

1 Department of Health

2

3 Adopted Permanent Rules Relating to WIC Program

4

5 Rules as Adopted

6

7 4617.0002 DEFINITIONS.

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

10 Subp. 2. Agency. "Agency" refers to a public or private,
11 nonprofit health or human service agency.

12 Subp. 3. Breastfeeding woman. "Breastfeeding woman" means
13 a woman who is breastfeeding her infant, up to one year
14 postpartum.

15 Subp. 4. Categorical status. "Categorical status" means
16 the status of a person as a pregnant woman, breastfeeding woman,
17 postpartum woman, infant, or child.

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

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

23 Subp. 7. Child. "Child" means a person whose birthday is
24 on the day of certification or who has had a first birthday but
25 who has not had a fifth birthday.

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

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

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

34 Subp. 11. Community health service agency. "Community
35 health service agency" means an agency established by and

1 operating under the direction of a community health board as
2 defined in Minnesota Statutes, section 145A.02, subdivision 5.

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

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

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

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

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

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

28 Subp. 18. **Individual care plan.** "Individual care plan"
29 means a plan established under part 4617.0062, subpart 3.

30 Subp. 19. **Infant.** "Infant" means a person who is under
31 one year of age.

32 Subp. 20. **Licensed practical nurse.** "Licensed practical
33 nurse" means a person who is licensed to provide health services
34 in Minnesota under Minnesota Statutes, sections 148.29 to
35 148.297, and who meets the requirements of part 4617.0035,
36 subpart 6.

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

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

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

9 Subp. 24. Migrant service agency. "Migrant service agency"
10 means a local agency approved by the commissioner to serve only
11 migrant farmworkers and to administer the WIC program for part
12 of a year.

13 Subp. 25. Nutrition education coordinator. "Nutrition
14 education coordinator" means a competent professional authority
15 who is a dietitian, home economist, nutritionist, or registered
16 nurse who performs the duties under part 4617.0055, subpart 9.

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

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

32 Subp. 28. Ongoing, routine pediatric care. "Ongoing,
33 routine pediatric care" means a comprehensive continuum of care
34 from birth through five years of age that includes physical
35 examinations at intervals, immunizations, counseling, health
36 education, and a periodic review of health history according to

1 the standards of care in the Guidelines for Health Supervision,
2 American Academy of Pediatrics, first edition (1985). This
3 document is incorporated by reference, is not subject to
4 frequent change, can be found in the Minnesota Department of
5 Health library, and is available through the Minitex
6 interlibrary loan system.

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

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

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

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

21 Subp. 33. Physician's assistant. "Physician's assistant"
22 means a person who is registered as a physician's assistant by
23 the Minnesota Board of Medical Examiners and who meets the
24 requirements of part 4617.0035, subpart 7.

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

27 Subp. 35. Pregnant woman. "Pregnant woman" means a woman
28 carrying one or more embryos or fetuses in the uterus.

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

33 Subp. 37. Proxy. "Proxy" means a the person other than a
34 participant who obtains vouchers from a local agency or buys
35 authorized foods for the participant and who is designated as a
36 proxy by a participant.

1 Subp. 38. **Registered nurse.** "Registered nurse" means a
2 person who is licensed to provide health services within the
3 scope of that person's profession under Minnesota Statutes,
4 sections 148.171 to 148.285.

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

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

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

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

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

26 Subp. 44. **Voucher.** "Voucher" means a written
27 authorization from the commissioner for a vendor to issue food
28 to a participant that is specified on the voucher by the
29 commissioner and that may be exchanged by a vendor for cash
30 under the WIC program.

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

35 LOCAL AGENCIES

1 4617.0005 NOTICE OF AVAILABILITY OF WIC PROGRAM FUNDS.

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

9 A. a description of the WIC program;

10 B. the format of the notice required under part
11 4617.0010, item A, and the date by which that notice must be
12 submitted to the department;

13 C. the date by which the application required under
14 part 4617.0020, subpart 2, must be submitted to the department;

15 D. the timetable for the commissioner's review of
16 applications; and

17 E. a description of the process used to authorize an
18 agency to become a local agency under part 4617.0020.

19 4617.0010 APPLICATION FOR WIC PROGRAM FUNDS.

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

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

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

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

35 D. An agency shall submit an application form for WIC

1 program funds no later than the date specified under part
2 4617.0005, item C. An application form must include the name
3 and address of the applicant and must document that the
4 applicant can meet the eligibility criteria under part 4617.0015.

