

CHAPTER 4617

DEPARTMENT OF HEALTH

WIC PROGRAM

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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. [Repealed, 22 SR 266]

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. [Repealed, 29 SR 1202]

Subp. 3. [Repealed, 29 SR 1202]

Subp. 3a. **Business-related violation.** “Business-related violation” means a criminal conviction of a person, or a civil judgment entered against a person, for violating one or more federal or state antitrust statutes, committing embezzlement, fraud, theft, forgery, bribery, or falsification or destruction of records, making one or more false statements, receiving stolen property, making false claims, or obstruction of justice, whether the conviction or judgment is based on a verdict, plea, stipulation, or settlement agreement.

Subp. 3b. **Business site.** “Business site” means the specific location, as designated by an address, of the real property where a vendor or vendor applicant operates.

Subp. 3c. **Cashier.** “Cashier” means an individual who accepts vouchers on behalf of a vendor.

Subp. 4. [Repealed, 29 SR 1202]

Subp. 5. [Repealed, 29 SR 1202]

Subp. 5a. **Change of vendor location.** “Change of vendor location” means a change in the business site of a vendor by more than one mile.

Subp. 6. [Repealed, 25 SR 805]

Subp. 6a. **Change of vendor ownership.** "Change of vendor ownership" means a sale or other transaction which results in at least one new owner of a vendor.

Subp. 6b. **Check-out lane.** "Check-out lane" means a distinct physical location within the vendor's established business site, with a separate operational cash register capable of generating receipts, where a customer can purchase items.

Subp. 7. [Repealed, 29 SR 1202]

Subp. 7a. **Citrus juice.** "Citrus juice" means orange juice, grapefruit juice, or a combination of orange and grapefruit juices.

Subp. 8. **Clinic town.** "Clinic town" means a town or city in which the local agency distributes vouchers to participants and proxies, or where participants are certified, or both.

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" has the meaning given in Minnesota Statutes, section 145A.02, subdivision 5.

Subp. 11. [Repealed, 19 SR 2089]

Subp. 12. [Repealed, 29 SR 1202]

Subp. 12a. [Repealed, 22 SR 266]

Subp. 12b. **Controlling person.** "Controlling person" means any owner or any person who, directly or indirectly, has the power to direct the management or control the activities of the vendor or vendor applicant, including any officer, manager, director, or general partner of the vendor or vendor applicant.

Subp. 13. [Repealed, 25 SR 805]

Subp. 14. [Repealed, 29 SR 1202]

Subp. 14a. **Disqualification.** "Disqualification" has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 14b. **Expired or damaged food.** "Expired or damaged food" means a food item which is in stock and available for purchase after its "sell by," "best if used by," or other date limiting the sale or use of the food item, is dented, rusted, unlabeled or otherwise defective, has become moldy or otherwise spoiled, or has been recalled by the manufacturer.

Subp. 14c. **Food assistance program.** "Food assistance program" means the WIC program, the Food Stamp Program, or any other food and consumer service program in Minnesota or in any other state, district, commonwealth or territory of the United States.

Subp. 14d. **Food item.** "Food item" means a specific brand, variety, and size of a food product.

Subp. 14e. **Food product.** "Food product" means any category of food in part 4617.0067, subpart 3, item A or B, and any other category of food which meets the requirements of Code of Federal Regulations, title 7, section 246.10(c), as amended.

Subp. 14f. **Health promotion.** "Health promotion" means activities intended to reduce the prevalence of risk conditions or behaviors of individuals or communities for the purpose of preventing chronic disease and effecting other definable advances in health status. These activities include the coordination or provision of community organization, regulation, targeted screening, and education, as well as informational and other scientifically supported interventions to foster health by affecting related conditions and behaviors.

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. [Repealed, 29 SR 1202]

Subp. 16a. [Repealed, 22 SR 266]

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. 17b. **Incentives.** “Incentives” means goods or services, in addition to the food products specified on a voucher, offered or provided to a WIC customer who redeems a voucher at a particular vendor.

Subp. 18. [Repealed, 29 SR 1202]

Subp. 19. [Repealed, 29 SR 1202]

Subp. 19a. **Infant formula.** “Infant formula” means any food item formulated to replace human breast milk. The term infant formula includes the formulas approved by the commissioner under part 4617.0171 and all special infant formulas.

Subp. 19b. **Launder.** “Launder” means to receive, transact, or redeem a voucher outside of authorized channels and includes redeeming a voucher accepted at a store that is not authorized as a WIC vendor, accepting a voucher at a place other than an established check-out lane at the vendor’s business site, accepting or redeeming a voucher from any source other than a WIC customer, and accepting a voucher that is then redeemed through another vendor.

Subp. 20. [Repealed, 25 SR 805]

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

Subp. 22. [Repealed, 29 SR 1202]

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

Subp. 24. [Repealed, 29 SR 1202]

Subp. 25. [Repealed, 29 SR 1202]

Subp. 26. [Repealed, 29 SR 1202]

Subp. 27. [Repealed, 29 SR 1202]

Subp. 28. [Repealed, 29 SR 1202]

Subp. 28a. **Owner.** “Owner” means any person who, directly or indirectly, beneficially owns a 20 percent or greater interest in any vendor or vendor applicant, or in any partnership, joint venture, association, corporation, or otherwise organized business entity which directly or indirectly has the power to direct the management or control the activities of the vendor or vendor applicant.

Subp. 28b. [Repealed, 29 SR 1202]

Subp. 28c. [Repealed, 25 SR 555]

Subp. 28d. **Participants.** “Participants” has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 29. [Repealed, 29 SR 1202]

Subp. 30. **Person.** “Person” means an individual, partnership, joint venturer, association, corporation or otherwise organized business entity.

Subp. 31. **Pharmacy.** “Pharmacy” means a business in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or retailed.

Subp. 31a. **Pharmacy vendor.** “Pharmacy vendor” means a vendor that is a pharmacy.

Subp. 31b. **Pharmacy vendor applicant.** “Pharmacy vendor applicant” means any pharmacy which has applied to the commissioner to be a pharmacy vendor, including any currently authorized pharmacy vendor which has applied to continue as a pharmacy vendor and any pharmacy which has applied for an immediate vendor agreement under part 4617.0066, subpart 3.

Subp. 32. [Repealed, 29 SR 1202]

Subp. 33. [Repealed, 25 SR 805]

Subp. 34. [Repealed, 29 SR 1202]

Subp. 35. [Repealed, 29 SR 1202]

Subp. 36. [Repealed, 29 SR 1202]

Subp. 36a. **Provide unauthorized food.** “Provide unauthorized food” means:

A. to provide any food other than WIC–allowed food in exchange for a voucher;

B. to provide, in exchange for a voucher, any WIC–allowed food that is not listed on the voucher;

C. to provide, as a substitute for any WIC–allowed food listed on a voucher, an excess quantity of another WIC–allowed food listed on the voucher; or

D. to provide, in exchange for a voucher, and to charge the WIC program for, more WIC–allowed food than is listed on the voucher.

Subp. 37. **Proxy.** “Proxy” has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 37a. **Rain check.** “Rain check” means a credit provided by a vendor to a WIC customer in exchange for a voucher, if the credit can only be used to purchase one or more specific food items listed on the voucher but not received by the WIC customer.

Subp. 37b. **Reauthorization application.** “Reauthorization application” means a vendor application submitted to the commissioner by a currently authorized vendor that is applying to continue as a vendor.

Subp. 37c. [Repealed, 29 SR 1202]

Subp. 37d. [Repealed, 29 SR 1202]

Subp. 38. [Repealed, 29 SR 1202]

Subp. 39. [Repealed, 22 SR 266]

Subp. 39a. **Retail food store.** “Retail food store” means a store which sells food at retail directly to consumers other than WIC customers.

Subp. 40. **Retail food vendor.** “Retail food vendor” means a vendor that is a retail food store.

Subp. 40a. [Repealed, 22 SR 266]

Subp. 40b. **Retail food vendor applicant.** “Retail food vendor applicant” means any retail food store which has applied to the commissioner to be a retail food vendor, including any currently authorized retail food vendor which has applied to continue as a retail food vendor and any retail food store which has applied for an immediate vendor agreement under part 4617.0066, subpart 3.

Subp. 40c. **Single investigation.** “Single investigation” means all compliance buys, monitoring visits, record reviews, and other investigatory activities conducted in connection with a store or pharmacy until the investigation is complete. The investigation is complete on the earlier of: (1) the date the investigatory file is closed; (2) the date the store or pharmacy is disqualified from the WIC program; (3) the date the commissioner assesses a civil money penalty against the store or pharmacy; (4) the date the commissioner denies the vendor application of the store or pharmacy; or (5) the date the commissioner terminates the vendor agreement of the store or pharmacy.

Subp. 40d. **Special infant formula.** “Special infant formula” means any infant formula specified on a voucher, other than the infant formula approved by the commissioner under part 4617.0171.

Subp. 40e. **Special population.** “Special population” means members of populations as defined in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 40f. **Tier 1 county.** “Tier 1 county” means a Minnesota county in which the total population is 250,000 or more according to the most recent State of Minnesota or United States census or estimated update as compiled by the state demographer.

Subp. 40g. **Tier 2 county.** “Tier 2 county” means a Minnesota county in which the total population is less than 250,000 according to the most recent State of Minnesota or United States census or estimated update as compiled by the state demographer.

Subp. 41. [Repealed, 29 SR 1202]

Subp. 42. **Vendor.** “Vendor” has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 42a. **Vendor applicant.** “Vendor applicant” means a business entity that operates a retail food store, a pharmacy, or a store which is both a retail food store and pharmacy, if the business entity has applied to the commissioner for that particular store to be a vendor. “Vendor applicant” includes any currently authorized vendor which has applied to continue as a vendor at the same location and any business entity which has applied for an immediate vendor agreement under part 4617.0066, subpart 3.

Subp. 42b. **Vendor application.** “Vendor application” means all information and documentation submitted to the commissioner by a vendor applicant under part 4617.0065 or 4617.0066, subpart 3.

