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the United States Department of the Interior, which operates a health clinic or is provided health services by an IHS service unit.

Subp. 2a. **Bran cereal.** "Bran cereal" means a cold, adult cereal for which the first ingredient listed on the label is wheat bran, oat bran, or corn bran.

Subp. 2b. **Brand.** "Brand" means, with respect to a food product, the name of a specific food product manufactured by a specific manufacturer.

Subp. 2c. **Breast-feeding.** "Breast-feeding" means the practice of feeding a mother's breast milk to her infant on the average of at least once a day.

Subp. 3. **Breast-feeding woman.** "Breast-feeding woman" means a woman who is breast-feeding her infant, up to one year postpartum.

Subp. 4. **Categorical status.** "Categorical status" means the status of a person as a pregnant woman, breast-feeding woman, postpartum woman, infant, or child.

Subp. 5. **Certification.** "Certification" means the process a local agency uses to determine and document an individual's eligibility for the WIC program.

Subp. 6. **Certifier.** "Certifier" means a person who meets the requirements of part 4617.0035, subpart 3.

Subp. 7. **Child.** "Child" means an individual who is at least one year old but who has not had a fifth birthday.

Subp. 8. **Clinic area.** "Clinic area" means a town or city in which a person is certified.

Subp. 9. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Health or the commissioner's designated representative.

Subp. 10. **Community health board.** "Community health board" means a board established, operating, and eligible for a subsidy under Minnesota Statutes, sections 145A.09 to 145A.13.

Subp. 11. [Repealed, 19 SR 2089]

Subp. 12. **Competent professional authority.** "Competent professional authority" means a person who meets the requirements of part 4617.0035, subpart 1, and who is qualified to determine nutritional risk, assign applicant priorities, prescribe supplemental foods, and provide a nutrition education contact.

Subp. 12a. **Corn cereal.** "Corn cereal" means a cold, adult cereal for which the first ingredient listed on the label is corn.

Subp. 13. **Dietetic technician.** "Dietetic technician" means a person who is registered or is eligible to be registered as a dietetic technician by the American Dietetic Association and who meets the requirements of part 4617.0035, subpart 4.

Subp. 14. **Dietitian.** "Dietitian" means a person who is registered as a dietitian by the American Dietetic Association.

Subp. 15. **Health service agency.** "Health service agency" means a public or private nonprofit agency whose primary purpose is to provide services designed to improve and protect an individual's health.

Subp. 16. **Home economist.** "Home economist" means a person who has a bachelor's or master's degree in home economics from a college or university accredited by the Association of Colleges and Schools and who meets the requirements of part 4617.0035, subpart 5.

Subp. 16a. **Hot cereal.** "Hot cereal" means an adult cereal for which the instructions on the label state to heat the cereal before consumption.

Subp. 17. **Human service agency.** "Human service agency" means a public or private nonprofit agency whose primary purpose is to provide services that include correctional, educational, employment, mental health, or social services.

Subp. 17a. **IHS.** "IHS" means the Indian Health Service of the United States Department of Health and Human Services.

Subp. 18. **Individual nutrition care plan.** "Individual nutrition care plan" means a plan established under part 4617.0058.

Subp. 19. **Infant.** "Infant" means an individual who is under one year of age.

Subp. 20. **Licensed practical nurse.** "Licensed practical nurse" means an individual who is licensed by the Minnesota board of nursing to practice practical nursing pursuant to Minnesota Statutes, sections 148.171 to 148.285, and who meets the requirements of part 4617.0035, subpart 6.

Subp. 21. **Local agency.** "Local agency" has the meaning given it in Code of Federal Regulations, title 7, section 246.2.

Subp. 22. **Medical consultant.** "Medical consultant" means a physician employed by or contracting with the commissioner to provide medical guidance to the WIC program.

Subp. 23. **Migrant farmworker.** "Migrant farmworker" has the meaning given it in Code of Federal Regulations, title 7, section 246.2.

Subp. 24. **Migrant service agency.** "Migrant service agency" means a local agency approved by the commissioner to serve only migrant farmworkers and to administer the WIC program for part of a year according to part 4617.0037, subpart 1.

Subp. 24a. **Noncitrus juice.** "Noncitrus juice" means:

- A. a fruit juice product which does not contain any citrus juice;
- B. a fruit juice product which contains both:
 - (1) one or more citrus juices; and
 - (2) one or more fruit juices which are not citrus juices; or
- C. a vegetable juice product.

Subp. 25. **Nutrition education coordinator.** "Nutrition education coordinator" means a competent professional authority who is a dietitian, home economist, nutritionist, or registered nurse.

Subp. 26. **Nutritionist.** "Nutritionist" means a person who has a bachelor's or master's degree in nutritional sciences, community nutrition, clinical nutrition, dietetics, or public health nutrition from a college or university accredited by the Association of Colleges and Schools.

Subp. 26a. **Oat cereal.** "Oat cereal" means a cold, adult cereal for which the first ingredient listed on the label is oats.

Subp. 27. **Ongoing, routine obstetric care.** "Ongoing, routine obstetric care" means a comprehensive continuation of care from antepartum care through a postpartum review and examination, as provided in the Standards for Obstetric–Gynecologic Services, American College of Obstetricians and Gynecologists, sixth edition, 1985, chapter 2. This document is incorporated by reference, is not subject to frequent change, can be found in the Minnesota Department of Health library, and is available through the Minitex interlibrary loan system.

Subp. 28. **Ongoing, routine pediatric care.** "Ongoing, routine pediatric care" means a comprehensive continuum of care from birth through five years of age that includes physical examinations at intervals, immunizations, counseling, health education, and a periodic review of health history according to the standards of care in the Guidelines for Health Supervision, American Academy of Pediatrics, first edition (1985). This document is incorporated by reference, is not subject to frequent change, can be found in the Minnesota Department of Health library, and is available through the Minitex interlibrary loan system.

Subp. 28a. **Participant.** "Participant" means a pregnant woman, breast-feeding woman, postpartum woman, infant, or child who is receiving WIC-approved foods or vouchers from a local agency, or an infant being breast-fed by a woman who is receiving vouchers from a local agency.

Subp. 29. **Participation level.** "Participation level" means the number of participants who are issued a voucher or are given food by a local agency during a period specified by the commissioner.

Subp. 30. **Person.** "Person" includes an individual, partnership, joint venturer, association, corporation or otherwise organized business entity, or combination of them.

Subp. 31. **Pharmacy vendor.** "Pharmacy vendor" means a vendor that is also a business registered by the Minnesota Board of Pharmacy in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or retailed.

Subp. 32. **Physician.** "Physician" means a person who is licensed to provide health services within the scope of that person's profession under Minnesota Statutes, chapter 147.

Subp. 33. **Physician's assistant.** "Physician's assistant" means an individual who is registered as a physician's assistant by the Minnesota Board of Medical Practice and who meets the requirements of part 4617.0035, subpart 7.

Subp. 34. **Postpartum woman.** "Postpartum woman" means a woman up to six months after termination of her pregnancy.

Subp. 35. **Pregnant woman.** "Pregnant woman" means a woman carrying one or more embryos or fetuses in utero.

Subp. 36. **Private physician.** "Private physician" means a physician or group of physicians who have contracted with a local agency to provide ongoing, routine pediatric care, ongoing, routine obstetric care, or both, to participants.

Subp. 37. **Proxy.** "Proxy" means a participant's legal guardian or a person designated by a participant or legal guardian who obtains a voucher from a local agency or redeems a voucher for a participant.

Subp. 38. **Registered nurse.** "Registered nurse" means an individual who is licensed by the Minnesota board of nursing to practice professional nursing pursuant to Minnesota Statutes, sections 148.171 to 148.285.

Subp. 39. **Restricted pharmacy vendor.** "Restricted pharmacy vendor" means a vendor that meets the requirements of part 4617.0065, subpart 2, item B, subitem (2), and who does not meet the requirements of part 4617.0065, subpart 2, item B, subitem (1).

Subp. 40. **Retail food vendor.** "Retail food vendor" means a vendor that is a grocer located in Minnesota whose primary purpose is to sell food at retail directly to the consumer according to Minnesota Statutes, section 28A.04.

Subp. 40a. **Rice cereal.** "Rice cereal" means a cold, adult cereal for which the first ingredient listed on the label is rice.

Subp. 41. **Transfer agency.** "Transfer agency" means a local agency that is approved according to part 4617.0020, subpart 3, to serve a geographic area or special population that was previously served by another local agency.

Subp. 42. **Vendor.** "Vendor" means a person that owns a pharmacy or food business for which a vendor stamp has been issued by the commissioner and that is in compliance with this chapter.

Subp. 43. **Vendor stamp.** "Vendor stamp" means a stamp with a number on the imprint face of the stamp that is issued by the commissioner to a vendor to authorize that vendor to accept WIC vouchers.

Subp. 44. **Voucher.** "Voucher" means a document which is authorized by the commissioner for use by a WIC customer to obtain WIC-approved foods from a vendor, and which may be deposited in the vendor's account at an established financial institution.

Subp. 44a. **Wheat cereal.** "Wheat cereal" means a cold, adult cereal for which the first ingredient listed on the label is wheat.

Subp. 44b. **WIC-approved foods.** "WIC-approved foods" means foods approved by the commissioner pursuant to this chapter for purchase with WIC vouchers.

Subp. 44c. **WIC customer.** "WIC customer" means a participant in the WIC program, a proxy, or a representative of the commissioner posing as a participant or proxy.