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

12 4617.0015 AGENCY ELIGIBILITY CRITERIA.

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

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

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

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

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

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

34 4617.0020 AGENCY APPLICATION REVIEW AND APPROVAL.

35 Subpart 1. General procedure. The commissioner shall

1 authorize an agency to administer the WIC program as a local
2 agency by following in order the steps in subparts 2 to 7.

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

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

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

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

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

24 Subp. 4. Performance record determination.

25 A. If two or more applications to serve the same
26 geographic area or special population could be approved under
27 subpart 3, item C, the commissioner shall, according to subparts
28 8 and 9, determine whether one or more of the agencies has a
29 poor performance record.

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

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

1 only.

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

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

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

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

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

22 D. poverty, measured as the percent of the total
23 population with income below the poverty level as poverty is
24 defined by the United States Office of Management and Budget and
25 revised annually in accordance with United States Code, title
26 42, section 9902.

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

30 A. The commissioner shall give:

31 (1) first priority to a community health service
32 agency;

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

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

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

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

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

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

17 (2) an agency that has applied before; and

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

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

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

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

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

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

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

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

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

27 Subp. 9. Table of Performance points.

28 A. Participation Level

- 29 15 - Average participation level that is at least
30 98 percent but not more than 102 percent of
31 the authorized level
32 10 - Average participation level that is
33 96 to 97.9 percent or 102.1 to 104 percent
34 of the authorized level
35 5 - Average participation level that is
36 90 to 95.9 percent or 104.1 to 110 percent
37 of the authorized level
38 0 - Average participation level that is less than
39 90 percent or more than 110 percent
40 of the authorized level
41

42 B. Participation by Pregnant Women

- 1 15 - Participation by pregnant women increased
 2 by at least ten percent
 3 10 - Participation by pregnant women increased by at
 4 least five percent but less than ten percent
 5 5 - Participation by pregnant women maintained or
 6 increased by less than five percent
 7 0 - Participation by pregnant women decreased

8
 9 C. Response to Written Findings of Management

10 Evaluation

- 11 15 - Response submitted within 30 days,
 12 or no response required
 13 10 - Response submitted within 90 days but
 14 after 30 days
 15 5 - Response submitted within 180 days but
 16 after 90 days
 17 0 - Response submitted after 180 days, or
 18 not submitted
 19

20 D. Response to Written Findings of Financial Review

- 21 15 - Response submitted within 30 days,
 22 or no response required
 23 10 - Response submitted within 90 days but
 24 after 30 days
 25 5 - Response submitted within 180 days but
 26 after 90 days
 27 0 - Response submitted after 180 days, or
 28 not submitted
 29

30 E. Corrective Action Taken in Response to Management

31 Evaluation

- 32 15 - No correction needed
 33 10 - Corrective action taken within six months from date
 34 of approval of corrective action plan
 35 5 - Corrective action taken within one year but after six
 36 months from date of approval of corrective action plan
 37 0 - Corrective action taken after one year from date of
 38 approval of corrective action plan, or not taken
 39

40 F. Corrective Action Taken in Response to Financial

41 Review

- 42 15 - No corrective action needed
 43 10 - Corrective action taken within six months from date
 44 of approval of corrective action plan
 45 5 - Corrective action taken within one year but after six
 46 months from date of approval of corrective action plan
 47 0 - Corrective action taken after one year from date of
 48 approval of corrective action plan, or not taken
 49

50 G. Nutrition Education Plan

- 51 15 - Nutrition education plan and required revisions
 52 submitted by the established deadline
 53 10 - Nutrition education plan and required revisions
 54 submitted within 30 days after established deadline
 55 5 - Nutrition education plan and required revisions
 56 submitted within 90 days but after 30 days after
 57 established deadline
 58 0 - Nutrition education plan and required revisions
 59 submitted more than 90 days after established
 60 deadline, or not submitted
 61

62 Subp. 10. Notice of approval or disapproval. Within 30

1 days after receiving a complete application, the commissioner
 2 shall give written notice to an agency that the commissioner has
 3 approved or disapproved its application. A notice of approval
 4 or disapproval must state:

5 A. that an application is:

6 (1) approved as originally submitted;

7 (2) approved with changes;

8 (3) disapproved because of inadequate WIC program

9 funds for WIC program expansion or initiation;

10 (4) disapproved because the agency does not meet
 11 the application requirements; or

12 (5) disapproved because the commissioner has
 13 approved another agency under subpart 6 or 7;

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

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

19 Subp. 11. Cessation of local agency operations. If a
 20 local agency ceases to operate before the expiration date of its
 21 contract, the commissioner shall publish a notice of
 22 availability to solicit agency applications to serve the
 23 geographic area or special population that was served by that
 24 local agency. The notice of availability must be published
 25 according to part 4617.0005.