Subp. 42c. **Vendor overcharge.** “Vendor overcharge” has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 43. **Vendor stamp.** “Vendor stamp” means an ink stamp issued to a vendor by the commissioner with a unique number identifying that vendor, which the vendor uses under part 4617.0070.

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. [Repealed, 22 SR 266]

Subp. 44b. **WIC-allowed foods.** “WIC-allowed foods” means special infant formula, and foods approved by the commissioner under this chapter for purchase with WIC vouchers.

Subp. 44c. [Repealed, 25 SR 555]

Subp. 44d. **WIC cashier trainer.** “WIC cashier trainer” means the employee or other representative of a vendor who is, or, in the case of a vendor applicant, who will be, responsible for training the vendor’s cashiers in properly transacting WIC vouchers.

Subp. 44e. **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. 44f. **WIC food center.** “WIC food center” means a site at which the commissioner or a nonprofit agent of the commissioner distributes WIC-allowed foods directly to WIC customers under Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A, part 246, subpart E, section 246.12, paragraph (n), as amended.

Subp. 44g. **WIC ID folder.** “WIC ID folder” means a document issued by a local agency to a participant or proxy which contains eligibility information on a participant and contains the signatures of all individuals authorized to sign vouchers issued to the participant.

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

Subp. 46. **WIC sales.** “WIC sales” means all sales by a vendor for which the vendor receives payment in the form of a WIC voucher.

Statutory Authority: *MS s 144.11; 144.12; 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164; L 1991 c 106 s 6; 19 SR 2089; 22 SR 266; 25 SR 555; 25 SR 805; 29 SR 1202*

NOTE: Subpart 44d was originally adopted as subpart 44c at 29 SR 1202. It, and the subsequent subdivisions, were renumbered editorially as subparts 44d through 44g.

LOCAL AGENCIES

4617.0005 NOTICE OF AVAILABILITY OF WIC PROGRAM FUNDS.

At least once every five years beginning January 1, 2006, 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 of availability must also be published on the Department of Health's Web page or in the State Register at least 15 days before the date by which the notice of intent required under part 4617.0010, item A, must be submitted to the commissioner. The notice of availability must include the format of the notice of intent required under part 4617.0010, item A, and the date by which that notice must be submitted to the department.

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

History: *14 SR 164; 29 SR 1202*

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. After 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. The instructions shall include a due date by which the agency shall submit the completed application form to the commissioner. The due date shall be no sooner than 30 days after the date the commissioner sends the application form and instructions.

C. An agency shall apply to administer the WIC program for a geographic area or a special population.

D. An agency shall submit an application form for WIC program funds no later than the due date specified in the instructions under item B. All applications must include the name and address of the applicant, must document that the applicant can meet the eligibility criteria under part 4617.0015, and must include all information requested on the application form that relates to the commissioner's consideration of the application under part 4617.0020.

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 144.11; 145.891 to 145.897*

History: *14 SR 164; 29 SR 1202*

4617.0015 AGENCY ELIGIBILITY CRITERIA.

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

A. meet the definition of local agency under Code of Federal Regulations, title 7, section 246.2, as amended;

B. comply with all requirements for local agencies under Code of Federal Regulations, title 7, part 246, as amended; and

C. comply with the requirements of a written agreement between a local agency and the commissioner according to part 4617.0030.

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

History: *14 SR 164; 29 SR 1202*

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 9a.

Subp. 2. **Agency application; review.** The commissioner shall 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 to serve geographic area; approval and disapproval.** The commissioner shall approve or disapprove an application to serve a geographic area according to items A to G.

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

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 except as provided in item C.

C. If an applicant fails to meet a deadline in part 4617.0010 but is the only applicant that meets the eligibility criteria under part 4617.0015 to serve a particular geographic area, the commissioner shall approve the application. If, after the approval of an application under this item, the commissioner receives a subsequent application to serve the same geographic area, the commissioner shall disapprove the subsequent application.

D. Except as provided in items E and F, 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.

E. If, after disapproving applications under item B, there are two or more remaining applications to serve the same geographic area:

(1) the commissioner shall determine whether any of these remaining applicants is an agency that is or has in the past been a WIC local agency, and, if so, shall determine whether such applicants had significant WIC compliance issues. For purposes of this part, an applicant had significant WIC compliance issues if:

(a) the applicant, while a WIC local agency, committed a violation of this chapter or Code of Federal Regulations, title 7, part 246; and

(b) the commissioner determines that a violation or violations described in unit (a) represents significant WIC compliance issues, based on the following factors:

- i. the number of violations;
- ii. the duration of the violations;
- iii. the impact or potential impact of the violations on participants;
- iv. the frequency of violations;
- v. how long ago the violations occurred;
- vi. the agency's response to technical assistance and training provided by the commissioner in connection with the violations; and
- vii. the adequacy of the agency's staff to avoid future violations, both in terms of ratio of staff to participants and in terms of staff qualifications; and

(2) the commissioner shall approve the application with the highest priority according to the following priority system:

(a) except as provided in item F, first priority to a community health board whose jurisdiction under Minnesota Statutes, chapter 145A, is the geographic area that the board is applying to serve;

(b) except as provided in item F, second priority to a community health board that, under one or more contracts between the applicant and another community health board, provides maternal or child health care or health promotion to residents of the geographic area that the board is applying to serve;

(c) except as provided in item F, third priority to any other community health board;

(d) except as provided in item F, fourth priority to a public or private nonprofit health service agency;

(e) except as provided in item F, fifth priority to a public human service agency; and

(f) except as provided in item F, sixth priority to a private nonprofit human service agency.

F. If the agency applicant that has the highest priority under item E had significant WIC compliance issues, as determined according to item E, subitem (1), or if there are two or more applicants with the highest priority under item E, the commissioner shall:

(1) request each applicant to provide to the commissioner information, as specified by the commissioner, that relates to the commissioner's consideration of the factors

identified in subitem (2), units (a) to (i). The commissioner shall consider relevant information provided by the applicant unless the commissioner receives the information more than ten business days after the date of the commissioner's request; and

(2) determine which of the applications to approve based on the following factors:

(a) each applicant's ability to continue meeting the WIC program needs that are currently being met in the area;

(b) each applicant's ability to meet any unmet WIC program needs in the area, including language skills of the applicant's staff, use of interpreters, and the staff's knowledge of cultures and health practices. For purposes of this unit, "unmet WIC program needs" in an area includes both:

i. WIC program needs in the area that are not being met at the time of the application; and

ii. WIC program needs in the area that are anticipated to be unmet during the time for which the applicant is applying to be a local agency;

(c) the relative benefits to the population to be served;

(d) each applicant's experience with the WIC program, other maternal and child health programs, and other public health programs;

(e) each applicant's experience with coordinating and ability to coordinate WIC program benefits with benefits from other health or human service programs;

(f) the proposed sites at which each applicant will deliver WIC services;

(g) the results of any financial and administrative reviews of each applicant, conducted by local, state, or federal governmental authorities within five years before the application due date as specified in the instructions for completing the application;

(h) the results of any audits of each applicant, conducted by an independent accounting firm or the state auditor within five years before the application due date as specified in the instructions for completing the application;

(i) the availability of local or other funds or in-kind contributions to supplement the federal funds to be expended by each applicant in administering the WIC program; and

(j) the recommendation, if any, of each community health board whose jurisdiction includes all or part of the geographic area the applicants are applying to serve and each community health board's rationale for its recommendation.

G. For purposes of the priority system under item E, an agency other than a community health board 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 promotion or health care and if more than 50 percent of the agency's employee work hours are non-WIC program health promotion or health care.

Subp. 4. [Repealed, 29 SR 1202]

Subp. 5. [Repealed, 29 SR 1202]

Subp. 6. [Repealed, 29 SR 1202]

Subp. 7. [Repealed, 29 SR 1202]

Subp. 8. [Repealed, 29 SR 1202]

Subp. 9. [Repealed, 29 SR 1202]

Subp. 9a. Agency application to serve special population; approval and disapproval. For purposes of this subpart, "unmet WIC program needs" in a special population includes both: (i) WIC program needs in the special population that are not being met at the time of the application; and (ii) WIC program needs in the special population that are anticipated to be unmet during the time for which the applicant is applying to be a local agency. The commissioner shall approve or disapprove an application to serve a special population according to items A to E.

A. If the 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.

B. If the applicant is eligible for funds directly from the United States Department of Agriculture to fund the applicant to provide WIC services to the special population and if the application has not been disapproved under item A, the commissioner shall approve that application and shall disapprove all other applications to serve the same special population.

C. If the application has not been approved or disapproved under item A or B, the commissioner shall disapprove the application if:

(1) the application does not identify unmet WIC program needs in the special population the applicant is applying to serve or does not document how the applicant intends to meet the identified unmet WIC program needs in the special population;

(2) based on all information available to the commissioner, the applicant's assertion of unmet WIC program needs is incorrect; or

(3) the applicant does not, at the time of the application, provide health promotion or obstetric or pediatric health care.

D. If, after considering applications according to items A to C, there are one or more remaining applications to serve a special population, the commissioner shall:

(1) request information from each applicant that has applied to serve a geographic area that includes the geographic area where some or all of the members of the special population reside, except applicants whose applications have been disapproved. The commissioner shall request that each such applicant submit information that relates to the commissioner's determinations under subitem (2) and consideration of the factors identified in item E. The commissioner shall consider relevant information provided by the applicants to serve the geographic areas unless the commissioner receives the information more than ten business days after the date of the commissioner's request; and

(2) determine whether the applicant to serve the special population can better meet the unmet WIC program needs than the applicants to serve the geographic areas. Unless an applicant to serve the special population can better meet the unmet WIC program needs of the special population, the applications to serve the special population shall be denied. If one or more applicants to serve the special population can better meet the unmet WIC program needs of the special population, the commissioner shall approve the application of the applicant that can best meet the unmet WIC program needs of the special population and shall deny all other applications to serve the special population.