Subp. 45. **WIC program.** "WIC program" means the Special Supplemental Food Program for Women, Infants, and Children administered by the United States Department of Agriculture under United States Code, title 42, section 1786.

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

History: *13 SR 1190; 14 SR 164; L 1991 c 106 s 6; 19 SR 2089*

LOCAL AGENCIES

4617.0005 NOTICE OF AVAILABILITY OF WIC PROGRAM FUNDS.

At least once every two federal fiscal years beginning October 1, 1987, the commissioner shall send a notice of availability of WIC program funds to each agency that has asked the commissioner for the notice and to other interested agencies. The notice must also be published in the State Register at least 30 days before the application deadline given in the notice. The notice must include:

- A. a description of the WIC program;
- B. the format of the notice required under part 4617.0010, item A, and the date by which that notice must be submitted to the department;
- C. the date by which the application required under part 4617.0020, subpart 2, must be submitted to the department;
- D. the timetable for the commissioner's review of applications; and
- E. a description of the process used to authorize an agency to become a local agency under part 4617.0020.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0010 APPLICATION FOR WIC PROGRAM FUNDS.

An agency shall apply for WIC program funds according to items A to E.

A. An agency shall notify the commissioner in writing that it intends to apply for WIC program funds. The agency must submit the notice of intent on a format and by a date consistent with a notice of availability published under part 4617.0005.

B. Upon receiving an agency's notice of intent to apply for WIC program funds, the commissioner shall send to that agency an application form and instructions on how to complete the form.

C. An agency shall apply to administer the WIC program for a geographic area or a special population. A local agency shall not serve a participant who does not live in the geographic area or who is not a member of the special population designated on the application.

D. An agency shall submit an application form for WIC program funds no later than the date specified under part 4617.0005, item C. An application form must include the name and address of the applicant and must document that the applicant can meet the eligibility criteria under part 4617.0015.

E. If the commissioner determines that an application is incomplete, the commissioner shall request in writing that the agency submit the information needed to complete the application within 15 days after receiving that application. The commissioner shall not authorize an agency to administer the WIC program if it fails to submit the requested additional information.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0015 AGENCY ELIGIBILITY CRITERIA.

To be eligible for WIC program funds an agency must be able to:

A. provide ongoing, routine pediatric care and ongoing, routine obstetric care directly to recipients, through written agreements with other agencies or private physicians, or through referral to a health provider;

B. provide staff sufficient in number and training to perform the duties that must be performed by a competent professional authority; a nutrition education coordinator; a coordinator of the WIC program; a person authorized to legally obligate the local agency; and a fiscal manager for the local agency; and to perform certification, voucher issuance, and nutrition education services for which a competent professional authority is not required;

C. provide fiscal and operational systems that are consistent with Code of Federal Regulations, title 7, part 3015;

D. provide clinic sites that are located near major concentrations of participants and that are accessible to the handicapped; and

E. meet the definition of local agency under Code of Federal Regulations, title 7, section 246.2.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0020 AGENCY APPLICATION REVIEW AND APPROVAL.

Subpart 1. **General procedure.** The commissioner shall authorize an agency to administer the WIC program as a local agency by following in order the steps in subparts 2 to 7.

Subp. 2. **Agency application; review.** The commissioner shall, according to the timetable in the notice of availability required by part 4617.0005, review an application to determine whether the agency applicant meets the eligibility criteria in part 4617.0015 and whether the application was submitted according to part 4617.0010.

Subp. 3. **Agency application; approval and disapproval.** The commissioner shall approve or disapprove an application according to items A to C and subpart 4.

A. The commissioner shall approve only one application for each geographic area or special population.

B. If an application does not document that the agency meets the eligibility criteria in part 4617.0015 or is not submitted according to part 4617.0010, the commissioner shall disapprove the application by not authorizing the applicant to become a local agency.

C. Except as provided in subpart 4, the commissioner shall approve an application and authorize the applicant to become a local agency if the application was submitted according to part 4617.0010 and if the application documents that the applicant meets the eligibility criteria under part 4617.0015.

Subp. 4. **Performance record determination.**

A. If two or more applications to serve the same geographic area or special population could be approved under subpart 3, item C, the commissioner shall, according to subparts 8 and 9, determine whether one or more of the agencies has a poor performance record.

B. If all of the competing agencies have a poor performance record, the commissioner shall approve the application from the agency with the highest number of points assigned under subparts 8 and 9.

C. If only one of the competing agencies does not have a poor performance record according to subparts 8 and 9, the commissioner shall approve the application from that agency only.

D. If two or more competing agencies do not have a poor performance record according to subparts 8 and 9, the commissioner shall approve the application from the agency that is assigned the highest priority under subpart 6, or, if indicated by subpart 6, item D, the highest subpriority under subpart 7.

Subp. 5. Affirmative action plan. The commissioner shall establish an affirmative action plan according to Code of Federal Regulations, title 7, section 246.4, paragraph (a)(5). The plan must include a list of unserved areas and unserved populations in order of relative need for WIC program services. The order of relative need must be based on:

A. low birth weight, measured as the percent of births of infants weighing less than or equal to 2,500 grams;

B. teenage pregnancies, measured as the percent of mothers less than 18 years of age during the year of their infant's birth;

C. poor prenatal care, measured as the percent of pregnant women receiving no prenatal care or prenatal care only during the third trimester of pregnancy; and

D. poverty, measured as the percent of the total population with income below the poverty level as poverty is defined by the United States Office of Management and Budget and revised annually in accordance with United States Code, title 42, section 9902.

Subp. 6. Priority system. The priority system under this subpart must be used by the commissioner when required by subpart 4.

A. The commissioner shall give:

(1) first priority to a community health board established pursuant to Minnesota Statutes, chapter 145A;

(2) second priority to a public or private nonprofit health service agency;

(3) third priority to a public human service agency; and

(4) fourth priority to a private nonprofit human service agency.

B. For the purpose of the priority system, an agency must be classified as a health service agency or as a human service agency, based on the type of services it primarily provides during its current fiscal year. An agency must not be simultaneously classified as a health service agency and a human service agency. The commissioner shall consider an agency to be a health service agency if more than 50 percent of expenses in an agency's budget are allocated to non-WIC program health services and if more than 50 percent of the agency's employee work hours are non-WIC program health service activities.

C. The priority system under this subpart and the subpriority system under subpart 7 apply to:

(1) an agency that is applying for the first time;

(2) an agency that has applied before; and

(3) an agency that has previously administered the WIC program.

D. If two or more agency applicants have the same priority under this subpart, the commissioner shall assign subpriorities to those agencies according to subpart 7.

Subp. 7. Subpriority system. When required by subpart 6, the commissioner shall assign:

A. first subpriority to an agency whose employees can provide ongoing, routine pediatric and obstetric care, and administrative services;

B. second subpriority to an agency that must enter into a written agreement with another agency for either ongoing, routine pediatric and obstetric care, or administrative services;

C. third subpriority to an agency that must enter into a written agreement with private physicians to provide ongoing, routine pediatric and obstetric care for women, infants, or children or for participants not eligible for health services at the local agency;

D. fourth subpriority to an agency that must enter into a written agreement with private physicians to provide ongoing, routine pediatric and obstetric care for all participants; and

E. fifth subpriority to an agency that must provide ongoing, routine pediatric and obstetric care through referral to a health care provider.

Subp. 8. Performance record. A poor performance record under subpart 4 must be determined according to this subpart and subpart 9. To determine whether an agency has a poor performance record, the commissioner shall assign points to the agency that indicate whether the agency has performed poorly in the categories of: participation level; level of participation by pregnant women; submission of local agency response to written findings of a management evaluation or financial review, if applicable; corrective action taken by local agency in response to a management evaluation or financial review, if applicable; and submission of a nutrition education plan, or revisions of the plan. Poor performance is any total of points below 35 points. Points for each category of performance must be given according to the table of performance points under subpart 9. For a category of performance for which there has been more than one occurrence since the start date of a current local agency contract, points must be assigned for each occurrence and averaged to obtain the point value to be assigned to the category.

Subp. 9. Table of Performance points.

A. Participation Level

- 15 – Average participation level that is at least 98 percent but not more than 102 percent of the authorized level
- 10 – Average participation level that is 96 to 97.9 percent or 102.1 to 104 percent of the authorized level
- 5 – Average participation level that is 90 to 95.9 percent or 104.1 to 110 percent of the authorized level
- 0 – Average participation level that is less than 90 percent or more than 110 percent of the authorized level

B. Participation by Pregnant Women

- 15 – Participation by pregnant women increased by at least ten percent
- 10 – Participation by pregnant women increased by at least five percent but less than ten percent
- 5 – Participation by pregnant women maintained or increased by less than five percent
- 0 – Participation by pregnant women decreased

C. Response to Written Findings of Management Evaluation

- 15 – Response submitted within 30 days, or no response required
- 10 – Response submitted within 90 days but after 30 days
- 5 – Response submitted within 180 days but after 90 days
- 0 – Response submitted after 180 days, or not submitted

D. Response to Written Findings of Financial Review

- 15 – Response submitted within 30 days, or no response required
- 10 – Response submitted within 90 days but after 30 days

- 5 – Response submitted within 180 days but after 90 days
- 0 – Response submitted after 180 days, or not submitted

E. Corrective Action Taken in Response to Management Evaluation

- 15 – No correction needed
- 10 – Corrective action taken within six months from date of approval of corrective action plan
- 5 – Corrective action taken within one year but after six months from date of approval of corrective action plan
- 0 – Corrective action taken after one year from date of approval of corrective action plan, or not taken

F. Corrective Action Taken in Response to Financial Review

- 15 – No corrective action needed
- 10 – Corrective action taken within six months from date of approval of corrective action plan
- 5 – Corrective action taken within one year but after six months from date of approval of corrective action plan
- 0 – Corrective action taken after one year from date of approval of corrective action plan, or not taken

G. Nutrition Education Plan

- 15 – Nutrition education plan and required revisions submitted by the established deadline
- 10 – Nutrition education plan and required revisions submitted within 30 days after established deadline
- 5 – Nutrition education plan and required revisions submitted within 90 days but after 30 days after established deadline
- 0 – Nutrition education plan and required revisions submitted more than 90 days after established deadline, or not submitted

Subp. 10. **Notice of approval or disapproval.** Within 30 days after receiving a complete application, the commissioner shall give written notice to an agency that the commissioner has approved or disapproved its application. A notice of approval or disapproval must state:

A. that an application is:

- (1) approved as originally submitted;
- (2) approved with changes;
- (3) disapproved because of inadequate WIC program funds for WIC program expansion or initiation;
- (4) disapproved because the agency does not meet the application requirements; or
- (5) disapproved because the commissioner has approved another agency under subpart 6 or 7;

B. that an agency applicant may appeal a disapproval according to part 4617.0100; and

C. that an agency that is disapproved because of inadequate program funds must be approved if funds become available during the period for which the agency is applying.