26 4617.0025 DISQUALIFICATION.

27 The commissioner shall stop providing WIC program funds to
 28 a local agency if the local agency does not comply with parts
 29 4617.0002 to 4617.0180. A local agency shall reimburse the
 30 commissioner for WIC program funds that are not distributed
 31 according to this chapter.

32 4617.0030 LOCAL AGENCY CONTRACTS AND AGREEMENTS.

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

1 A. contain the signatures of the state officials
2 required by Minnesota Statutes, section 16.098, and the legal
3 representatives of the local agency;

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

6 C. be consistent with this chapter;

7 D. contain a nondiscrimination clause regarding
8 employment practices and the delivery of program benefits to
9 eligible or potentially eligible participants that is consistent
10 with Title VI of the Civil Rights Act of 1964, Title IX of the
11 Education Amendment of 1972, section 504 of the Rehabilitation
12 Act of 1973, and Code of Federal Regulations, title 7, part 15;

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

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

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

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

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

31 B. contain a nondiscrimination clause that is
32 consistent with subpart 1, item D;

33 C. be submitted to the commissioner for approval with
34 the application form required under part 4617.0010, item D; and

35 D. be consistent with Code of Federal Regulations,
36 title 7, section 246.6, paragraph (d) or (e).

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

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

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

14 4617.0035 STAFF QUALIFICATIONS.

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

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

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

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

34 B. A nutrition education coordinator shall review at
35 least 25 percent of a certifier's charts biweekly, shall audit

1 and document at least ten of the certifier's charts at least
2 quarterly, and shall observe and document at least three
3 certifications at least quarterly.

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

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

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

16 B. A dietetic technician hired after September 30,
17 1987, must meet the requirements of subitems (1) to (3).

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

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

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

28 C. A dietetic technician approved under this subpart
29 who voluntarily terminates employment or takes a leave of
30 absence may be rehired as a dietetic technician by a local
31 agency within two years of the date employment is terminated or
32 the leave of absence begins without repeating the self-study
33 course if supervision is provided according to item A. A
34 dietetic technician who is rehired after an involuntary
35 termination or is rehired more than two years after the date
36 employment was terminated or the leave of absence began must be

1 considered a new hire under item B.

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

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

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

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

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

36 B. A licensed practical nurse approved by the

1 commissioner to be a competent professional authority before
 2 October 1, 1987, must be supervised on-site at least four hours
 3 a month by a nutrition education coordinator.

4 C. A licensed practical nurse hired after September
 5 30, 1987, must be supervised on-site continuously by a nutrition
 6 education coordinator. In addition, a licensed practical nurse
 7 hired after September 30, 1987, must:

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

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

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

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

27 Subp. 7. Physician's assistant. ~~A-physician's-assistant~~
 28 ~~hired-after-September-30,1987,shall-enroll-in-a-self-study~~
 29 ~~course-designed-by-the-commissioner-within-30-days-of-the-first~~
 30 ~~day-of-employment,7-take-an-examination-on-the-course-that-is~~
 31 ~~designed-by-the-commissioner-within-six-months-of-the-enrollment~~
 32 ~~date,7-and-pass-the-examination-in-no-more-than-three-attempts~~
 33 ~~within-one-year-after-the-enrollment-date.--A-physician's~~
 34 ~~assistant-approved-under-this-subpart-who-voluntarily-terminates~~
 35 ~~employment-or-takes-a-leave-of-absence-may-be-rehired-as-a~~
 36 ~~physician's-assistant-in-a-local-agency-within-two-years-after~~

1 ~~the date employment is voluntarily terminated or the leave of~~
2 ~~absence begins without repeating the self-study course.---A~~
3 ~~physician's assistant who is rehired after an involuntary~~
4 ~~termination or is rehired more than two years after the date~~
5 ~~employment was terminated or the leave of absence began must~~
6 ~~repeat the self-study course. A physician's assistant must meet~~
7 the requirements of item A and of item B or C.