E. To determine under item D, subitem (2), whether an applicant can better meet the unmet WIC program needs of a special population and to determine which applicant can best meet the unmet WIC program needs of a special population, the commissioner shall consider the factors listed in subitems (1) to (13). For purposes of subitems (1) to (10), "applicant" means an applicant to serve the special population or an applicant to serve one of the geographic areas involved, except applicants whose applications have been disapproved:

(1) each applicant's ability to meet any unmet WIC program needs in the special population, including language skills of staff, use of interpreters, and staff's knowledge of cultures and health practices;

(2) the extent to which the special population is at high risk for health problems related to nutritional deficiencies and the ability of each applicant to meet the needs of the high-risk persons;

(3) each applicant's ability to continue meeting the WIC program needs that are currently being met in the special population;

(4) the relative benefits to the population to be served;

(5) each applicant's experience with the WIC program, other maternal and child health programs, and other public health programs;

(6) each applicant's experience with and ability to coordinate WIC program benefits with benefits from other health or human service programs;

(7) the proposed sites at which each applicant will deliver WIC services;

(8) the results of any financial and administrative reviews of each applicant, conducted by local, state, or federal governmental authorities, within five years before the application due date as specified in the instructions for completing the application;

(9) the results of any audits of each applicant by an independent accounting firm or the state auditor, within five years before the application due date as specified in the instructions for completing the application;

(10) the availability of local or other funds or in-kind contributions to supplement the state and federal funds to be expended by each applicant in administering the WIC program;

(11) the recommendation, if any, of each community health board whose jurisdiction includes the geographic area where some or all of the members of the special population reside and each community health board's rationale for its recommendation;

(12) whether the applicant to serve the special population consulted with the existing WIC local agency serving the geographic area about the unmet WIC program needs in the special population, and how the existing WIC local agency responded; and

(13) the financial impact on administrative resources of approving the application to serve the special population.

Subp. 10. Notice of approval or disapproval. Within 90 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 that an application is approved as originally submitted, approved with changes, or disapproved.

A notice of disapproval must state the reason for the disapproval and must state that the agency applicant may appeal the disapproval according to part 4617.0100.

Subp. 11. [Repealed, 29 SR 1202]

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

History: *14 SR 164; 19 SR 2089; 29 SR 1202*

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 or with Code of Federal Regulations, title 7, part 246, as amended. 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; 29 SR 1202*

4617.0030 LOCAL AGENCY AGREEMENTS.

Subpart 1. State agreements. To administer the WIC program, a local agency must have a written agreement with the commissioner. The agreement 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), as amended;

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

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, as amended;

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

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

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

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

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 agreement; 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), as amended;

(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. [Repealed, 29 SR 1202]

Subp. 3. [Repealed, 29 SR 1202]

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

History: *14 SR 164; 19 SR 2089; 29 SR 1202*

4617.0035 [Repealed, 25 SR 805]

4617.0037 [Repealed, 29 SR 1202]

4617.0040 [Repealed, 29 SR 1202]

4617.0042 [Repealed, 29 SR 1202]

4617.0043 [Repealed, 29 SR 1202]

4617.0044 [Repealed, 25 SR 805]

4617.0045 [Repealed, 25 SR 805]

4617.0046 [Repealed, 19 SR 2089]

4617.0047 [Repealed, 19 SR 2089]

4617.0049 [Repealed, 25 SR 805]

4617.0050 [Repealed, 25 SR 805]

4617.0052 [Repealed, 25 SR 805]

4617.0054 [Repealed, 25 SR 805]

4617.0056 [Repealed, 25 SR 805]

4617.0058 [Repealed, 25 SR 805]

4617.0059 [Repealed, 25 SR 555]

4617.0060 [Repealed, 22 SR 266]

4617.0061 [Repealed, 22 SR 266]

4617.0062 [Repealed, 22 SR 266]

4617.0063 [Repealed, 22 SR 266]

4617.0064 [Repealed, 22 SR 266]

VENDORS

4617.0065 MR 1995 [Renumbered 4617.0067]

4617.0065 VENDOR APPLICATION PROCESS.

Subpart 1. **Applicability.** This part applies to all vendor applications, except that it applies to applications for immediate vendor agreements under part 4617.0066, subpart 3, only to the extent specified in that subpart. If a vendor applicant is applying to be both a pharmacy vendor and a retail food vendor:

A. the applicant need only submit one application; however, the commissioner shall treat the application as if the applicant had submitted an application to be a pharmacy vendor separate from the application to be a retail food vendor; and

B. the commissioner shall approve or disapprove the applicant as a retail food vendor, and shall approve or disapprove the vendor applicant as a pharmacy vendor, according to this part.

Subp. 2. **Application.**

A. Each vendor applicant shall complete and submit to the commissioner an application form, supplied by the commissioner, which contains the following information:

- (1) name of the applicant;
- (2) mailing address and location of the applicant's business site;
- (3) whether the applicant is seeking to be a retail food vendor, a pharmacy vendor, or both;
- (4) names and current addresses of all controlling persons of the applicant;
- (5) hours of operation of the applicant;
- (6) the specific WIC-approved foods stocked by the applicant and the applicant's shelf prices at the time of application for those WIC-approved foods;
- (7) the applicant's food stamp authorization number;
- (8) if the commissioner has given notice to vendors under part 4617.0090, subpart 1a, the name of the bank, the bank's routing number, and the bank account number of the bank account into which the applicant will deposit WIC vouchers;
- (9) information on where in Minnesota the applicant will, if approved as a vendor, have available for immediate review by WIC program representatives the store's original documentation, including receipts and invoices, reflecting all purchases of WIC-allowed food items by the store during the most recent three months, as required in part 4617.0068, subpart 4a;
- (10) other information requested by the commissioner which relates to whether the applicant is in compliance with all applicable vendor eligibility requirements in part 4617.0067; and
- (11) the signature of an authorized representative of the applicant, attesting that the information in the application is true and correct to the best of the authorized representative's knowledge and belief.

B. Each vendor applicant shall submit to the commissioner documentation described in this item.

(1) A retail food vendor applicant must submit to the commissioner a copy of all government licenses required by part 4617.0067, subpart 2, item B, subitem (1), or if the store has applied for but not yet received all of the government licenses, a copy of all licenses received and the receipts for all licenses not yet received.

(2) A pharmacy vendor applicant must submit to the commissioner a copy of the pharmacy's registration by the Minnesota Board of Pharmacy under Minnesota Statutes, chapter 151.

C. Upon request by the commissioner, a vendor applicant must submit to the commissioner all additional information necessary to support or clarify information submitted under items A and B.

Subp. 3. **Submission time frames for applications.**

A. The deadline for a vendor to submit a complete reauthorization application is five months before the ending date of the vendor applicant's existing vendor agreement. If

the commissioner receives the complete reauthorization application more than 30 days after the deadline, the vendor applicant's existing vendor agreement may expire before the commissioner approves or disapproves the reauthorization application. If the commissioner receives the complete reauthorization application after the applicant's most recent vendor agreement has expired, the commissioner shall treat the application as an application from a vendor applicant that is not a current vendor.

B. Except as provided in item C, a pharmacy vendor applicant that is not a current pharmacy vendor may submit a pharmacy vendor application to the commissioner at any time.

C. A pharmacy vendor applicant may not submit more than one pharmacy vendor application in any 12-month period, other than an application for an immediate vendor agreement under part 4617.0066, subpart 3. The commissioner shall return any additional applications to the applicant without approval or disapproval.

D. Except as provided in item E, a retail food vendor applicant that is not a current retail food vendor may submit a retail food vendor application to the commissioner at any time.

E. A retail food vendor applicant may not submit more than one retail food vendor application in any 12-month period, other than an application for an immediate vendor agreement under part 4617.0066, subpart 3. The commissioner shall return any additional applications to the applicant without approval or disapproval.

Subp. 4. [Repealed, 29 SR 1202]

Subp. 5. **Application review and approval process.** The commissioner shall, in accordance with this subpart, review vendor applications except applications returned to the vendor applicant under subpart 3, item C or E.

A. The commissioner shall perform an initial office review of each application to determine whether the application is complete and the applicant meets all applicable eligibility requirements in part 4617.0067.

(1) If the commissioner determines during the initial office review of the application that the application is incomplete, the commissioner shall contact the applicant and give the applicant an opportunity to submit complete information, unless subitem (2) applies. If the commissioner does not receive complete information within 30 days after the commissioner first contacts the applicant for complete information, the commissioner shall disapprove the application.

(2) If the commissioner determines during the initial office review of the application that the applicant does not meet an applicable eligibility requirement in part 4617.0067, subpart 2, item A or C; 4, item A, B, or E; or 6, the commissioner shall disapprove the application.

(3) If the commissioner determines during the initial office review of the application that the applicant does not meet an applicable eligibility requirement in part 4617.0067, subpart 3; 4, item D or G; or 5, the commissioner shall contact the applicant and give the applicant one opportunity to submit corrected information. If the commissioner does not receive a response from the applicant within 30 days after the commissioner first contacts the applicant for corrected information, the commissioner shall disapprove the application.

B. If the application is a reauthorization application and is not disapproved under item A, and if the complete or corrected application meets all applicable eligibility requirements under part 4617.0067, the commissioner shall approve the application.

C. If the application is not a reauthorization application and is not disapproved under item A, the commissioner shall conduct an on-site inspection of the applicant to verify the information in the application and to verify that the applicant is in full compliance with part 4617.0067:

(1) If the on-site inspection shows that the applicant is not in full compliance with part 4617.0067, then:

(a) if the applicant is a retail food vendor applicant:

i. the commissioner shall notify the applicant in writing of the ways in which the applicant was not in full compliance with part 4617.0067;

ii. within 30 days after the date of the commissioner's written notice, the applicant must notify the commissioner in writing that the applicant has been brought into full compliance with part 4617.0067; and

iii. after receiving the applicant's written notice, the commissioner shall conduct a second on-site inspection; or

(b) if the applicant is a pharmacy vendor applicant, the commissioner shall disapprove the application.

(2) If the on-site inspection of a pharmacy vendor applicant shows that the applicant is in full compliance with part 4617.0067, the commissioner shall approve the application.