Subp. 11. **Cessation of local agency operations.** If a local agency ceases to operate before the expiration date of its contract, the commissioner shall publish a notice of availability to solicit agency applications to serve the geographic area or special population that was

served by that local agency. The notice of availability must be published according to part 4617.0005.

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

History: *14 SR 164; 19 SR 2089*

4617.0025 DISQUALIFICATION.

The commissioner shall stop providing WIC program funds to a local agency if the local agency does not comply with parts 4617.0002 to 4617.0174. A local agency shall reimburse the commissioner for WIC program funds that are not distributed according to this chapter.

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

History: *14 SR 164; 19 SR 2089*

4617.0030 LOCAL AGENCY CONTRACTS AND AGREEMENTS.

Subpart 1. **State contracts.** To administer the WIC program, a local agency must have a written contract with the commissioner. The contract must:

A. contain the signature of a representative of the local agency who is authorized to legally bind the agency;

B. contain the provisions required by Code of Federal Regulations, title 7, section 246.6, paragraph (b);

C. be consistent with this chapter and Code of Federal Regulations, title 7, part 246;

D. contain a nondiscrimination clause regarding employment practices and the delivery of program benefits to eligible or potentially eligible participants that is consistent with the following statutes and the regulations adopted under them:

(1) Title VI of the Civil Rights Act of 1964, United States Code, title 42, sections 2000d to 2000d-4a;

(2) Title IX of the Education Amendments of 1972, United States Code, title 20, sections 1681 to 1688;

(3) section 504 of the Rehabilitation Act of 1973, United States Code, title 29, section 794;

(4) the Age Discrimination Act of 1975, United States Code, title 42, sections 6101 to 6107; and

(5) the Americans with Disabilities Act of 1990, United States Code, title 42, sections 12101 to 12213;

E. require the local agency to obtain written consent from the commissioner to implement a change to the application submitted under part 4617.0010;

F. provide assurances that no conflict of interest exists between the local agency and a vendor or the local agency and the commissioner;

G. specify beginning and ending dates of the contract; and

H. contain a statement that the local agency agrees to develop a nutrition education plan which:

(1) is consistent with Code of Federal Regulations, title 7, section 246.11, paragraph (d)(2);

(2) includes the criteria used to select participants for high-risk nutrition education; and

(3) includes the criteria the local agency uses to determine which participants will receive an individual nutrition care plan.

Subp. 2. **Health care provider agreements.** Except as provided in subpart 3, a local agency whose employees cannot provide ongoing, routine pediatric and obstetric care must have a written agreement with another agency or with a private physician to provide ongoing, routine pediatric and obstetric care. A local agency that provides services under this part must have a written agreement with at least one health care provider per clinic area. A written agreement to provide ongoing, routine pediatric or obstetric care must:

A. have the same beginning and ending dates as the contract completed under subpart 1;

- B. contain a nondiscrimination clause that is consistent with subpart 1, item D;
- C. be submitted to the commissioner for approval with the application form required under part 4617.0010, item D; and
- D. be consistent with Code of Federal Regulations, title 7, section 246.6, paragraph (d) or (e).

Subp. 3. Health service referral agreements and plans. An agency whose employees cannot provide or that does not provide ongoing, routine pediatric or obstetric care through a written agreement with another agency or with a private physician under subpart 2, shall submit with its application:

- A. at least one letter of understanding with a health care provider per clinic area that describes the referral process for health care and that designates responsibilities of the agency and health care provider; and

- B. a plan to make routine pediatric and obstetric care available to participants directly or through written agreements within 90 days after the start of a WIC program contract for that agency.

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

History: *14 SR 164; 19 SR 2089*

4617.0035 STAFF QUALIFICATIONS.

Subpart 1. Competent professional authority. A person designated by a local agency to serve as a competent professional authority must be employed by or under contract with the local agency and must be a certifier, dietetic technician, dietitian, home economist, licensed practical nurse, nutritionist, physician, physician's assistant, or registered nurse.

Subp. 2. Commissioner's review. The commissioner shall review the qualifications of a certifier, dietetic technician, home economist, licensed practical nurse, or physician's assistant and review the agency's plans for the supervision of a certifier, dietetic technician, physician's assistant, or licensed practical nurse to ensure compliance with this part.

Subp. 3. Certifier. A certifier must meet the requirements of items A to C.

- A. A certifier must have been approved by the commissioner to be a competent professional authority before October 1, 1987, and must be supervised on-site continuously by a nutrition education coordinator.

- B. A nutrition education coordinator shall review at least 25 percent of a certifier's charts biweekly, shall audit and document at least ten of the certifier's charts at least quarterly, and shall observe and document at least three certifications at least quarterly.

- C. A certifier approved under this subpart who voluntarily terminates employment or takes a leave of absence may be rehired as a certifier by a local agency within two years after the date employment is terminated or the leave of absence begins if supervision is provided according to items A and B.

Subp. 4. Dietetic technician. A dietetic technician must meet the requirements of item A and of item B or C.

- A. A nutrition education coordinator shall supervise a dietetic technician on-site at least four hours a month, audit and document at least ten of the dietetic technician's charts at least quarterly, and observe and document at least three certifications at least quarterly.

- B. A dietetic technician hired after September 30, 1987, must meet the requirements of subitems (1) to (3).

- (1) Within 30 days after the first day of employment, the dietetic technician must enroll in a self-study course designed by the commissioner.

- (2) Within six months after enrolling in a self-study course under subitem (1), the dietetic technician must take an examination on the self-study course in subitem (1).

- (3) Within one year after enrolling in the self-study course under subitem (1), the dietetic technician must pass the examination in subitem (2), in no more than three attempts.

- C. A dietetic technician approved under this subpart who voluntarily terminates employment or takes a leave of absence may be rehired as a dietetic technician by a local agency within two years of the date employment is terminated or the leave of absence begins

without repeating the self-study course if supervision is provided according to item A. A dietetic technician who is rehired after an involuntary termination or is rehired more than two years after the date employment was terminated or the leave of absence began must be considered a new hire under item B.

Subp. 5. Home economist. A home economist must meet the requirements of item A or B.

A. A home economist who was approved by the commissioner to be a competent professional authority before October 1, 1987, who does not meet the requirements of item B, and who terminates employment or takes a leave of absence may be rehired as a home economist by a local agency within two years after the date employment is terminated or the leave of absence begins.

B. A home economist hired after September 30, 1987, must have successfully completed college or university coursework including 18 quarter or 12 semester credits in food and nutrition, one-half of which must be in upper division courses. Food and nutrition credits must include courses on the principles of nutrition; the application of nutrition principles to the nutritional needs of infants, children, adults, pregnant women, and breast-feeding women; food budgeting and purchasing; and sociocultural determinants of food choices. Up to two quarter credits or one semester credit of food and nutrition coursework may include coursework in evaluating scientific literature or nutrition claims. The coursework must also include six quarter or four semester credits in the principles of education and counseling and nine quarter or six semester credits in physical and biological sciences. Physical and biological sciences credits may include coursework in chemistry, biology, microbiology, physiology, biochemistry, anatomy, or pathology.

Subp. 6. Licensed practical nurse. A licensed practical nurse must meet the requirements of item A, B or C, and D.

A. A nutrition education coordinator shall review at least 25 percent of a licensed practical nurse's charts monthly, audit and document at least ten of the licensed practical nurse's charts at least quarterly, and observe and document at least three certifications at least quarterly.

B. A licensed practical nurse approved by the commissioner to be a competent professional authority before October 1, 1987, must be supervised on-site at least four hours a month by a nutrition education coordinator.

C. A licensed practical nurse hired after September 30, 1987, must be supervised on-site continuously by a nutrition education coordinator. In addition, a licensed practical nurse hired after September 30, 1987, must:

(1) within 30 days after the first day of employment, enroll in a self-study course designed by the commissioner;

(2) within six months after enrolling in the self-study course under subitem (1), take an examination on the course; and

(3) within one year after enrolling in the self-study course under subitem (1), pass the examination in subitem (2) in no more than three attempts.