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

13 B. A physician's assistant hired after September 30,
14 1987, must meet the requirements of subitems (1) to (3).

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

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

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

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

35 4617.0037 AUTHORIZED PARTICIPATION LEVELS.

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

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

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

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

25 4617.0040 ADMINISTRATIVE FUNDING.

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

32 Subp. 2. **Administrative funding for operating costs.**
33 Before the beginning of a federal fiscal quarter, the
34 commissioner shall determine the amount of administrative funds
35 available to a local agency for operating costs, based on an

1 estimate of funding available to the WIC program for the
2 quarter. Each local agency shall receive a proportion of the
3 available administrative funds that bears the same relation to
4 total administrative funds as the local agency's authorized
5 participation level bears to the statewide authorized
6 participation level.

7 Subp. 3. Allocation of remaining administrative funds.

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

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

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

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

23 4617.0042 REPORTING REQUIREMENTS.

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

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

34 B. The local agency must submit a claim for
35 reimbursement and report of expenditures to the commissioner by

1 the 20th calendar day of the month following the month for which
2 the report is being submitted.

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

8 4617.0043 EVALUATIONS AND MONITORING.

9 Subpart 1. Evaluations and federal rules. Through
10 financial reviews and management evaluations the commissioner
11 shall evaluate whether a local agency has accomplished its WIC
12 program objectives and determine whether the local agency is in
13 compliance with parts 4617.0002 to 4617.0180. The commissioner
14 shall monitor a local agency according to Code of Federal
15 Regulations, title 7, section 246.19, paragraph (b)(2).

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

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

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

35 4617.0044 NUTRITION EDUCATION PLAN; REQUIREMENT.

1 A local agency must prepare a nutrition education plan for
2 the two years following the submission deadline under part
3 4617.0055. A nutrition education plan must be consistent with
4 the requirements of this chapter.

5 4617.0045 NUTRITION EDUCATION PLAN SUBMISSION DEADLINES.

6 Subpart 1. General deadline. Except as provided in
7 subparts 2 and 3, a local agency shall submit a nutrition
8 education plan to the commissioner before October 1 of the
9 federal fiscal year in which the plan must begin.

10 Subp. 2. Transfer agency. A transfer agency shall submit
11 a nutrition education plan to the commissioner not later than
12 180 days after the transfer agency begins operations. A
13 transfer agency that wants to submit a nutrition education plan
14 after the 180 days must submit a written request to do so to the
15 commissioner.

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

19 4617.0046 CONTENTS OF A NUTRITION EDUCATION PLAN.

20 A nutrition education plan must include:

21 A. a statement of nutrition education goals and
22 objectives for the participants served by the local agency;

23 B. an assessment of the needs for nutrition
24 education, including resources of the local agency and
25 geographic area served by the local agency, and the concerns of
26 program participants and local agency staff;

27 C. a description of how the local agency will comply
28 with parts 4617.0054 to 4617.0058;

29 D. a description of how community resources will be
30 used to provide nutrition education;

31 E. a description of how nutrition education will be
32 documented in a participant's certification file;

33 F. a description of the criteria used to select
34 participants for high-risk nutrition education;

35 G. a description of how participants with different

1 cultural and language needs will be served;

2 H. the written report required by part 4617.0047,
3 subpart 3;

4 I. the names of the individuals from the local agency
5 who will provide nutrition education, the type of nutrition
6 education that they will provide, and whether the education will
7 be provided to groups or individuals; and

8 J. the signature of the nutrition education
9 coordinator who prepared and approved the nutrition education
10 plan.

11 4617.0047 EVALUATION AND REVISION OF NUTRITION EDUCATION PLAN.

12 Subpart 1. **Evaluation.** A local agency shall evaluate its
13 nutrition education plan at the end of each year of the plan.

14 In evaluating the plan, the local agency must assess
15 progress toward program objectives for nutrition education and
16 individual learning objectives, participants' views on the
17 effectiveness of the nutrition education they received, local
18 agency staff views regarding the nutrition education provided,
19 and any information from the commissioner regarding progress on
20 the plan.

21 Subp. 2. **Revision.** A local agency must revise its
22 nutrition education plan to document changes and to correct
23 deficiencies indicated by the evaluation under subpart 1.
24 Examples of items that could be revised include program goals
25 and objectives; procedures for providing nutrition education,
26 topics, and instructors for group classes; and specific
27 educational components requested by the commissioner.