(3) If the applicant is a retail food vendor applicant and either the initial or second on-site inspection under this item shows that the applicant meets all applicable eligibility requirements in part 4617.0067, the commissioner shall approve the application.

(4) If the second on-site inspection under subitem (1), unit (a), shows that the retail food vendor applicant does not meet all applicable eligibility requirements in part 4617.0067, the commissioner shall disapprove the application.

(5) If the commissioner does not receive in a timely manner the notice required by subitem (1), unit (a), subunit ii, the commissioner shall disapprove the application.

Subp. 6. Notification of status of application.

A. The commissioner shall, in writing, inform each vendor that has submitted a complete reauthorization application of the commissioner's approval or disapproval of the application by the later of:

(1) the next April 1 after the commissioner received the complete reauthorization application; or

(2) four months after the commissioner received the complete and, if applicable, corrected reauthorization application.

B. For a vendor application that is not a reauthorization application, the commissioner shall inform the vendor applicant in writing of the commissioner's approval or disapproval of the application no later than four months after the commissioner received the complete and, if applicable, corrected application.

C. If the commissioner disapproves an application under subpart 5, item A, subitem (1) or (3), the commissioner must notify the vendor applicant of the commissioner's disapproval of the application within four months after the commissioner first requests the complete or corrected information from the vendor applicant.

D. A notice of disapproval must state the reasons for the commissioner's disapproval.

Subp. 7. Mandatory training of vendor representative. After submitting an application and before the commissioner executes a new vendor agreement under subpart 8, at least one representative of each vendor applicant must complete WIC-approved training, sign a training verification form provided by the commissioner to verify completion of the WIC-approved training, and submit this signed training verification form to the commissioner.

Subp. 8. Execution of vendor agreement.

A. If a vendor application is approved, the commissioner shall mail or deliver a vendor agreement to the applicant or agent designated by the applicant. The applicant or designated agent shall submit the vendor agreement, signed according to part 4617.0075, to the commissioner by the deadline specified by the commissioner. This deadline shall be no sooner than 14 days after the commissioner mails or delivers the vendor agreement to the applicant or designated agent. Upon receipt of a timely signed and submitted vendor agreement, the commissioner shall:

(1) verify that the applicant has complied with subpart 7;

(2) execute the vendor agreement; and

(3) issue the applicant a vendor stamp unless the applicant already has a valid vendor stamp.

B. If the applicant or designated agent fails to submit the signed vendor agreement within 30 days after the specified deadline, the commissioner shall disapprove the vendor application, notwithstanding the commissioner's prior approval of the vendor application.

Subp. 9. **Additional grounds for disapproval.** Notwithstanding subpart 5, the commissioner shall disapprove a vendor application if:

A. the application is not a reauthorization application and the applicant does not comply with all applicable requirements in part 4617.0067 at any time between the final on-site inspection under subpart 5, item C, and the commissioner's execution of a new vendor agreement;

B. a reauthorization applicant does not comply with all applicable requirements in part 4617.0067 at any time between the commissioner's receipt of the complete and corrected application and the commissioner's execution of a new vendor agreement;

C. the applicant is a retail food vendor applicant which does not comply with part 4617.0067, subpart 2, item B, by the date the applicant signs any vendor agreement;

D. the applicant provides the commissioner with false or misleading material information:

(1) on the application; or

(2) in any other manner after the application is submitted but before the commissioner's execution of a new vendor agreement; or

E. the applicant does not comply with subpart 7.

Statutory Authority: *MS s 144.11; 145.894*

History: 22 SR 266; 25 SR 555; 29 SR 1202

4617.0066 CHANGE OF VENDOR OWNERSHIP, NAME, OR BUSINESS SITE.

Subpart 1. **Notice of change of vendor ownership, name, or business site.** A vendor must submit to the commissioner a written notice of a change of vendor ownership, a change of vendor location, a change of name, or a cessation of operations. This notice must be received by the commissioner prior to the effective date of the change.

Subp. 2. **Effect of changes.** If there is a change of vendor ownership, a change of vendor location, or a cessation of operations:

A. the commissioner shall terminate the vendor agreement with respect to that vendor;

B. the termination of the vendor agreement is effective on the later of:

(1) 15 days after the commissioner mails written notice of termination; or

(2) the effective date of the change of vendor ownership, change of vendor location, or cessation of operations;

C. the vendor stamp for that vendor must be returned to the commissioner within five days after the effective date of the termination of the vendor agreement; and

D. if the vendor agreement in effect before the change includes one or more other vendors that have not changed ownership or location and have not ceased operations, a duly authorized agent of each of the other vendors shall execute, by the effective date of the change, an amended vendor agreement that does not include any vendor that changed ownership or location or ceased operations.

Subp. 3. **Immediate vendor agreement.** If there is a change of vendor ownership or location, the retail food store or pharmacy may apply for an immediate vendor agreement under this subpart.

A. The application for an immediate agreement must include, at a minimum, the materials specified in part 4617.0065, subpart 2.

B. A retail food store or pharmacy may not submit more than one application for an immediate vendor agreement each calendar year. The commissioner shall return any additional applications to the applicant without approval or disapproval.

C. The commissioner shall approve the application for an immediate vendor agreement if:

(1) the retail food store or pharmacy, during the two years immediately preceding the change of ownership or location, had no history of violations under part 4617.0084, subpart 5, 6, 7, 8, or 19, item A, B, or C;

(2) during the two years immediately preceding the change of ownership or location, no controlling person of the vendor applicant was a controlling person of another retail food store or pharmacy that committed a violation under part 4617.0084, subpart 5, 6, 7, 8, or 19, item A, B, or C;

(3) the vendor applicant has not accepted and has not held itself out as able to accept a WIC voucher at any time when there was not a fully executed vendor agreement in effect between the vendor applicant and the commissioner;

(4) the vendor applicant meets all applicable eligibility requirements under part 4617.0067;

(5) within one year before the change of ownership or location, a representative of the vendor applicant completed WIC-approved training under part 4617.0065, subpart 7, or 4617.0068, subpart 7; and

(6) the WIC cashier trainer of the vendor applicant is the same as the WIC cashier trainer of the retail food store or pharmacy before the change of ownership or location.

D. If a retail food store or pharmacy that is applying for an immediate vendor agreement does not meet all the requirements in item C, the commissioner shall review the application according to part 4617.0065, subparts 5, 7, and 9. If the commissioner approves the application under part 4617.0065, then part 4617.0065, subpart 8, shall apply.

E. If the commissioner approves an application for an immediate vendor agreement, then with respect to the immediate vendor agreement, the applicant shall comply with part 4617.0065, subpart 7, and the commissioner and the applicant shall comply with part 4617.0065, subpart 8. The immediate vendor agreement shall expire on the same expiration date stated on the voided vendor agreement. The immediate vendor agreement shall be effective no sooner than the effective date of the change of ownership.

F. Notwithstanding item C, the commissioner shall disapprove an application for an immediate vendor agreement if:

(1) the applicant does not comply with all applicable requirements in part 4617.0067 before the commissioner executes the immediate vendor agreement;

(2) a retail food vendor applicant does not comply with the requirement in part 4617.0067, subpart 2, item B, by the date the applicant signs the immediate vendor agreement; or

(3) the applicant provides the commissioner with false or misleading material information.

Statutory Authority: *MS s 144.11; 145.894*

History: *22 SR 266; 25 SR 555; 29 SR 1202*

4617.0067 VENDOR ELIGIBILITY REQUIREMENTS.

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

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

A. A retail food vendor must be a retail food store located in Minnesota, unless:

(1) the retail food vendor is located in a state adjacent to Minnesota;

(2) there is a clinic town with no retail food vendors; and

(3) the distance from the clinic town to the retail food vendor is less than the distance from the clinic town to any other retail food vendor.

B. A retail food vendor must:

(1) be licensed by all government entities that require a license for the vendor to be open to the public for business; and

(2) be authorized by the United States Department of Agriculture to accept food stamps.

C. A pharmacy vendor must be a pharmacy located in Minnesota which is registered by the Minnesota Board of Pharmacy according to Minnesota Statutes, chapter 151.

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

A. A retail food vendor located in a Tier 2 county shall at all times have in stock and available for purchase, at a minimum:

(1) except as provided in item D, ten containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(2) 24 ounces of WIC-allowed plain, dry, infant cereal;

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

(a) skim or nonfat;

(b) one percent milkfat;

(c) two percent milkfat; and

(d) whole;

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

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

(6) three 14- to 16-ounce packages of WIC-allowed dried legumes, which do not contain any added ingredients;

(7) three 16- to 18-ounce containers of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;

(8) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;

(9) four six-ounce containers of WIC-allowed canned tuna fish;

(10) 12 containers of any combination of the following, as long as at least four containers are 100 percent citrus juice:

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

(b) 46-ounce containers of WIC-allowed pure and unsweetened 100 percent juice; and

(11) nine boxes or bags of WIC-allowed cereal in any combination of at least five varieties.

B. A retail food vendor located in a Tier 1 county shall at all times have in stock and available for purchase, at a minimum:

(1) except as provided in item D, 31 containers of milk-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(2) except as provided in item D, 15 containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(3) except as provided in item D, ten containers of soy-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(4) 48 ounces of WIC-allowed plain, dry, infant cereal;

(5) 15 gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:

(a) skim or nonfat;

(b) 1 percent milkfat;

(c) 2 percent milkfat; and

(d) whole;

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

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

(8) four 14- to 16-ounce packages of WIC-allowed dried legumes, which do not contain any added ingredients;

(9) four 16- to 18-ounce containers of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;

(10) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;

(11) four six-ounce containers of WIC-allowed canned tuna fish;

(12) 18 containers of any combination of the following, as long as at least six containers are 100 percent citrus juice:

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

(b) 46-ounce containers of WIC-allowed pure and unsweetened 100 percent juice; and

(13) 12 boxes or bags of WIC-allowed cereal in any combination of at least six varieties.

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

D. If the vendor has been a vendor for more than six months and, during the most recent six months for which data are available, has not redeemed any voucher for a particular type of infant formula, the vendor does not need to maintain in stock and available for purchase any of that type of infant formula.