D. A licensed practical nurse approved under this subpart who voluntarily terminates employment or takes a leave of absence may be hired as a licensed practical nurse by a local agency within two years after the date employment is terminated or the leave of absence begins, without repeating the self-study course if supervision is provided according to items A and C. A licensed practical nurse who is rehired after an involuntary termination or is rehired more than two years beyond the date employment was terminated or leave of absence began must be considered a new hire under item C.

Subp. 7. Physician's assistant. A physician's assistant must meet the requirements of item A and of item B or C.

A. A nutrition education coordinator shall supervise a physician's assistant on-site at least four hours a month, audit and document at least ten of the physician's assistant's charts at least quarterly, and observe and document at least three certifications at least quarterly.

B. A physician's assistant hired after September 30, 1987, must meet the requirements of subitems (1) to (3).

(1) Within 30 days after the first day of employment, the physician's assistant must enroll in a self-study course designed by the commissioner.

(2) Within six months after enrolling in a self-study course under subitem (1), the physician's assistant must take an examination on the self-study course in subitem (1).

(3) Within one year after enrolling in the self-study course under subitem (1), the physician's assistant must pass the examination in subitem (2), in no more than three attempts.

C. A physician's assistant approved under this subpart who voluntarily terminates employment or takes a leave of absence may be rehired as a physician's assistant by a local agency within two years of the date employment is terminated or the leave of absence begins without repeating the self-study course if supervision is provided according to item A. A physician's assistant who is rehired after an involuntary termination or is rehired more than two years after the date employment was terminated or the leave of absence began must be considered a new hire under item B.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0037 AUTHORIZED PARTICIPATION LEVELS.

Subpart 1. **Migrant service agencies.** The authorized participation level of a migrant service agency must be based on an annual participation plan. The migrant service agency shall submit an annual participation plan with its application to become a local agency.

Subp. 2. **All other local agencies.** Before the start of a federal fiscal quarter, the commissioner shall determine the total number of participants that can be served statewide. The determination must be based on an estimate of funding available for the WIC program for the federal fiscal quarter.

To determine the authorized participation level for a local agency for a federal fiscal quarter, the commissioner shall consider the local agency's use of its current authorized participation level, the number of participants currently served by each local agency, and the number of applicants for participation on each local agency's waiting list in each priority or subpriority risk group.

Subp. 3. **Applicants who cannot be served.** Based on the estimate of funding available to the WIC program, the commissioner shall determine which priority or subpriority risk groups can be served in Minnesota. A local agency shall not certify an applicant for participation if the applicant is a member of a priority or subpriority risk group that the commissioner has determined cannot be served in Minnesota.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0040 ADMINISTRATIVE FUNDING.

Subpart 1. **Administrative funding for transfer and migrant service agencies.** The commissioner shall provide administrative funds to transfer agencies for start-up costs and to migrant service agencies for start-up, operating, and close-out costs. The costs must be justified by the transfer and migrant service agencies in writing and must be approved by the commissioner.

Subp. 2. **Administrative funding for operating costs.** Before the beginning of a federal fiscal quarter, the commissioner shall determine the amount of administrative funds available to a local agency for operating costs, based on an estimate of funding available to the WIC program for the quarter. Each local agency shall receive a proportion of the available administrative funds that bears the same relation to total administrative funds as the local agency's authorized participation level bears to the statewide authorized participation level.

Subp. 3. **Allocation of remaining administrative funds.** Any administrative funds remaining after the allocation of funds under subparts 1 and 2 must be made available to local agencies by the commissioner. Local agency costs that the commissioner must consider when allocating these administrative funds include:

4617.0040 WIC PROGRAM

390

A. the staff, mileage, and per diem costs incurred by a local agency with a quarterly authorized participation level of less than 900 to attend WIC program meetings sponsored by the commissioner;

B. staff and mileage costs incurred by a local agency with a geographic area larger than the average for all local agencies to travel to and from clinic sites, to the extent that the miles traveled exceed the average of miles traveled to and from clinic sites; and

C. costs incurred by local agencies in response to special program initiatives designated by the commissioner.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0042 REPORTING REQUIREMENTS.

A local agency must submit to the commissioner the reports in items A to C. If the date a report must be received by the commissioner is on a Saturday, Sunday, or legal holiday, the report must be received by the commissioner on the next business day. The commissioner shall provide forms for the reports upon a local agency's request.

A. The local agency must submit a monthly report of participation to the commissioner by the seventh calendar day of the month following the month for which the report is being submitted.

B. The local agency must submit a claim for reimbursement and report of expenditures to the commissioner by the 20th calendar day of the month following the month for which the report is being submitted.

C. The local agency must submit a final claim for reimbursement and report of expenditures to the commissioner by January 20 of the calendar year following the fiscal year. Payments for the previous fiscal year must not be made for claims filed after this date.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0043 EVALUATIONS AND MONITORING.

Subpart 1. **Evaluations and federal rules.** Through financial reviews and management evaluations, the commissioner shall evaluate whether a local agency has accomplished its WIC program objectives and determine whether the local agency is in compliance with parts 4617.0002 to 4617.0174. The commissioner shall monitor a local agency according to Code of Federal Regulations, title 7, section 246.19, paragraph (b)(2).

Subp. 2. **Reports of findings.** The commissioner shall give a local agency a written report of findings regarding management evaluations and financial reviews conducted under this part. The commissioner shall mail the report of findings to a local agency within 60 days after completing a financial review or management evaluation under this part.

Subp. 3. **Correcting deficiencies.** Within 30 days after receiving the commissioner's report of findings, a local agency shall submit to the commissioner a written plan for correcting the deficiencies identified in the commissioner's report.

The written plan for correcting deficiencies must be approved by the commissioner in writing. If the commissioner approves a plan, then, six months after approval, the commissioner shall conduct an on-site verification of the plan's implementation. If the commissioner disapproves a plan, the commissioner shall notify the local agency in writing of the reasons for disapproval. Within 30 days after receiving the disapproval notice, a local agency shall submit another plan that addresses the reasons for disapproval.

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

History: *14 SR 164; 19 SR 2089*

4617.0044 NUTRITION EDUCATION PLAN; REQUIREMENT.

A local agency must prepare an annual nutrition education plan to be effective beginning on the submission deadline under part 4617.0045. A nutrition education plan must be consistent with this chapter and Code of Federal Regulations, title 7, part 246, and must meet

all nutrition education plan requirements contained in the local agency's written contract with the commissioner.

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

History: *14 SR 164; 19 SR 2089*

4617.0045 NUTRITION EDUCATION PLAN SUBMISSION DEADLINES.

Subpart 1. **General deadline.** Except as provided in subparts 2 and 3, a local agency shall submit a nutrition education plan to the commissioner before October 1 of each year.

Subp. 2. **Transfer agency.** A transfer agency shall submit a nutrition education plan to the commissioner not later than 180 days after the transfer agency begins operations. A transfer agency that wants to submit a nutrition education plan after the 180 days must submit a written request to do so to the commissioner.

Subp. 3. **Migrant service agency.** A migrant service agency shall submit a nutrition education plan to the commissioner at least two months before beginning operations each year.

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

History: *14 SR 164; 19 SR 2089*

4617.0046 [Repealed, 19 SR 2089]

4617.0047 [Repealed, 19 SR 2089]

4617.0049 APPROVAL OF NUTRITION EDUCATION PLAN.

The commissioner shall approve or disapprove a nutrition education plan based on whether the local agency has complied with all nutrition education plan requirements as contained in its written contract with the commissioner and in Code of Federal Regulations, title 7, part 246. Within 120 days after receiving a nutrition education plan, the commissioner shall notify the local agency in writing of the commissioner's approval or disapproval of that local agency's nutrition education plan. If a plan is disapproved, the commissioner shall advise the local agency of the items that must be revised or completed for the plan to be consistent with this chapter. A local agency shall complete revisions of the plan within 30 days after the date it receives the commissioner's written disapproval.

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

History: *14 SR 164; 19 SR 2089*

4617.0050 ROLE OF NUTRITION EDUCATION COORDINATOR.

A nutrition education coordinator must approve and prepare a nutrition education plan required by part 4617.0044. A nutrition education coordinator must approve each individual nutrition care plan required by part 4617.0058. At least one nutrition education coordinator from a local agency shall attend the annual nutrition education conference sponsored by the commissioner. A nutrition education coordinator must also review and approve the local agency nutrition education materials and activities.

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

History: *14 SR 164; 19 SR 2089*

4617.0052 QUALIFICATIONS OF NUTRITION EDUCATION INSTRUCTORS.

Nutrition education provided to individual participants must be provided by a competent professional authority.

Nutrition education provided to groups of participants may be provided by a person who is not a competent professional authority if the person is approved to provide that education in the local agency's nutrition education plan, and if a competent professional authority is available for consultation at the site at which the nutrition education is provided.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0054 SCHEDULE OF NUTRITION EDUCATION SESSIONS.

Subpart 1. **Schedule of nutrition education sessions for infants whose certification period ends after their first birthday, women, and children.** An adult participant, the par-

ent or caretaker of an infant or child participant, and, where possible, a child participant must be offered a nutrition education session at the participant's certification appointment and on at least one other separate occasion during the participant's certification period. The nutrition education session offered at the participant's certification appointment must be a one-to-one session for that participant. Depending on the needs of the participant, a nutrition education session offered after the certification appointment may be provided to the participant one-to-one, provided to the participant in a group with other participants, or provided to the participant in a high-risk session as required under part 4617.0056, subpart 3.