28 Subp. 3. **Written report.** A local agency must submit a
29 written report of the evaluation and revisions to the
30 commissioner by the October 1 following submission of the
31 nutrition education plan. A nutrition education plan submitted
32 according to the deadline under part 4617.0045 must include the
33 evaluation and revisions of the second year of the previous
34 nutrition education plan and must include a separate written
35 report of the evaluation and revisions.

1 4617.0049 APPROVAL OF NUTRITION EDUCATION PLAN AND WRITTEN
2 REPORT.

3 The commissioner shall approve or disapprove a nutrition
4 education plan and a written report required under part
5 4617.0047, subpart 3. Within 120 days after receiving a
6 nutrition education plan or a written report, the commissioner
7 shall notify the local agency in writing of the commissioner's
8 approval or disapproval of that local agency's nutrition
9 education plan or written report. If a plan or report is
10 disapproved, the commissioner shall advise the local agency of
11 the items that must be revised or completed for the plan or
12 report to be consistent with this chapter. A local agency shall
13 complete revisions of the plan or report within 30 days after
14 the date it receives the commissioner's written disapproval.

15 4617.0050 ROLE OF NUTRITION EDUCATION COORDINATOR.

16 A nutrition education coordinator must approve and prepare
17 a nutrition education plan. A nutrition education coordinator
18 must approve an individual care plan. At least one nutrition
19 education coordinator from a local agency shall attend the
20 annual nutrition education conference sponsored by the
21 commissioner. A nutrition education coordinator must also
22 review and approve the local agency nutrition education
23 materials and activities.

24 4617.0052 QUALIFICATIONS OF NUTRITION EDUCATION INSTRUCTORS.

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

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

33 4617.0054 SCHEDULE OF NUTRITION EDUCATION SESSIONS.

34 Subpart 1. Schedule of nutrition education sessions for

1 infants whose certification period ends after their first
2 birthday, women, and children. An adult participant, the parent
3 or caretaker of an infant or child participant, and, where
4 possible, a child participant must be offered a nutrition
5 education session at the participant's certification appointment
6 and on at least one other separate occasion during the
7 participant's certification period. The nutrition education
8 session offered at the participant's certification appointment
9 must be a one-to-one session for that participant. Depending on
10 the needs of the participant, a nutrition education session
11 offered after the certification appointment may be provided to
12 the participant one-to-one, provided to the participant in a
13 group with other participants, or provided to the participant in
14 a high-risk session as required under part 4617.0056, subpart 3.

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

31 4617.0056 CONTENTS OF NUTRITION EDUCATION SESSIONS.

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

35 A. encouragement of pregnant participants to

1 breastfeed unless the participant's health does not allow
2 breastfeeding; and

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

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

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

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

14 (4) the importance of health care;

15 (5) the nutritional value of supplemental foods;

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

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

21 (8) the relationship between diet and health;

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

24 (10) the nutritional concerns of participants;

25 and

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

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

33 A. appropriate feeding practices for an infant;

34 B. the introduction of solid food for the infant;

35 C. weaning the infant from a bottle or breastfeeding
36 to a cup;

- 1 D. progressing to table foods; and
2 E. the value of using infant formula or breastfeeding
3 until the infant is one year of age.

4 Subp. 3. Contents of high-risk nutrition education. If a
5 participant meets the high-risk criteria under part 4617.0046,
6 item F, the contents of nutrition education for that participant
7 must be developed according to the needs indicated by the
8 individual care plan required under part 4617.0058.

9 4617.0058 INDIVIDUAL CARE PLAN.

10 A competent professional authority from the local agency
11 serving the participant must prepare a written plan to meet the
12 nutrition needs of a participant who meets the criteria required
13 by part 4617.0046, item F, of a participant who requests a plan,
14 or of a participant for whom a competent professional authority
15 has determined that an individual care plan is needed. An
16 individual care plan must include:

17 A. an identification of the health and nutritional
18 needs of the participant;

19 B. a plan and schedule for meeting the needs
20 identified in item A;

21 C. methods for documenting progress of the plan's
22 implementation;

23 D. the name of the person who will monitor
24 implementation of the individual care plan;

25 E. the signature and title of the person who
26 developed the individual care plan; and

27 F. the signature and title of the nutrition education
28 coordinator who approved the plan, if a nutrition education
29 coordinator did not develop the plan.