E. If a WIC customer requests a prescribed infant formula approved by the commissioner under part 4617.0171, the vendor must ensure that the requested formula is in stock and available for purchase at the vendor's location within one week of the WIC customer's request.

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

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

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

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

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

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

(1) is employed by the Minnesota Department of Health in connection with the WIC program;

(2) is employed by a local agency in a capacity that allows the employee access to WIC vouchers; or

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

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

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

Subp. 5. Vendor prices. A retail food vendor's price for each of the authorized foods in subpart 3 must not be more than 115 percent of the average price charged by retail food ven-

dors. The commissioner shall determine the average price charged by retail food vendors based on the most recent price information available to the commissioner on prices charged by retail food vendors. A change in the manufacturer's price of an authorized food in subpart 3 is grounds for the commissioner to change the commissioner's calculation of the average price charged by retail food vendors. If the commissioner determines that there is a religious need for a vendor to charge a specific price greater than 115 percent of the average price charged by retail food vendors, the vendor may charge that specific price.

Subp. 6. Special requirements for vendor applicants.

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

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

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

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

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

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

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

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

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

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

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

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

(1) was permanently disqualified from the food stamp program; or

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

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

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

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

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

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

4617.0068 OPERATING REQUIREMENTS.

Subpart 1. Acceptance and pricing of vouchers.

A. A pharmacy vendor shall not accept WIC vouchers for any foods other than infant formula, infant cereal, and juice, unless the pharmacy vendor is also a retail food vendor.

B. For each voucher accepted by a vendor, the vendor shall ensure that:

- (1) the voucher is accepted at a check-out lane at the vendor's business site;
- (2) the voucher is accepted on a date between the first-day-to-use date and the last-day-to-use date, inclusive, on the voucher;
- (3) the date that the voucher is accepted is inserted on the voucher when the voucher is accepted;
- (4) the price of the food purchased with the voucher is inserted in the space provided on the voucher before the WIC customer signs the voucher;
- (5) the price inserted on the voucher reflects a discount in the amount of any store or manufacturer coupons presented by a WIC customer for the food purchased;
- (6) the vendor does not charge the WIC program more for WIC-allowed food than the vendor's usual and customary charge to non-WIC customers;
- (7) the vendor does not charge the WIC program more than the vendor's shelf price for the WIC-allowed food provided to the WIC customer at the time the vendor accepts the voucher in exchange for the food;
- (8) the WIC customer signs the voucher at the time the WIC customer uses the voucher to obtain food;
- (9) the cashier verifies that the signature of the individual who signs the voucher matches an authorized signature on the WIC ID folder;
- (10) before deposit in the vendor's bank, the number on the vendor stamp has legibly been imprinted onto the voucher; and
- (11) the voucher does not contain any alteration of the first-day-to-use date, last-day-to-use date, or food prescription.

Subp. 2. Deposit of vouchers. A vendor shall deposit each voucher in the vendor's bank within 60 days of the first-day-to-use date on the voucher, except as provided in part 4617.0084, subpart 18, item C. The vendor may only deposit into the vendor's account vouchers which were accepted at a check-out lane at the vendor's business site. The vendor may not transfer any vouchers accepted by the vendor to anyone else for deposit in an account other than the vendor's account.

Subp. 3. Access to vouchers. A vendor shall allow representatives of the Minnesota Department of Health and representatives of the United States Department of Agriculture access to vouchers that are present at the vendor's business site on the day of an on-site monitoring visit and access to any cash register or other area of the vendor's premises where vouchers may be located.

Subp. 4. Three-year documentation of purchases.

A. For a minimum of three years, a vendor shall maintain, in chronological order:

- (1) documentation showing the dollar amount of all food sales by the vendor;
- and

(2) documentation, including receipts or invoices, showing all purchases by the vendor while a vendor agreement was in effect of all WIC–allowed foods for which the vendor accepted one or more vouchers.

B. All documentation required by this subpart shall specify the quantity, size, brand, and product name of each WIC–allowed food purchased by the vendor, the date of purchase, the name and address of the entity from which the purchase was made, and the date of delivery to the vendor.

C. Within 15 business days of a request by the commissioner, a vendor shall provide to the commissioner:

(1) the documentation required under this subpart; and

(2) the vendor's inventory records relating to the inventory maintained during the two years before the commissioner's request.

Subp. 4a. **Three-month documentation of purchases.** During normal business hours, the vendor must have available for immediate review by WIC program representatives, at the Minnesota location indicated on the vendor application, the store's original documentation, including receipts and invoices, reflecting all purchases of WIC–allowed food items by the store during the most recent three months before a request by a WIC program representative to review the documentation.

Subp. 5. **Documentation of real estate ownership.** A vendor shall maintain documentation showing that one or more controlling persons of the vendor own or lease the real estate where the vendor's business site is located. A vendor shall provide this documentation to the commissioner within 30 days from the date of a request by the commissioner.

Subp. 6. **Notification requirements.** In addition to the notification required by part 4617.0066, subpart 1, a vendor must notify the commissioner of any change in controlling persons. A vendor must also notify the commissioner of any business–related violation of any cashier or controlling person of the vendor.

Subp. 7. **Annual training requirements.** A vendor shall ensure that:

A. a representative of the vendor completes WIC–approved training on the WIC program at least once every calendar year; and

B. the representative who completes this training conveys all information presented during the training to all cashiers of the vendor.

Subp. 8. [Repealed, 25 SR 555]

Subp. 9. **Shelf price surveys.** Within one month of a request by the commissioner, a vendor shall provide the commissioner with accurate and complete shelf price survey information in the format requested.

Subp. 10. **Shelf labels.** A vendor shall display in proximity to each WIC–allowed food a current shelf label provided or approved by the commissioner which indicates that the food item is a WIC–allowed food.

Subp. 11. **Receipts.** When a vendor accepts a WIC voucher, the vendor must provide a cash register receipt to the WIC customer. The receipt must include the date, the total price, and the price of each item received by the WIC customer.

Subp. 12. **Coupons.** A vendor shall accept store and manufacturer's coupons for food purchased by a WIC customer.

Subp. 13. **Bank account information.** If the commissioner has provided notice under part 4617.0090, subpart 1a, and if there is a change in the vendor's bank name, bank routing number, or bank account number for the account to which the vendor deposits WIC vouchers, the vendor shall promptly inform the commissioner in writing of the change.

Subp. 14. **Purchase of infant formula.** A vendor shall only purchase infant formula from the entities on the list maintained by the commissioner under section 17(h)(8)(A)(ix) of the Child Nutrition Act of 1966, codified at United States Code, title 42, section 1786(h)(8)(A)(ix), as amended.

Subp. 15. **Volume of WIC sales.** A vendor's annual revenue from WIC sales may not be greater than 50 percent of the vendor's annual revenue from the sale of all food items.

Statutory Authority: *MS s 144.11; 145.894*

History: 22 SR 266; 25 SR 555; 29 SR 1202

4617.0069 [Repealed, 25 SR 555]

4617.0070 VENDOR STAMPS.

Subpart 1. **Issuance.** After a vendor agreement has been executed by the commissioner, the commissioner shall issue a vendor stamp to each vendor included in the agreement that does not already have a valid vendor stamp. The number on each stamp must be issued to only one vendor. A vendor shall not possess more than one vendor stamp, shall not use a vendor stamp issued to another vendor, shall not duplicate a vendor stamp, and shall not use or allow the use of the vendor stamp on any voucher other than a voucher accepted at a check-out lane at the vendor's business site. The commissioner shall issue only one vendor stamp to each vendor, even if the vendor is authorized as both a retail food vendor and a pharmacy vendor.

Subp. 1a. **Returning vendor stamp.** If a vendor is disqualified or terminated under part 4617.0084, the vendor must return the vendor stamp to the commissioner no later than five days after the effective date of the disqualification or termination. In addition, the vendor must return the vendor stamp to the commissioner within five days after the earlier of: (i) the date that the vendor permanently closes the business; (ii) a change of ownership of the vendor; or (iii) the expiration of the vendor's current vendor agreement if the vendor's application is disapproved or if the vendor agreement ends and no subsequent agreement for that vendor is executed.

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 144.11; 145.891 to 145.897*

History: 13 SR 1190; 22 SR 266; 25 SR 555; 29 SR 1202

4617.0075 VENDOR AGREEMENTS.

A duly authorized agent of a retail food store or pharmacy which has been approved to be a vendor shall sign and date a vendor agreement. A separate vendor agreement must be signed for each vendor, except that all vendors with identical ownership may elect to be included in one vendor agreement. A vendor agreement must contain:

- A. the names and addresses of all vendors included in the vendor agreement;
- B. the method by which the agreement must be terminated;
- C. terms that are consistent with this chapter and Code of Federal Regulations, title 7, section 246.12, paragraph (h), as amended;
- D. a statement that disqualification from the WIC program may result in disqualification as a retailer in the food stamp or food support program and that such disqualification may not be subject to administrative or judicial review under the food stamp or food support program; and
- E. an ending date that is not more than three years beyond the beginning date.

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

History: 13 SR 1190; 14 SR 164; 22 SR 266; 25 SR 555; L 2003 1Sp14 art 1 s 106; 29 SR 1202

4617.0080 MONITORING VENDORS.

The commissioner shall monitor vendors according to the Code of Federal Regulations, title 7, section 246.12, paragraph (j), as amended.

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

History: *13 SR 1190; 14 SR 164; 22 SR 266; 29 SR 1202*

4617.0084 VENDOR SANCTIONS.

Subpart 1. **Notice of violation.** If a violation described in subpart 7, 8, 9, 12, 13, 13a, or 19 does not result in disqualification or a civil money penalty, the commissioner shall mail or deliver to the vendor a notice of violation.

Subp. 2. **Permanent disqualification.** The commissioner shall permanently disqualify a vendor if any controlling person of the vendor is criminally convicted of either:

A. buying or selling one or more vouchers for cash; or

B. selling any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, for one or more vouchers.

Subp. 3. **Six-year disqualification.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for six years if the vendor:

A. buys or sells one or more vouchers for cash; or

B. sells any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, for one or more vouchers.

Subp. 4. **Providing alcohol or tobacco.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if the vendor provides any alcohol, alcoholic beverage, or tobacco product in exchange for one or more vouchers.