Subp. 2. Schedule of nutrition education sessions for infants whose certification will end on the infant's first birthday. The parent or caretaker of an infant whose certification ends on the infant's first birthday must be offered a nutrition education session at the infant's certification appointment and, after the certification appointment, on a number of separate occasions that equals or exceeds the number of quarters for which the infant is certified. The nutrition education session offered at the infant's certification appointment must be a one-to-one session for that infant's parent or caretaker. Depending on the needs of the infant, a nutrition education session offered after the certification appointment may be provided to the participant one-to-one, provided to the participant in a group with other participants, or provided to the participant in a high-risk session as required under part 4617.0056, subpart 3.

Statutory Authority: *MS s 145.891 to 145.897*

History: *14 SR 164*

4617.0056 CONTENTS OF NUTRITION EDUCATION SESSIONS.

Subpart 1. Contents of nutrition education session for women, children, and infants. A nutrition education session for women, children, and infants must include the following:

A. encouragement of pregnant participants to breast-feed unless the participant's health does not allow breast-feeding; and

B. an explanation of at least one of the following:

(1) the participant's nutritional risk condition, why the risk condition is a problem, and how the problem can be addressed through a change in nutrition or health behaviors;

(2) why it is important that the supplemental food provided to a participant be consumed by that participant rather than other family members or persons outside the family;

(3) that the WIC program is a supplemental food program rather than a total food program, making it necessary that participants purchase the majority of the participant's food needs;

(4) the importance of health care;

(5) the nutritional value of supplemental foods;

(6) how parents and caretakers can meet dietary needs in ways appropriate to the infant's or child's development and how to avoid common nutrition and feeding problems;

(7) the nutritional needs related to the participant's categorical status;

(8) the relationship between diet and health;

(9) the benefits of eating a variety of foods, including foods not provided by the WIC program;

(10) the nutritional concerns of participants; and

(11) the nutrition problems common to individuals in the geographic area or special population served by the local agency.

Subp. 2. Contents of nutrition education for the parent or caretaker of an infant participant. A nutrition education session for a parent or caretaker of a participant who is an infant must include information and training regarding:

A. appropriate feeding practices for an infant;

B. the introduction of solid food for the infant;

C. weaning the infant from a bottle or breast-feeding to a cup;

- D. progressing to table foods; and
- E. the value of using infant formula or breast-feeding until the infant is one year of age.

Subp. 3. **Contents of high-risk nutrition education.** If a participant meets the high-risk criteria in the local agency nutrition education plan, the contents of nutrition education for that participant must be developed according to the needs indicated by the individual nutrition care plan required under part 4617.0058.

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

History: *14 SR 164; 19 SR 2089*

4617.0058 INDIVIDUAL NUTRITION CARE PLAN.

A competent professional authority from the local agency must prepare an individual nutrition care plan for each participant who meets the individual nutrition care plan criteria in the local agency nutrition education plan, for each participant who requests a plan, and for each participant for whom a competent professional authority has determined that an individual nutrition care plan is needed. An individual nutrition care plan must include:

- A. an identification of the health and nutritional needs of the participant;
- B. a plan and schedule for meeting the needs identified in item A;
- C. methods for documenting progress of the plan's implementation;
- D. the title of the person who will monitor implementation of the individual nutrition care plan;
- E. the signature and title of the person who developed the individual nutrition care plan; and
- F. the signature and title of the nutrition education coordinator who approved the plan, if a nutrition education coordinator did not develop the plan.

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

History: *14 SR 164; 19 SR 2089*

VENDORS

4617.0060 GENERAL APPLICATION REQUIREMENTS.

Subpart 1. **Who may apply.** A retail food business or a pharmacy business located in Minnesota may apply for eligibility to participate as a vendor in the WIC program.

Subp. 2. **Application form.** An applicant shall apply for eligibility to participate as a vendor in the WIC program on an application form supplied by the commissioner. The application form must provide a place for the applicant's signature and must state that the applicant must meet the eligibility criteria in part 4617.0065.

Subp. 3. **Submission deadlines for applications.** An applicant shall submit an application so it is received by the commissioner no later than the first day of one of the review periods in subpart 5 for the commissioner to review the application during that period. An application that is submitted later than the first day of a review period in subpart 5 must not be reviewed by the commissioner until the following review period. The commissioner may at any time review an application from an applicant from a clinic area where no authorized vendor currently operates.

Subp. 4. **Application approval requirements.** Within 135 days of receiving an application, the commissioner shall inform an applicant in writing of approval or disapproval of an application to become a vendor. A notice of disapproval must state the reasons for the commissioner's disapproval. The commissioner shall include a vendor guarantee with a notice of approval to become a vendor. The applicant shall sign the vendor guarantee and return it to the commissioner. Within 14 days after receipt of a properly completed and signed vendor guarantee, the commissioner shall issue the applicant a vendor stamp.

If after two attempts the commissioner is unable to conduct an on-site visit of an applicant on an established business route because the applicant is not operating at a location indicated on the business route list at the indicated time, the application must be disapproved.

Subp. 5. **Review periods.** The commissioner shall review vendor applications during the periods October 1 to December 31, January 1 to March 31, April 1 to June 30, and July 1 to September 30.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0061 INITIAL APPLICATIONS.

In this part, "initial application" means an application to participate in the WIC program received from an applicant who is not now participating in the WIC program and who is not a previously authorized vendor or a new owner of a pharmacy or food business for which a vendor stamp has been issued.

The commissioner shall review an initial application according to items A to E.

A. The commissioner shall review the application to determine whether the applicant is in compliance with the eligibility criteria in part 4617.0065.

B. If an application indicates that an applicant is in compliance with the eligibility criteria in part 4617.0065, the commissioner shall do an on-site inspection of the applicant's business to verify the applicant's compliance with part 4617.0065.

C. If the on-site inspection verifies that the applicant is in compliance with part 4617.0065, the commissioner shall approve the application.

D. If an application or an on-site inspection indicates that an applicant is not in compliance with part 4617.0065, the commissioner shall disapprove the application.

E. The commissioner shall notify an applicant, in writing, of application approval or disapproval. A notice of disapproval must be given or mailed to an applicant within 21 days of the commissioner's review of an application. A notice of approval or disapproval must be given or mailed to an applicant within 21 days of an on-site inspection conducted under item B. A notice of disapproval must state that the application was disapproved because the applicant did not comply with part 4617.0065. An approval notice must state that the application was approved because the applicant complies with part 4617.0065 and that the applicant will be given a vendor stamp according to part 4617.0070 after the commissioner has received a vendor guarantee from the applicant, completed according to part 4617.0075.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0062 NEW OWNER APPLICATIONS.

Subpart 1. **Submitting the application.** When a pharmacy or food business for which a vendor stamp has been issued is sold, the new owner may apply to become a vendor. To apply to become a vendor, the new owner shall complete and submit to the commissioner: a vendor application; food and stock price information on a form supplied by the commissioner; written assurance that the on-site manager of the business who was employed by the previous owner will continue as manager and that employees have been trained in the WIC program procedures contained in this chapter; and the vendor stamp issued to the previous owner or written assurance that the applicant did not receive and is not using the previous owner's vendor stamp.

Subp. 2. **Commissioner's review.** The commissioner shall approve an application from a new owner according to items A to E.

A. The commissioner shall review the application of a new owner to verify that the new owner has met the eligibility criteria in part 4617.0065.

B. The commissioner shall review the data maintained by the commissioner to determine whether:

(1) the commissioner has, under part 4617.0085, subpart 1, documented non-compliance by the previous owner who sold the business to the applicant; and

(2) the previous owner maintained an average sales record of at least \$100 a month for the months sampled by the commissioner, unless the previous owner was the only authorized vendor in the clinic area.

C. If the new owner does not submit all the materials required under this part, if the new owner is not eligible under part 4617.0065, or if the previous owner had a history of noncompliance or a low sales record according to item B, the commissioner shall notify the applicant that the application must be processed as an initial application according to part 4617.0061.

D. If the new owner is eligible under part 4617.0065 and the previous owner did not have a history of noncompliance or a low sales record according to item B, the commissioner shall send the new owner a temporary vendor guarantee. The time from the beginning date to the ending date of a temporary vendor guarantee must not exceed six months. The new owner shall sign the temporary vendor guarantee and return it to the commissioner.

E. Before the ending date of the temporary vendor guarantee, the commissioner shall do an on-site inspection of the place of business named on the application to verify that the new owner is in compliance with part 4617.0065. If the on-site inspection verifies that the applicant is in compliance, the applicant's temporary vendor guarantee must be amended to extend the ending date of the temporary vendor guarantee to the date that is two years beyond the beginning date. If the on-site inspection verifies that the new owner is not in compliance, the applicant shall return the vendor stamp to the commissioner within 30 days of the inspection.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0063 REAPPLICATIONS.

Subpart 1. **Submitting the application.** Before the ending date of a guarantee completed by a vendor under part 4617.0061 or 4617.0062, subpart 2, item E, a vendor may submit to the commissioner a new application and food stock and price information. The food stock and price information must be submitted on forms supplied by the commissioner. The commissioner shall approve a reapplication submitted under this part according to subparts 2 to 5.

Subp. 2. **Commissioner's review.** The commissioner shall review the vendor's application, materials required to be submitted by this part, and data maintained by the commissioner to verify that the applicant:

A. is eligible under part 4617.0065;

B. has complied with Code of Federal Regulations, title 7, sections 246.1 to 246.25;

C. has complied with this chapter; and

D. has maintained an average sales record of at least \$100 a month for the months sampled by the commissioner, unless the applicant is the only authorized vendor in the clinic area.