30 VENDORS

31 4617.0060 GENERAL APPLICATION REQUIREMENTS.

32 Subpart 1. and 2. [Unchanged.]

33 Subp. 3. Submission deadlines for applications. An
34 applicant shall submit an application so it is received by the
35 commissioner no later than the first day of one of the review

1 periods in subpart 5 for the commissioner to review the
2 application during that period. An application that is
3 submitted later than the first day of a review period in subpart
4 5 must not be reviewed by the commissioner until the following
5 review period. The commissioner may at any time review an
6 application from an applicant from a clinic area where no
7 authorized vendor currently operates.

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

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

24 Subp. 5. [Unchanged.]

25 4617.0061 INITIAL APPLICATIONS.

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

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

33 A. to D. [Unchanged.]

34 E. The commissioner shall notify an applicant, in
35 writing, of application approval or disapproval. A notice of

1 disapproval must be given or mailed to an applicant within 21
2 days of the commissioner's review of an application. A notice
3 of approval or disapproval must be given or mailed to an
4 applicant within 21 days of an on-site inspection conducted
5 under item B. A notice of disapproval must state that the
6 application was disapproved because the applicant did not comply
7 with part 4617.0065. An approval notice must state that the
8 application was approved because the applicant complies with
9 part 4617.0065 and that the applicant will be given a vendor
10 stamp according to part 4617.0070 after the commissioner has
11 received a vendor guarantee from the applicant, completed
12 according to part 4617.0075.

13 4617.0062 NEW OWNER APPLICATIONS.

14 Subpart 1. [Unchanged.]

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

18 A. to C. [Unchanged.]

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

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

1 commissioner within 30 days of the inspection.

2 4617.0063 REAPPLICATIONS.

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

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

15 A. is eligible under part 4617.0065;

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

18 C. has complied with this chapter; and

19 D. has maintained an average sales record of at least
20 \$100 a month for the months sampled by the commissioner, unless
21 the applicant is the only authorized vendor in the clinic area.

22 Subp. 3. On-site inspection. An applicant whose
23 application complies with subpart 2 may keep the vendor stamp
24 and continue to operate as a vendor without an on-site
25 inspection to verify compliance with part 4617.0065 if the
26 commissioner has conducted an on-site inspection or monitoring
27 visit of the applicant no more than 36 months before the ending
28 date of the vendor's current vendor guarantee. If the
29 commissioner has not conducted an on-site inspection or
30 monitoring visit, the commissioner shall conduct an on-site
31 inspection of the vendor to verify compliance with part
32 4617.0065. The commissioner shall disapprove the application of
33 an applicant whose on-site inspection shows the applicant does
34 not comply with part 4617.0065 and shall approve the application
35 of an applicant who does comply. The commissioner shall notify

1 the applicant of the approval or disapproval before the ending
2 date of the vendor's current guarantee.

3 Subp. 4. [Unchanged.]

4 Subp. 5. Notice of disapproval; who may reapply. An
5 applicant whose application is disapproved according to this
6 part shall return to the commissioner that applicant's vendor
7 stamp within 30 days of the date of the commissioner's written
8 notice of disapproval. An applicant whose application is
9 disapproved according to this part may, no sooner than six
10 months after the ending date of the applicant's current vendor
11 guarantee, apply to be a vendor according to part 4617.0061.

12 4617.0064 PRIOR VENDOR APPLICATIONS.

13 Subpart 1. to 5. [Unchanged.]

14 Subp. 6. Notice of review findings. The commissioner
15 shall notify the vendor in writing of the commissioner's
16 approval or disapproval. A notice of approval or disapproval
17 must be given or mailed to the vendor before the last day of the
18 review period in which the commissioner determines from an
19 application or on-site inspection that the vendor is or is not
20 eligible under part 4617.0065. A notice of disapproval must
21 state that the application was disapproved because the vendor
22 did not comply with part 4617.0065. A vendor whose application
23 is disapproved shall return that vendor's vendor stamp within 30
24 days of the date of the disapproval notice. An approval notice
25 must state that the application was approved because the vendor
26 complies with part 4617.0065, that the vendor will be given a
27 different vendor stamp according to part 4617.0070, and that a
28 different vendor stamp will not be given to the vendor until the
29 commissioner receives the vendor stamp currently possessed by
30 the vendor and a vendor guarantee completed according to part
31 4617.0075.