Subp. 5. **Redeeming vouchers in excess of inventory.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if, on two occasions within any two-year period, the vendor claims reimbursement for the sale of an amount of a specific supplemental food item during a month and the amount claimed exceeds the store's documented inventory of that supplemental food item by at least 15 units for the month. The two occasions may be established during a single review of inventory records and may involve two different food items during the same month, two different food items during two different months, or one food item during two different months.

Subp. 6. **Laundering vouchers.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if, on two occasions within any two-year period, the vendor launders one or more vouchers.

Subp. 7. **Providing credit or nonfood item.**

A. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for three years if, twice within any two-year period, the vendor provides credit, other than a rain check, or provides a nonfood item, other than any alcohol, alcoholic beverage, tobacco product, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, in exchange for a voucher.

B. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for three years if, four times within any two-year period, the vendor provides a rain check in exchange for a voucher.

Subp. 8. **Overcharging and charging for food not received.**

A. This subpart applies to violations under subitems (1) and (2). The violation described in subitem (1) is distinct from the violation described in subitem (2) and is accumulated separately to determine the number of violations:

(1) a vendor overcharge; and

(2) charging the WIC program for WIC-allowed food not received by a WIC customer.

B. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A twice within any two-year period and if:

(1) for each violation, the price the WIC program paid the vendor for the voucher was \$2 or more greater than the correct price for the voucher; and

(2) each violation involved any of the following circumstances:

(a) no price was entered on the voucher at the time it was accepted by the vendor;

(b) the price on the voucher was at any time altered to reflect a price higher than the price originally entered on the voucher;

(c) the price the WIC program paid the vendor for the voucher was more than 20 percent greater than the correct price for the voucher;

(d) no receipt was provided at the time the voucher was accepted by the vendor;

(e) the price for any of the WIC-approved food items obtained with the voucher was not displayed for easy viewing or marked on the food; or

(f) the cashier or other store representative asked the WIC customer for any identification other than the WIC ID folder.

C. Except as provided in item B and subparts 15, 16, and 19, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A three times within any two-year period and if, for each violation, the price the WIC program paid the vendor for the voucher was \$2 or more greater than the correct price for the voucher.

D. Except as provided in items B and C and subparts 15, 16, and 19, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A four times within any two-year period.

Subp. 9. Providing unauthorized food.

A. A vendor shall not provide unauthorized food.

B. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify the vendor for one year if the vendor violates item A twice within any two-year period and each violation involved providing unauthorized food in exchange for any of the infant formula listed on the voucher, other than substituting another infant formula with the same level of iron fortification.

C. Except as provided in item B and subparts 15, 16, and 19, the commissioner shall disqualify the vendor for one year if the vendor violates item A four times within any two-year period.

Subp. 10. Food stamp or food support sanctions.

A. If a vendor is disqualified from the food stamp or food support program, the commissioner shall disqualify the vendor from the WIC program for an equal amount of time, except as provided in subpart 15.

B. If the food stamp or food support program assesses a vendor a civil money penalty for hardship instead of disqualifying the vendor from the food stamp or food support program, the commissioner shall disqualify the vendor from the WIC program for the amount of time the vendor would have been disqualified from the food stamp or food support program absent the hardship determination, except as provided in subpart 15.

Subp. 11. One-year disqualification for one violation.

A. The commissioner shall disqualify a vendor if, during any 12-month period within the last three years, the dollar amount of the vendor's WIC sales was greater than 50 percent of the vendor's total food sales.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for one year if:

(1) the vendor provides false or misleading material information on any document submitted to the commissioner;

(2) a controlling person of the vendor commits a business-related violation, unless the business-related violation results in permanent disqualification under subpart 2;

(3) the vendor fails to provide as required, by the deadline and in the manner specified by the commissioner, documentation requested by the commissioner under part 4617.0068, subpart 4 or 5;

(4) the real estate where the vendor's business is located is not owned or leased by one or more controlling persons of the vendor;

(5) during an on-site inspection, the vendor fails to allow the commissioner access to any voucher located on the vendor's premises or to any cash register or other area of the vendor's premises where vouchers may be located; or

(6) the vendor violates part 4617.0068, subpart 14.

Subp. 12. Six-month disqualification for two violations.

A. This subpart applies to the violations described in subitems (1) to (6). Violations described in each subitem are accumulated separately to determine the number of violations:

(1) duplicating a vendor stamp or using a counterfeit vendor stamp;

(2) violating the nondiscrimination clause of the vendor agreement, as specified in Code of Federal Regulations, title 7, section 246.12, paragraph (f)(2)(xv), as amended, or failing to offer a WIC customer the same courtesies offered to other customers;

(3) altering the first-day-to-use date, last-day-to-use date, or food prescription on a voucher or signing a voucher that the vendor has accepted without a signature;

(4) offering an incentive for a WIC customer to redeem a voucher at the vendor's business site or advertising that the vendor would provide such an incentive;

(5) allowing a WIC customer to return or exchange any infant formula bought with a voucher, unless the customer is exchanging infant formula that is expired or damaged food for the identical size, type, brand, and level of iron fortification; and

(6) the vendor fails to provide as required, by the deadline and in the manner specified by the commissioner, documentation requested by the commissioner under part 4617.0068, subpart 4a.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for six months if the vendor commits a violation under item A twice within any two-year period.

Subp. 13. Six-month disqualification for two violations.

A. This subpart applies to the violations described in subitems (1) to (5). Violations described in each subitem are accumulated separately to determine the number of violations:

(1) requiring a WIC customer to provide information or identification other than the WIC ID folder;

(2) requesting any reimbursement or payment from a WIC customer for a WIC voucher returned by the bank;

(3) failing to enter a dollar amount on a voucher at the time the vendor accepts the voucher from a WIC customer;

(4) except as provided in subpart 12, item A, subitem (5), allowing a customer to return or exchange any food bought with a voucher, unless the customer is exchanging expired or damaged food for the identical size and type of food; and

(5) accepting a voucher on which the last-day-to-use date, first-day-to-use date, or food prescription has been altered.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for six months if the vendor commits a violation under item A twice within any two-year period.

Subp. 13a. Three-month disqualification for three violations.

A. This subpart applies to the violations described in subitems (1) to (4). Violations described in each subitem are accumulated separately to determine the number of violations:

(1) failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the WIC ID folder;

(2) failing to accept a manufacturer's coupon for any food obtained by a WIC customer in exchange for a WIC voucher or failing to discount the price inserted on the voucher by the amount of the coupon;

(3) failing to provide to a WIC customer a cash register receipt that includes the date, total price, and price of each item purchased by the WIC customer; and

(4) failing to provide the commissioner with accurate and complete shelf price survey information within one month of a request by the commissioner.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for three months if the vendor commits a violation under item A three times within any two-year period.

Subp. 14. [Repealed, 29 SR 1202]

Subp. 14a. **Written warnings; termination.**

A. The commissioner shall terminate a vendor agreement if:

(1) the commissioner disqualifies the vendor; or

(2) termination of the vendor agreement is required under part 4617.0066, subpart 2.

B. If a vendor commits a violation under subitems (1) to (12), the commissioner shall issue a written warning to the vendor. The vendor must correct the violation within 15 days after the vendor receives the warning. If the vendor fails to correct the violation or commits the same violation at any time more than 15 days but less than six months after receiving the written warning, the commissioner shall terminate the vendor agreement. The commissioner shall issue a written warning if the vendor:

(1) violates part 4617.0067, subpart 4, item A, B, C, D, or E, or 5; or 4617.0068, subpart 4a;

(2) is a retail food vendor and any license or authorization required under part 4617.0067, subpart 2, item B, is suspended or revoked or is not renewed;

(3) is a pharmacy vendor and the vendor's Minnesota Board of Pharmacy registration is suspended or revoked or is not renewed;

(4) with respect to two or more food items, fails to ensure that the price charged for each WIC-allowed food stocked by the vendor is displayed for easy viewing or marked on the food;

(5) is a retail food vendor that fails to maintain the required minimum stock under part 4617.0067, subpart 3;

(6) on two occasions, fails to ensure that a prescribed infant formula is in stock and available for purchase within one week of a WIC customer's request under part 4617.0067, subpart 3, item E;

(7) fails to ensure that a representative of the vendor receives WIC-approved training at least once every year;

(8) fails to make full payment to the commissioner within 120 days of a request by the commissioner under part 4617.0090, subpart 4;

(9) has in stock and available for purchase any expired infant formula of the brand and level of iron fortification approved by the commissioner under part 4617.0171;

(10) is a pharmacy vendor, is not also a retail food vendor, and accepts a WIC voucher for any foods other than infant formula, infant cereal, and juice;

(11) fails to be open for business during the business hours that the vendor has reported to the WIC program; or

(12) fails to provide to the commissioner by the applicable deadline the corrective action plan required under subpart 15, item G.

Subp. 15. **Inadequate participant access; corrective action plan.**

A. Before disqualifying a vendor under any subpart except subpart 2 or 11, item A, the commissioner shall determine whether disqualification of the vendor would result in inadequate participant access, unless under subpart 16, item C, the vendor is not eligible for a civil money penalty instead of disqualification.

B. Disqualification of a vendor located in a Tier 1 county would result in inadequate participant access if the vendor is the only vendor in a clinic town or if:

(1) during the most recent 12 months for which voucher redemption information is available for the commissioner's review, the vendor redeemed WIC vouchers in an average monthly amount of at least \$150; and

(2) as of the date of the notice of disqualification or civil money penalty:

(a) the next closest retail food vendor is more than one mile by public road from the vendor, not including roads on which pedestrians are prohibited; and

(b) there is no bus stop or other public transportation within one-half mile by public road from the vendor, not including roads on which pedestrians are prohibited.