Subp. 3. **On-site inspection.** An applicant whose application complies with subpart 2 may keep the vendor stamp and continue to operate as a vendor without an on-site inspection to verify compliance with part 4617.0065 if the commissioner has conducted an on-site inspection or monitoring visit of the applicant no more than 36 months before the ending date of the vendor's current vendor guarantee. If the commissioner has not conducted an on-site inspection or monitoring visit, the commissioner shall conduct an on-site inspection of the vendor to verify compliance with part 4617.0065. The commissioner shall disapprove the application of an applicant whose on-site inspection shows the applicant does not comply with part 4617.0065 and shall approve the application of an applicant who does comply. The commissioner shall notify the applicant of the approval or disapproval before the ending date of the vendor's current guarantee.

Subp. 4. **Disapproval.** The commissioner shall disapprove the application of an applicant who does not meet the requirements of subpart 2 and notify the applicant of the disapproval in writing.

Subp. 5. **Notice of disapproval; who may reapply.** An applicant whose application is disapproved according to this part shall return to the commissioner that applicant's vendor stamp within 30 days of the date of the commissioner's written notice of disapproval. An applicant whose application is disapproved according to this part may, no sooner than six

months after the ending date of the applicant's current vendor guarantee, apply to be a vendor according to part 4617.0061.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0064 PRIOR VENDOR APPLICATIONS.

Subpart 1. **Applying to continue as vendor.** If a vendor approved before November 21, 1988 wants to continue operating as a vendor, the vendor shall apply according to this part.

Subp. 2. **Schedule for commissioner's review of applications.** The commissioner shall schedule when the commissioner will review and approve or disapprove an application from a prior vendor. The schedule must be for the two years following November 21, 1988. Each of the two years must be divided into the four review periods indicated in part 4617.0060, subpart 5. The prior vendors must be divided into geographic groups. A group must consist of contiguous counties with no more vendors than the commissioner can reasonably be expected to review during one review period. Each geographic group must be randomly assigned to a review period.

Subp. 3. **Notice of need to apply.** At least 60 days before the first day of a review period during which the vendor is scheduled under subpart 2 to be reviewed, the commissioner shall notify the vendor that the vendor's authority to operate as a vendor ends at the end of that review period. The notice must be in writing and must include an application.

Subp. 4. **Due date.** The vendor shall submit a completed application no later than the first day of the review period during which the vendor is scheduled under subpart 2 to be reviewed. A vendor who does not submit an application according to this part shall return the vendor stamp no later than the last day of the review period.

Subp. 5. **Review.** The commissioner shall check the application to determine whether the applicant is eligible under part 4617.0065.

If an application indicates that an applicant is eligible under part 4617.0065, the commissioner shall do an on-site inspection of the applicant to verify the applicant's compliance with part 4617.0065.

If the on-site visit indicates that the applicant is eligible under part 4617.0065, the commissioner shall approve the application.

If an application or an on-site inspection indicates that an applicant is not eligible under part 4617.0065, the commissioner shall disapprove the application.

Subp. 6. **Notice of review findings.** The commissioner shall notify the vendor in writing of the commissioner's approval or disapproval. A notice of approval or disapproval must be given or mailed to the vendor before the last day of the review period in which the commissioner determines from an application or on-site inspection that the vendor is or is not eligible under part 4617.0065. A notice of disapproval must state that the application was disapproved because the vendor did not comply with part 4617.0065. A vendor whose application is disapproved shall return that vendor's vendor stamp within 30 days of the date of the disapproval notice. An approval notice must state that the application was approved because the vendor complies with part 4617.0065, that the vendor will be given a different vendor stamp according to part 4617.0070, and that a different vendor stamp will not be given to the vendor until the commissioner receives the vendor stamp currently possessed by the vendor and a vendor guarantee completed according to part 4617.0075.

The vendor shall return the vendor stamp and the vendor guarantee to the commissioner within 30 days of the date of notice of approval.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0065 VENDOR ELIGIBILITY CRITERIA.

Subpart 1. **Requirement.** To be eligible as a vendor, a vendor applicant shall comply with subparts 2 to 5.

Subp. 2. **Minimum in-stock requirements.** A vendor shall at all times keep in stock at least the authorized foods in item A or B.

A. A retail food vendor shall keep in stock at least:

- (1) 31 13-ounce cans of concentrated iron fortified infant formula of the brand specified on the voucher;
- (2) three eight-ounce containers of plain, dry, infant cereal in any combination of at least two varieties;
- (3) 15 4-ounce or 4.2-ounce jars of infant juice in any combination of at least two varieties;
- (4) ten gallons of fluid whole, lowfat, or skim milk in gallon or half-gallon containers;
- (5) three pounds of domestic cheese in blocks that do not exceed one pound in any combination of at least two varieties;
- (6) 72 ounces of cereal in any combination of at least four varieties;
- (7) 12 six-ounce or six 12-ounce containers of frozen concentrate juice or six 46-ounce cans of single concentrate juice in any combination of at least two varieties;
- (8) four one-dozen containers of medium or large eggs; and
- (9) two one-pound containers of dried legumes in two varieties.

B. A pharmacy vendor shall keep in stock at least:

- (1) the foods under item A, subitems (1) to (3); and
- (2) within three business days of a request from a participant or a local agency, any of the following products: Alimentum; Enfamil low-iron; Ensure; Isocal; Isomil SF; Nursoy; Nutramigen; Osmolite; PediaSure; Portagen; Pregestimil; Prosobee; Similac low-iron; Similac PM 60/40; Similac Special Care with Iron 24; SMA low-iron; Sustacal; and Sustacal HC.

Subp. 3. **Restricted pharmacy vendor.** A restricted pharmacy vendor shall not redeem a voucher for authorized foods listed in subpart 2, item A.

Subp. 4. **Operating requirements.** A vendor shall comply with the following operating requirements:

- A. A vendor shall operate at least Monday to Friday, 10 a.m. to 4:30 p.m.
- B. A vendor shall allow the commissioner access to vouchers that are present in the store on the day of an on-site monitoring visit.
- C. A vendor shall operate at an established business site, or on an established business route using route lists that the vendor shall submit to the commissioner by October 1, January 1, April 1, and July 1 of each year.
- D. Employees who accept vouchers for the vendor must be able to demonstrate their ability to read and understand a voucher.

Subp. 5. **Vendor prices.** A vendor's total price for the minimum amount of authorized foods in subpart 2 must not be more than the average price plus one standard deviation of other vendors in the same geographic area. The commissioner shall determine the average price of vendors in the geographic area using shelf price surveys that each vendor shall submit to the commissioner by January 15 and July 15 of each year.

Subp. 6. **Disqualification from other programs.** To be authorized to accept WIC vouchers, a grocery or pharmacy must not be currently disqualified from another food and nutrition service program, must not have been subjected to a civil money penalty instead of disqualification from another food and nutrition service program within the last six months, and must not be owned by a person who owns another business that is currently disqualified from the WIC program.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0070 VENDOR STAMPS.

Subpart 1. **Issuance.** The commissioner shall issue a vendor stamp to an applicant who, under parts 4617.0060 to 4617.0064, has been determined eligible to be a vendor for the WIC program. A grocer or pharmacy that applies to become a vendor shall not accept a voucher before receiving a vendor stamp. A vendor shall use the stamp to imprint the number on the

stamp onto each voucher accepted by that vendor. The commissioner shall not issue more than one vendor stamp to a vendor, and the number on the stamp must be issued to that vendor only. A vendor shall not possess more than one vendor stamp, shall not use a vendor stamp issued to another vendor, and shall not duplicate a vendor stamp.

Subp. 2. **Replacement vendor stamp.** A vendor shall orally or in writing notify the commissioner of a lost, stolen, or damaged vendor stamp. If a vendor wants a stamp to replace a lost, stolen, or damaged stamp, the vendor shall request one from the commissioner orally or in writing. The commissioner shall issue one replacement vendor stamp to a vendor at no cost to the vendor. A vendor shall pay \$10 for each additional replacement vendor stamp.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190*

4617.0075 VENDOR GUARANTEES.

A person whose application to be a vendor has been approved shall sign a retail food vendor guarantee, pharmacy vendor guarantee, or restricted pharmacy vendor guarantee. A separate vendor guarantee must be signed for each vendor. A vendor guarantee must contain:

- A. the name and address of the vendor;
- B. the method by which the guarantee must be terminated;
- C. terms that are consistent with Code of Federal Regulations, title 7, sections 246.12, paragraphs (f)(2) and (k)(1)(iii), and 278.1, paragraph (o)(1);
- D. a warning that a vendor's authorization to participate in the food stamp program can be withdrawn according to Code of Federal Regulations, section 278.1(0)(1) if the vendor is disqualified from the WIC program;
- E. assurances that:
 - (1) no conflict of interest exists with the Department of Health or any local agency;
 - (2) the vendor will use the vendor stamp to validate only those vouchers accepted at the vendor outlet for which the stamp was issued;
 - (3) the vendor will redeem vouchers only for authorized persons identified on the Minnesota WIC program authorization/transfer of certification card;
 - (4) the vendor will make no alterations on the voucher with the exception of properly executed price corrections, and will not accept vouchers that appear to have been altered by a participant;
 - (5) the vendor will respond within 45 days to a letter requesting justification of or reimbursement for vouchers identified as potentially overpriced;
 - (6) the vendor will return the vendor stamp to the commissioner when the vendor permanently closes business, ownership of the business or vendor outlet changes, the vendor is disqualified, the vendor's application is disapproved, or the vendor guarantee ends;
 - (7) the vendor will comply with this chapter and Code of Federal Regulations, title 7, part 246; and
 - (8) the vendor will only accept a voucher for authorized supplemental foods provided at the time the voucher is countersigned;
- F. a beginning date that is the same as the date of the notice of approval of the vendor's application and an ending date that is not more than two years beyond the beginning date; and
- G. the signature of the vendor and the date of the signature.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0080 IDENTIFYING AND MONITORING HIGH RISK VENDORS.