C. Disqualification of a vendor located in a Tier 2 county would result in inadequate participant access if the vendor is the only vendor in a clinic town or if:

(1) during the most recent 12 months for which voucher redemption information is available for the commissioner's review, the vendor redeemed WIC vouchers in an average monthly amount of at least \$100; and

(2) as of the date of the notice of disqualification or civil money penalty, the next closest retail food vendor is more than five miles by public road from the vendor, including roads on which pedestrians are prohibited.

D. If the commissioner determines under this part that disqualification of the vendor would result in inadequate participant access, then instead of disqualifying the vendor, the commissioner shall, except as provided in item F and in subpart 16, item C, impose on the vendor one or more civil money penalties.

(1) If during the course of a single investigation the commissioner determines that the vendor committed multiple violations, the commissioner shall impose a civil money penalty for each violation that would constitute grounds for disqualification in the absence of inadequate participant access.

(2) For each violation described in subparts 3 to 9 and subpart 10, item A, the civil money penalty is calculated as follows:

(a) determine the vendor's average monthly WIC redemptions for the six months immediately before the month that the notice of civil money penalty is dated;

(b) multiply the monthly average from unit (a) by ten percent; and

(c) multiply the product from unit (b) by the number of months the store would have been disqualified for the violation. The product is the civil money penalty for the violation except as provided in subpart 16 and except that, if this product exceeds \$10,000, the civil money penalty for the violation shall be reduced to \$10,000.

(3) For each violation described in subparts 11, item B, and 12 to 14a, the civil money penalty is \$700 or the average monthly amount of the vendor's WIC redemptions during the most recent 12 months for which voucher redemption information is available for the commissioner's review, whichever is less.

(4) The total amount of all civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

E. A civil money penalty assessed under this part must be paid in full no later than 30 days after the date of the notice of assessment. If the vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed under this part, the commissioner shall disqualify the vendor for the length of time that the vendor would have been disqualified if there had been no determination of inadequate participant access.

F. If disqualification of a vendor under subpart 10, item B, would result in inadequate participant access, then the commissioner shall not disqualify the vendor under subpart 10, item B, or impose a civil money penalty in lieu of disqualification under subpart 10, item B.

G. If the commissioner imposes a civil money penalty on a vendor, the commissioner shall also require the vendor to create and implement a corrective action plan to prevent future violations. The corrective action plan must be in writing. The vendor must provide the corrective action plan to the commissioner no later than 30 days after the date of the notice of assessment.

Subp. 16. Second and subsequent sanctions.

A. For the purpose of this subpart, "federally mandated sanction" means any disqualification or civil money penalty assessed based on this subpart or the violations described in subparts 3 to 9 and 19.

B. If a vendor that has on one occasion received a federally mandated sanction subsequently engages in conduct warranting a second federally mandated sanction, the second federally mandated sanction shall be doubled, except that:

- (1) a civil money penalty for one violation shall not exceed \$10,000; and
- (2) the total of all civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

C. If a vendor that has on two or more occasions received a federally mandated sanction subsequently engages in conduct warranting a third or subsequent federally mandated sanction:

- (1) the vendor shall be disqualified and shall not be eligible for a civil money penalty instead of disqualification; and
- (2) the third and each subsequent sanction shall be doubled.

Subp. 17. Multiple violations.

A. If, during a single investigation, a vendor commits multiple violations that warrant disqualification, then:

- (1) the commissioner shall include all of the violations in the notice of disqualification;
- (2) the commissioner shall disqualify the vendor for the period corresponding to the most serious violation, except as provided in subpart 15; and
- (3) if disqualification under subparts 2 to 9; 10, item A; or 19 is not upheld on appeal and the vendor has also committed one or more violations warranting disqualification under subpart 10, item B, or subparts 11 to 14a, the commissioner shall disqualify the vendor for the period corresponding to the most serious violation described in subpart 10, item B, or subparts 11 to 14a, except as provided in subpart 15.

B. For the purpose of this subpart, a violation warranting disqualification that is described in subparts 2 to 9; 10, item A; or 19 shall be considered more serious than any violation warranting disqualification that is described in subpart 10, item B, or in subparts 11 to 14a.

Subp. 18. General provisions.

A. Except for a violation of subpart 2, a vendor commits a violation of this part if any controlling person, employee, or agent of the vendor committed the described conduct.

B. The commissioner shall notify a vendor in writing of the vendor's disqualification and of the vendor's termination. The written notice shall include all information required by federal regulations. If a disqualification is based on subpart 2, the disqualification shall be effective on the date the vendor receives the written notice of disqualification. If a disqualification is based on any subpart other than subpart 2, the disqualification shall be effective 30 days after the date the written notice of disqualification is mailed. If a termination is based on subpart 14a, item A, subitem (1), the termination shall be effective on the same date that the disqualification is effective. If a termination is based on subpart 14a, item B, the termination shall be effective 30 days after the date the written notice of termination is mailed.

C. A retail food store or pharmacy that has been disqualified or terminated must deposit each voucher in the store's or pharmacy's bank account by the earlier of:

- (1) 60 days after the first-day-to-use date on the voucher; or
- (2) five days after the effective date of the disqualification or termination.

D. After expiration of the disqualification period, a disqualified vendor may apply for WIC vendor authorization. A retail food store or pharmacy that has been terminated but not disqualified as a WIC vendor may apply for WIC vendor authorization no sooner than two months after the effective date of the termination, except that a retail food vendor terminated under part 4617.0066, subpart 2, may apply for an immediate vendor agreement under part 4617.0066, subpart 3.

E. A vendor may not terminate the vendor's WIC vendor agreement or otherwise withdraw from the WIC program instead of disqualification. The expiration or termination of the vendor agreement shall not affect the commissioner's duty to disqualify the vendor and shall not affect the vendor's right to appeal the disqualification under part 4617.0100.

F. If a violation involves a vendor's acceptance of a voucher, the violation occurs on the date the vendor accepts the voucher.

G. If a vendor provides food in exchange for a voucher under circumstances where the vendor informs the WIC customer that the customer may return the food for cash or a nonfood item and if the WIC customer subsequently does return the food for cash or a nonfood item, the vendor shall be sanctioned in the same way as if the vendor had provided the cash or nonfood item directly to the WIC customer in exchange for the voucher.

Subp. 19. Previous history of disqualification. Notwithstanding subparts 7 to 9, if a vendor was previously disqualified under this subpart or subparts 3 to 10, and if any controlling person of the vendor was a controlling person at the time of the previous disqualification, except as provided in subparts 15 and 16, the commissioner shall disqualify the vendor for:

A. three years if, twice within any two-year period, the vendor, in exchange for a WIC voucher, provides credit other than a rain check or provides a nonfood item other than any alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended;

B. three years if the vendor commits a vendor overcharge twice within any two-year period;

C. three years if, twice within any two-year period, the vendor charges the WIC program for WIC-allowed food not received by a WIC customer; and

D. one year if the vendor provides unauthorized food twice within any two-year period.

Statutory Authority: *MS s 144.11; 145.894*

History: 25 SR 555; L 2003 1Sp14 art 1 s 106; 29 SR 1202

4617.0085 [Repealed, 22 SR 266]

4617.0086 [Repealed, 25 SR 555]

4617.0087 WIC FOOD CENTERS.

For the purpose of this chapter, WIC food centers are not vendors.

Statutory Authority: *MS s 144.11; 145.894*

History: 22 SR 266

4617.0088 MAXIMUM PRICES OF VOUCHERS.

Subpart 1. Calculation of maximum prices. Beginning no sooner than June 17, 2005, the commissioner shall calculate a maximum price for each computer-generated voucher. The maximum price shall not be printed on the voucher. The maximum price shall be the sum of the maximum prices of all products on the voucher. The maximum price for each food product, other than special infant formula, shall be 115 percent of the average price of the food product. The commissioner shall compute an average price for each food product listed on a voucher, other than special infant formula, based on the most recent vendor price survey information available to the commissioner. The maximum price for each special infant formula is 130 percent of the manufacturer's list price for that special infant formula.

Subp. 2. Changing maximum prices. A change in the manufacturer's price of an applicable WIC-allowed food item shall be grounds for the commissioner to change the maximum price of a food product computed under subpart 1.

Subp. 3. [Repealed, 29 SR 1202]

Statutory Authority: *MS s 144.11; 145.894*

History: 22 SR 266; 29 SR 1202

4617.0090 REJECTION OF VOUCHERS AND REIMBURSEMENT BY VENDORS.

Subpart 1. Return without payment. The bank which processes WIC vouchers on behalf of the commissioner shall return a voucher to a vendor without payment if:

- A. the voucher is not stamped with a vendor stamp;
- B. the voucher is stamped with a vendor stamp which is illegible;
- C. the voucher is not signed by a WIC customer;
- D. the space provided on the voucher for the price of the food purchased is left blank by the vendor;
- E. there is no first-day-to-use or last-day-to-use date on the voucher;
- F. the commissioner has placed a stop-payment order on the voucher;
- G. the date that the WIC customer used the voucher to obtain food is before the first-day-to-use date or after the last-day-to-use date on the voucher;
- H. the vendor deposits the voucher before the first-day-to-use date on the voucher;
- I. the vendor does not initially deposit the voucher in the vendor's bank by the earlier of:
 - (1) 60 days after the first-day-to-use date on the voucher; or
 - (2) five days after the effective date of the vendor's disqualification or termination;
- J. the voucher was returned to the vendor under item A or B and the vendor does not redeposit the voucher in the vendor's bank by the earlier of:
 - (1) 90 days after the first-day-to-use date on the voucher; or
 - (2) five days after the effective date of the vendor's disqualification or termination;
- K. the first-day-to-use date, last-day-to-use date, or food prescription on the voucher has been altered; or
- L. the voucher is stamped with a vendor stamp other than a vendor stamp issued to the vendor by the commissioner under part 4617.0070.

Subp. 1a. **Return with credit.** Before this subpart applies, the commissioner shall give at least two months' written notice to vendors. If the price of the food purchased with a voucher exceeds the maximum price calculated by the commissioner for that voucher under part 4617.0088, subpart 1, the bank that processes WIC vouchers on behalf of the commissioner shall:

- A. return the voucher to the vendor;
- B. not pay the price listed on the voucher;
- C. credit the vendor in an amount equal to the maximum price calculated by the commissioner for that voucher under part 4617.0088, subpart 1; and
- D. notwithstanding item C, not credit the vendor in any amount if the bank is unable to credit the vendor because of the vendor's failure to comply with part 4617.0068, subpart 13, or failure to provide accurate information on the vendor's most recent vendor application.