The commissioner shall identify a vendor as a high-risk vendor according to the criteria in Code of Federal Regulations, title 7, section 246.12, paragraph (i)(1), or because of vendor activities observed by or reported to the commissioner or local agency staff that are suspected

by the commissioner or local agency staff to not comply with this chapter. Vendor activities that staff suspect do not comply with this chapter must be reported to or by the commissioner on a form supplied by the commissioner. The form must require a description of the suspected abuse, the name and address of the vendor, and the signature of the staff member.

A high-risk vendor must be monitored according to Code of Federal Regulations, title 7, section 246.12, paragraph (i).

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0085 SANCTIONS.

Subpart 1. Procedures. The commissioner shall impose a sanction on a vendor for non-compliance with this chapter.

Noncompliance with this chapter must be documented on a form provided by the commissioner. The form must require a description of the noncompliance, the name and address of the vendor not in compliance, and the signature of the commissioner, a participant, or a local agency representative.

The commissioner shall notify a vendor in writing of the vendor's sanction.

Disqualification is effective 15 days after the date of a notice of disqualification except when the vendor appeals the disqualification and the vendor is the only vendor in the clinic area. If the vendor appeals a sanction and is the only vendor in the clinic area, disqualification must begin 15 days following the day a decision under the appeal upholds the disqualification.

Subp. 2. Length of disqualification. Disqualifications for multiple abuses are successive, except that the total length of a disqualification or successive disqualifications must not exceed three years. The length of disqualification for an abuse must be according to items A to F.

A. Disqualification is three months for the first offense and six months for each subsequent offense for:

(1) a restricted pharmacy vendor who redeems a voucher for an authorized food listed in part 4617.0065, subpart 2, item A;

(2) a vendor on an established business route who does not submit a business route list by October 1, January 1, April 1, and July 1 of a year;

(3) a vendor on an established business route who fails to operate at a location indicated on the vendor's business route list at the times indicated on the list unless there are documented extenuating circumstances beyond the vendor's control;

(4) a vendor who does not submit a shelf price survey by January 15 or July 15 of a year;

(5) a vendor who does not respond within 45 days of the date of a letter from the commissioner requesting justification for an apparently overpriced voucher; or

(6) a previously authorized vendor, or a new owner of a business for which a vendor stamp has been issued, who does not return a completed and signed guarantee within 45 days.

B. Disqualification is six months for the first offense and 12 months for each subsequent offense for a vendor who:

(1) fails to maintain minimum stock of an authorized food as required by part 4617.0065, subpart 2;

(2) refuses to let the commissioner see a voucher stored on the vendor's premises on the day of an on-site visit;

(3) refuses to let the commissioner see invoices for stock purchases for the last two years;

(4) accepts an altered voucher or a voucher whose issue date is more than 30 days before the day it was accepted by the vendor;

(5) is approved after November 21, 1988, and who charges a total price for the minimum amount of authorized foods specified in part 4617.0065 that is not competitive un-

der part 4617.0065, subpart 4, with prices charged by other vendors in that vendor's geographic area;

(6) does not display for easy viewing the price of an authorized food or mark on an authorized food the price of that food;

(7) accepts a voucher without providing authorized supplemental foods at the time the voucher is countersigned;

(8) enters the price of an authorized food on a voucher after a participant has countersigned the voucher;

(9) fails to verify that a voucher is redeemed only by a person listed on a Minnesota WIC program authorization or transfer of certification card;

(10) provides and then charges the WIC program for more food than is authorized on a voucher;

(11) fails to obtain a participant's countersignature on a voucher at the time that voucher was used to buy food;

(12) allows a participant to return food bought with a voucher to obtain a cash refund, to exchange food for an authorized food in a different food category, or to exchange the food for a nonauthorized product;

(13) requires a participant to return to the vendor to countersign a voucher that the commissioner has rejected for payment; or

(14) provides services to a customer that are lower in quality than services provided to most customers because the customer is a participant.

C. Disqualification is 12 months for the first offense and 24 months for each subsequent offense for a vendor who:

(1) violates the nondiscrimination requirements of Code of Federal Regulations, title 7, section 246.8;

(2) permits use of a vendor stamp in a way that is inconsistent with this chapter;

(3) requests reimbursement from a participant for a voucher that the commissioner rejected for payment;

(4) does not enter the dollar amount of the purchase on a voucher at the time the voucher is used to buy food;

(5) exchanges cash or unauthorized food or other items for a voucher;

(6) charges the WIC program more money for an authorized food than the vendor's usual and customary charge for that food;

(7) alters a voucher; or

(8) charges the WIC program for foods not received by a participant.

D. A vendor who is disqualified from another food and nutrition service program is disqualified from the WIC program for the same amount of time as the disqualification from the other program.

E. A vendor subjected to a civil penalty instead of disqualification from another food and nutrition service program within the last six months is disqualified for six months for the offense that prompted the penalty and 12 months for each subsequent offense that occurs.

F. A vendor in subitems (1) to (5) who does not return to the commissioner the vendor stamp issued to that vendor within 30 days of the date of a notice from the commissioner to return the vendor stamp shall not reapply as a new vendor for two years from the date of the notice:

(1) a temporarily approved new owner of a business for which a vendor stamp has been issued, who is found by an on-site visit to be ineligible;

(2) a previously authorized vendor who is not eligible to renew its guarantee;

(3) a vendor approved before November 21, 1988, who does not reapply for authorization or is found ineligible under part 4617.0065, except that the vendor stamp is not due until the last day of the scheduled review period;

(4) a vendor approved before November 21, 1988, who reapplies for authorization and is found eligible or ineligible by an on-site visit; and

(5) a vendor who has been disqualified under this subpart, except that the vendor stamp must be returned to the commissioner within 15 days after the date of a notice of disqualification from the commissioner.

Subp. 3. **Civil money penalty.** The commissioner shall allow a vendor in a clinic area where no other vendors operate to choose to pay a civil money penalty instead of disqualification if the disqualification is not for:

- A. requesting reimbursement from a participant for a rejected voucher;
- B. not recording the price on a voucher at the time the voucher is used to buy food;
- C. providing cash, unauthorized food, or other items instead of authorized foods;
- D. charging the WIC program more for unauthorized foods than the vendor's usual and customary charge for those foods;
- E. charging the WIC program for foods not received by a participant;
- F. altering a voucher; or
- G. the same length of time as a disqualification from another food and nutrition service program.

The civil money penalty is equal to 20 percent of the vendor's average monthly voucher redemptions for the number of months for which a vendor would be disqualified under subpart 2, except that a civil money penalty must not exceed \$10,000. A civil money penalty must be paid according to a plan approved by the commissioner. The plan must indicate that the penalty will be paid by the last day of the disqualification period that would be imposed if the vendor chose disqualification instead of the civil money penalty. If a civil money penalty is not paid according to the plan, the commissioner shall disqualify the vendor according to subpart 2.

Subp. 4. **Losses due to disqualification.** The commissioner is not liable for a vendor's financial losses due to disqualification.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164*

4617.0090 RETURNING VOUCHERS TO VENDORS.

The commissioner shall return a voucher to a vendor without payment if the space provided on the voucher for the price of the food purchased is left blank by the vendor, if the voucher is not stamped with a vendor stamp, if the voucher is not signed or countersigned by the participant or a proxy, if the vendor deposits the voucher before the issue date of the voucher, or if the vendor does not deposit the voucher in the vendor's bank within 60 days of the issue date on the voucher.

A voucher returned to a vendor by the bank under contract with the commissioner may be submitted by the vendor to the commissioner for payment if the voucher is received by the commissioner not more than 120 days after the issue date on the voucher and if:

- A. the issue date or the last-day-to-use date on the voucher was not written on the voucher by the commissioner;
- B. the first signature on the voucher is missing; or
- C. the bank under contract with the commissioner returned the voucher to the vendor for a reason not authorized by this part.

A vendor shall not seek reimbursement from a participant for a voucher not paid according to this part, or require a participant to provide a countersignature that was not provided at the time the voucher was used to buy food from the vendor.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190*

4617.0095 REIMBURSEMENT OF VOUCHER OVERCHARGES.

A copy of a voucher paid by the bank under contract with the commissioner and identified by the commissioner as potentially overpriced must be returned by the commissioner to the vendor. The commissioner shall include a letter with a returned voucher that asks the vendor to justify the charge on the voucher using shelf price information or to pay the commissioner the amount of the overcharge.

A vendor shall respond to the commissioner's letter within 45 days of the date on the letter.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190*

APPEALS

4617.0100 APPEALS BY VENDORS AND LOCAL AGENCIES.

Subpart 1. Procedures. A local agency or vendor against whom the commissioner takes adverse action that affects participation in the WIC program may appeal the action. An appeal must be in writing and be received by the commissioner not more than 30 days after notice of adverse action was mailed. The commissioner shall provide an appellant not less than ten days' advance written notice of the time and place of a hearing. The appellant must be given one opportunity to request that a hearing date be rescheduled. An appeal by a local agency or vendor must be decided in accordance with the requirements of Minnesota Statutes, sections 14.57 to 14.62; Code of Federal Regulations, title 7, section 246.18, as amended through January 1, 1988; and this part. Expiration of a contract or agreement with a local agency or vendor is not subject to appeal.

Subp. 2. Judicial review. A local agency or vendor aggrieved by the commissioner's decision on an appeal is entitled to a judicial review of the decision under Minnesota Statutes, sections 14.63 to 14.69.

Subp. 3. Burden of proof. A local agency or vendor that appeals the commissioner's denial of an application to participate has the burden of proving the facts at issue by a preponderance of the evidence. When a local agency or vendor appeals a disqualification or other sanction, the commissioner has the burden of proof.

Statutory Authority: *MS s 145.891 to 145.897*

History: *13 SR 1190*

4617.0170 [Repealed, 19 SR 2089]

WIC-APPROVED FOODS

4617.0171 INFANT FORMULA APPROVAL PROCESS.

In accordance with Code of Federal Regulations, title 7, section 246.16(m), the commissioner shall solicit bids and approve for purchase using WIC vouchers one or more brands of milk-based iron fortified infant formula and soy-based iron fortified infant formula. The nutritional content, size, and packaging of each approved brand of infant formula must be consistent with Code of Federal Regulations, title 7, section 246.10(c).

Statutory Authority: *MS s 144.11; 145.894*

History: *19 SR 2089*

4617.0172 NONCOMPETITIVE FOOD APPROVAL PROCESS.

Subpart 1. Definition of noncompetitive food product. "Noncompetitive food product" means a food product listed in items A to J which meets all applicable requirements in Code of Federal Regulations, title 7, section 246.10(c), and does not contain any nonnutritive or artificial sweetener:

A. infant cereal in a container of at least eight ounces and not more than 24 ounces which does not contain any fruit or formula and which is labeled as infant cereal;

B. pure, unsweetened infant fruit juice in a container which does not exceed eight ounces and which is labeled as infant fruit juice;

C. unsweetened, unflavored milk which is:

(1) fluid cow's milk in a container of at least 32 ounces;

(2) evaporated cow's milk in a 12-ounce or 13-ounce container; or

(3) dry cow's milk in a container that does not exceed 28 quarts when reconstituted;

D. cheese;

E. pure and unsweetened citrus juice which:

- (1) contains no additives other than vitamin C and calcium; and
- (2) is either frozen concentrate citrus juice in six-ounce or 12-ounce containers, or single strength citrus juice in containers of not more than 46 ounces;

F. fresh eggs in cartons that contain a dozen eggs;

G. legumes which do not contain any added ingredients and which are in containers of at least 14 ounces and not more than 32 ounces;

H. peanut butter in a container of not more than 18 ounces which does not contain any other food product such as jelly, jam, or chocolate;

I. tuna fish in a can which does not exceed 26 ounces; or

J. fresh, frozen, or canned carrots without any sauce.

Subp. 2. **Approval of noncompetitive food products.** Every brand of a food product which meets the definition of a noncompetitive food product under subpart 1 is automatically approved by the commissioner for purchase using WIC vouchers, without any need for application by any food manufacturer. An approval under this subpart remains in effect until the food product no longer meets the definition of a noncompetitive food product under subpart 1.

Statutory Authority: *MS s 144.11; 145.894*

History: *19 SR 2089*

4617.0173 COMPETITIVE FOOD APPROVAL PROCESS.

Subpart 1. **Definition of competitive food product.** "Competitive food product" means a food product listed in items A to C:

A. adult cereal;

B. noncitrus juice; or

C. any other food authorized under Code of Federal Regulations, title 7, section 246.10(c), for which, based on the best information available to the commissioner, not all brands of the food meet all applicable requirements in Code of Federal Regulations, title 7, section 246.10(c).

Subp. 2. **Duration of approval.** The approval of a competitive food product under subparts 3 and 4 must be for one year, beginning on the first day of the federal fiscal year following the date of notification of approval. However, if the food stops meeting the approval criteria under subpart 4, the approval of the food product ends immediately.

Subp. 3. **Approval process.** The approval process for competitive food products shall be as follows:

A. The commissioner shall annually send a written request for competitive food product applications to food manufacturers who have asked in writing to receive the request, to food manufacturers of competitive food products that are currently approved, and to food manufacturers identified by the commissioner. The request must include the following information:

(1) a description of the WIC program and of the procedure the commissioner shall use to approve a competitive food product;

(2) the approval criteria under subpart 4;

(3) the list of information that must be submitted in writing as a part of an application for competitive food product approval. The list must consist of information needed to identify the applicant and information needed for the commissioner to apply the approval criteria in subpart 4;

(4) the final date for submission of an application for competitive food product approval to the commissioner; and

(5) the expected timetable for the commissioner's review of an application for competitive food product approval.

B. The commissioner shall not consider an application that does not provide the information required by item A, subitem (3), or is not submitted according to item A, subitem (4).

Subp. 4. **Approval criteria.** The commissioner shall determine which brands of each competitive food product to approve for purchase using WIC vouchers on the basis of the following criteria:

A. A competitive food product must meet the nutritional requirements of Code of Federal Regulations, title 7, section 246.10(c). A product must not contain any nonnutritive or artificial sweeteners. Single strength noncitrus juice must be pure and unsweetened juice, and contain a minimum of 30 milligrams of vitamin C per 100 milliliters. Single strength fruit juice products must contain no additives other than vitamin C and calcium. Frozen concentrate noncitrus juice must be pure and unsweetened juice, and contain a minimum of 30 milligrams of vitamin C per 100 milliliters when reconstituted at a ratio of one ounce of juice to three ounces of water. Frozen concentrate fruit juice products must contain no additives other than vitamin C and calcium. Adult cereal must contain a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (six grams per ounce).

B. Frozen concentrate noncitrus juice must be in six-ounce or 12-ounce containers. Single strength noncitrus juice must be in a container that does not exceed 46 ounces. Adult cereal must be in nine-ounce or larger containers.

C. A brand of competitive food product must be stocked by at least five percent of the Minnesota WIC retail food vendors responding to the most recent availability survey conducted by the commissioner.

D. A brand of competitive food product will not be approved if the price per ounce of that brand, less any rebate received by the commissioner for the brand, exceeds 130 percent of the average price per ounce of all brands of the same competitive food product which meet the criteria in items A to C.

E. At least once every two years the commissioner shall conduct a survey of a sample of WIC participants from each local agency to determine which brands of competitive food products are preferred by WIC participants. The survey must include:

(1) all brands of competitive food products currently approved for purchase using WIC vouchers; and

(2) all other brands of competitive food products that meet the applicable requirements of items A and B, based on the best information available to the commissioner.

F. Unless the commissioner receives an insufficient number of applications for approval of competitive food product brands which meet the requirements of items A to D, the commissioner shall approve at least the following minimum number of brands of competitive food products:

(1) 18 brands of adult cereal;

(2) four brands of frozen concentrate noncitrus juice; and

(3) six brands of single strength noncitrus juice.

G. If the number of applications received by the commissioner for brands which satisfy the requirements of items A to D exceeds the relevant minimum number in item F, the commissioner may disapprove one or more applications if the commissioner determines that disapproval is necessary for administrative efficiency. In considering administrative efficiency, the commissioner shall consider the number of brand names which could reasonably be printed on a participant's WIC authorization card, the number of brands which would be readily identifiable to an adult WIC customer or to vendor cashiers, the number of brands which a local agency could reasonably be expected to communicate to a participant, and the number of WIC approved foods which could reasonably be printed on an 8-1/2 inch by 11 inch piece of paper. If the commissioner decides to disapprove one or more applications, the commissioner shall consider the factors in subitems (1) to (4) in determining which application or applications to disapprove:

(1) the results of the food preference survey described in item E;

(2) the cost of the applicant brands;

(3) the availability of the applicant brands; and

(4) the variety of the applicant brands, including the distribution of adult cereal brands among corn cereals, rice cereals, oat cereals, bran cereals, wheat cereals, and hot

cereals, and the distribution of noncitrus juice brands among apple juice, grape juice, pineapple juice, vegetable juice, and fruit or vegetable juice combinations.

Subp. 5. Notification of approval. The commissioner shall notify each food manufacturer which has submitted an application under this part of the commissioner's action on the application. By October 1 of each year, the commissioner shall provide notice to each vendor and local agency of the brands of competitive food products approved under this part.

Subp. 6. Revocation of approval. Notwithstanding subparts 2 and 4, item F, the commissioner may, at any time, revoke approval of a brand of a competitive food product if it no longer meets one or more of the requirements in subpart 4, items A to D. If the commissioner revokes approval of a brand, the commissioner shall provide the food manufacturer with written notice of the revocation.

Statutory Authority: *MS s 144.11; 145.894*

History: *19 SR 2089*

4617.0174 GENERAL PROVISIONS.

Subpart 1. Expiration of prior approvals. All WIC food product approvals by the commissioner in effect on April 17, 1995, except the approval of infant formula, expire at 12:01 a.m., October 1, 1995.

Subp. 2. Cultural preference. Notwithstanding the provisions of this chapter, the commissioner shall approve for purchase using WIC vouchers any food product or brand of food product authorized under Code of Federal Regulations, title 7, section 246.10(c), if the commissioner believes, based on the best information available, that there is a need for the food product or brand of food product within a specific cultural or ethnic group. If the commissioner approves any food product or brand of food product under this subpart, the commissioner shall provide notice of the approval to all retail food vendors and local agencies.

Statutory Authority: *MS s 144.11; 145.894*

History: *19 SR 2089*

4617.0175 [Repealed, 19 SR 2089]

4617.0180 [Repealed, 19 SR 2089]