Subp. 2. Payment of rejected vouchers.

A. A voucher returned to a vendor under subpart 1, item A or B, may be corrected by the vendor and redeposited in the vendor's bank within 90 days of the first-day-to-use date on the voucher.

B. A voucher returned to a vendor under subpart 1, item D or E, or for a reason not authorized by this part, may be submitted by the vendor to the commissioner for payment if:

- (1) the voucher is received by the commissioner not more than 120 days after the first-day-to-use date on the voucher; and
- (2) for a voucher returned to the vendor under subpart 1, item D, the vendor inserts the correct price and provides to the commissioner documentation showing that the vendor had failed to insert the correct price due to inadvertent error, oversight, or some other reason not inconsistent with the purposes of this chapter.

Subp. 2a. **Bank fees.** The commissioner is not liable for any bank fees incurred by a vendor.

Subp. 3. [Repealed, 29 SR 1202]

Subp. 4. Vendor liability. A vendor shall pay to the commissioner, within 30 days of a request by the commissioner, the amount of any overcharges paid by the commissioner to the vendor, the amount paid by the commissioner to the vendor in excess of the maximum price of the voucher calculated under part 4617.0088, subpart 1, the amount erroneously paid by the commissioner to the vendor for a voucher that should have been returned to the vendor without payment according to subpart 1, all money paid by the commissioner to the vendor for food items not received by a WIC customer, all money paid by the commissioner to the vendor for products other than WIC-allowed foods, and all money paid by the commissioner to the vendor for vouchers accepted by the vendor while there was not in effect a WIC vendor agreement for the vendor. If the vendor does not pay these amounts within 90 days of the initial request by the commissioner, then, in addition to any other sanction specified in this chapter, the vendor must pay interest to the commissioner computed in the same manner that interest on judgments is computed under Minnesota Statutes, section 549.09.

Subp. 5. Prohibited vendor conduct. A vendor shall not seek reimbursement from any WIC customer for a voucher not paid according to this part, for any banking charges paid by the vendor as a result of the nonpayment of a voucher, or for any money paid by the vendor to the commissioner according to this part. A vendor shall not require a WIC customer to provide a signature that was not provided at the time the voucher was used to buy food from the vendor.

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

History: *13 SR 1190; 22 SR 266; 29 SR 1202*

4617.0095 [Repealed, 22 SR 266]

APPEALS

4617.0100 APPEALS BY VENDORS, VENDOR APPLICANTS, LOCAL AGENCIES, AND LOCAL AGENCY APPLICANTS.

Subpart 1. Procedures.

A. A local agency, local agency applicant, vendor, or vendor applicant against whom the commissioner takes adverse action that affects participation in the WIC program may appeal the action, except that the following actions by the commissioner are not subject to appeal:

(1) a notice of violation under part 4617.0084 is not subject to appeal unless the violation results in the vendor's disqualification, the termination of the vendor agreement, a civil money penalty imposed on the vendor, or denial of the vendor's reauthorization application;

(2) disqualification under part 4617.0084, subpart 10, item A;

(3) the commissioner's determination of whether disqualification would result in inadequate participant access under part 4617.0084, subpart 15; or

(4) the commissioner's return of an application to a vendor applicant under part 4617.0065, subpart 3, item C or E; or 4617.0066, subpart 3, item B.

The denial of a vendor application for the vendor applicant's failure to meet the requirement of part 4617.0067, subpart 6, item C, subitem (3), is subject to appeal. The validity and appropriateness of the criteria referenced in part 4617.0067, subpart 6, item C, subitem (3), are not subject to administrative review.

B. An appeal must be in writing and be received by the commissioner not more than 30 days after notice of adverse action was mailed. An appeal by a local agency, local agency applicant, vendor, or vendor applicant must be decided according to this part; parts 1400.5100 to 1400.8401; Minnesota Statutes, sections 14.57 to 14.62; and Code of Federal Regulations, title 7, section 246.18, as amended. Expiration of a contract or agreement with a local agency or vendor is not subject to appeal.

C. All appeals by local agencies and local agency applicants are subject to full administrative reviews under item D. Appeals by vendors and vendor applicants are subject to full administrative reviews under item D, except that appeals of the following actions by the commissioner are subject to abbreviated administrative reviews under item E:

(1) denial of authorization based on the vendor applicant's failure to comply with part 4617.0067, subpart 6, item B; C, subitems (1), units (a) and (c), and (2); D; or E, subitem (1);

(2) termination of a vendor agreement under part 4617.0066, subpart 2; and

(3) disqualification of a vendor under part 4617.0084, subpart 2 or 10, item B.

D. Full administrative reviews shall be conducted under the contested case provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14, and rules adopted thereunder. 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.

E. Abbreviated administrative reviews shall be conducted in writing, without a hearing, according to the following procedures:

(1) The commissioner shall appoint a decision maker who had no involvement in the initial determination to take adverse action against the vendor.

(2) After receiving the appellant's appeal, the decision maker shall notify the appellant and the WIC program who the decision maker is and shall require the WIC program to mail to the appellant and provide to the decision maker a letter setting forth the WIC program's basis for the action being appealed, attaching copies of any supporting documentation. The appellant shall then have 30 days to serve on the WIC program and file with the decision maker a written response to the WIC program's letter, along with any documentation to support the response. The appellant and the WIC program may be, but need not be, represented by counsel.

(3) The decision maker shall determine whether to uphold the WIC program's action based solely on whether the WIC program has correctly applied federal and state statutes, rules, regulations, policies, and procedures governing the WIC program, according to the information provided to the appellant concerning the cause for the adverse action and the appellant's response. The decision maker shall notify the WIC program and the appellant in writing of the decision maker's determination, including the basis for the determination. If the decision maker is unable to make a determination on the basis of the information filed, the decision maker shall notify the WIC program and the appellant that the procedures described in item D should be followed in connection with the appeal.

Subp. 2. Judicial review. A local agency, local agency applicant, vendor, or vendor applicant aggrieved by the decision of the commissioner or other decision maker 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 applicant or vendor applicant 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 144.11; 145.891 to 145.897*

History: *13 SR 1190; 22 SR 266; 25 SR 555; 29 SR 1202*

4617.0120 [Repealed, 25 SR 555]

4617.0121 TRANSITION PERIOD.

Subpart 1. [Repealed, 29 SR 1202]

Subp. 2. Applications. If the commissioner has received but has neither approved nor denied a vendor application before April 25, 2005, the commissioner shall approve the application if the applicant complies with all requirements in effect before April 25, 2005. If the commissioner approves this application, the resulting vendor agreement shall reflect the requirements in effect on April 25, 2005, and shall have an ending date of March 31, 2008.

Statutory Authority: *MS s 144.11; 145.894*

History: *25 SR 555; 29 SR 1202*

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

Statutory Authority: *MS s 144.11; 145.894*

History: *19 SR 2089; 22 SR 266; 29 SR 1202*

4617.0172 [Repealed, 22 SR 266]

4617.0173 [Repealed, 22 SR 266]

4617.0174 [Repealed, 22 SR 266]

4617.0175 [Repealed, 19 SR 2089]

4617.0176 APPROVAL PROCESS FOR WIC FOODS OTHER THAN INFANT FORMULA.

Subpart 1. Approval process. The commissioner shall approve for purchase using WIC vouchers:

A. food items within each food product in part 4617.0067, subpart 3, item A, subitems (2) to (11); and

B. any other food item permitted under Code of Federal Regulations, title 7, part 246, as amended, other than infant formula, if the commissioner determines that there is a nutritional need for participants to obtain such food item.

Subp. 2. Approval criteria. At least once every three years, the commissioner shall determine which food items within each food product to approve for purchase using WIC vouchers.

A. For food products in part 4617.0067, subpart 3, item A, subitems (2) to (10), the commissioner's determination must be based on the following factors:

(1) whether the food item meets all specifications in the applicable subitem of part 4617.0067, subpart 3, item A;

(2) whether the food item meets the nutritional requirements of Code of Federal Regulations, title 7, section 246.10(c), as amended;

(3) whether the food item contains any nonnutritive or artificial sweetener; and

(4) the price per ounce of the food item compared to other brands, sizes, and varieties of the food product.

B. For food products in part 4617.0067, subpart 3, item A, subitem (11), the commissioner's determination must be based on the factors in item A, subitems (1) to (4), and the following factors:

(1) the quantity of sucrose or other sugars in each ounce of the food item compared to other brands, sizes, and varieties of the food product;

(2) the extent to which the food item is available at WIC retail food vendors, based on the most recent survey conducted by the commissioner for which results are available; and

(3) the extent to which WIC participants prefer the food item, based on the most recent food preference survey conducted by the commissioner for which results are available.

Subp. 3. Nutritional, cultural, religious, or ethnic need. The commissioner shall approve for purchase using WIC vouchers a food item or food product which meets the requirements of Code of Federal Regulations, title 7, section 246.10(c), as amended, if the commis-

sioner determines, based on the information available, that there is a nutritional need for the item or product, or that there is a need for the item or product within a specific cultural, religious, or ethnic group.

Subp. 4. **Notice of approval.** The commissioner shall provide notice to each vendor and local agency of the food items approved under this part.

Subp. 5. **Revocation of approval.** The commissioner shall, at any time, revoke approval of a food item if:

A. it no longer meets the nutritional requirements in Code of Federal Regulations, title 7, section 246.10(c), as amended; or

B. it no longer meets all applicable specifications in part 4617.0067, subpart 3.

If the commissioner revokes approval of a food item, the commissioner shall provide notice to each vendor and local agency of the revocation.

Statutory Authority: *MS s 144.11; 145.894*

History: 22 SR 266; 25 SR 555; 29 SR 1202

4617.0180 [Repealed, 19 SR 2089]