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

35 4617.0065 VENDOR ELIGIBILITY CRITERIA.

1 Subpart 1. [Unchanged.]

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

5 A. [Unchanged.]

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

7 (1) the foods under item A, subitems (1) to (3);

8 and

9 (2) within three business days of a request from
10 a participant or a local agency, any of the following products:

11 Alimentum; Enfamil low-iron; Ensure; Isocal; Isomil SF; Nursoy;

12 Nutramigen; Osmolite; PediaSure; Portagen; Pregestimil;

13 Prosobee; Similac low-iron; Similac PM 60/40; Similac Special

14 Care with Iron 24; SMA low-iron; Sustacal; and Sustacal HC.

15 Subp. 3. to 6. [Unchanged.]

16 4617.0075 VENDOR GUARANTEES.

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

22 A. the name and address of the vendor;

23 B. the method by which the guarantee must be
24 terminated;

25 C. terms that are consistent with Code of Federal
26 Regulations, title 7, sections 246.12, paragraphs (f)(2) and
27 (k)(1)(iii), and 278.1, paragraph (o)(1);

28 D. [Unchanged.]

29 E. assurances that:

30 (1) no conflict of interest exists with the
31 Department of Health or any local agency;

32 (2) to (5) [Unchanged.]

33 (6) the vendor will return the vendor stamp to
34 the commissioner when the vendor permanently closes business,
35 ownership of the business or vendor outlet changes, the vendor

1 is disqualified, the vendor's application is disapproved, or the
2 vendor guarantee ends;

3 (7) the vendor will comply with this chapter and
4 Code of Federal Regulations, title 7, part 246; and

5 (8) [Unchanged.]

6 F. [Unchanged.]

7 G. the signature of the vendor and the date of the
8 signature.

9 4617.0080 IDENTIFYING AND MONITORING HIGH RISK VENDORS.

10 The commissioner shall identify a vendor as a high-risk
11 vendor according to the criteria in Code of Federal Regulations,
12 title 7, section 246.12, paragraph (i)(1), or because of vendor
13 activities observed by or reported to the commissioner or local
14 agency staff that are suspected by the commissioner or local
15 agency staff to not comply with this chapter. Vendor activities
16 that staff suspect do not comply with this chapter must be
17 reported to or by the commissioner on a form supplied by the
18 commissioner. The form must require a description of the
19 suspected abuse, the name and address of the vendor, and the
20 signature of the staff member.

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

23 4617.0085 SANCTIONS.

24 Subpart 1. [Unchanged.]

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

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

32 (1) to (5) [Unchanged.]

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

1 days.

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

5 (1) to (14) [Unchanged.]

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

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

11 (2) to (8) [Unchanged.]

12 D. [Unchanged.]

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

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

23 (1) [Unchanged.]

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

26 (3) to (5) [Unchanged.]

27 Subp. 3. and 4. [Unchanged.]

28 APPROVED FOODS

29 4617.0170 PREAPPROVED FOODS.

30 Beginning with the federal fiscal year following the year
31 in which parts 4617.0002 to 4617.0180 become effective, the
32 commissioner shall approve, for use by the WIC program, foods in
33 the categories of items A to H if the foods meet the approval
34 criteria in part 4617.0180. An approval under this part remains
35 in effect until the approved food product no longer meets the

1 approval criteria or until parts 4617.0170 to 4617.0180 are
2 amended to reflect different approval criteria. The approved
3 food categories are:

- 4 A. infant formula;
- 5 B. infant cereal;
- 6 C. infant fruit juice;
- 7 D. milk;
- 8 E. cheese;
- 9 F. citrus juice;
- 10 G. eggs; and
- 11 H. legumes.

12 4617.0175 BIENNIALY APPROVED FOODS.

13 Subpart 1. Food products. For the purpose of this part,
14 biennially approved food products are cereal, fruit juice food
15 products other than citrus juices, and vegetable juice food
16 products.

17 Subp. 2. Previously approved food products. Biennially
18 approved food products approved before the effective date of
19 this chapter must be reapproved according to subpart 5 within
20 one year after the effective date of this part.

21 Subp. 3. New food products. Biennially approved food
22 products not approved before the effective date of this chapter
23 must be approved according to subpart 5.

24 Subp. 4. Duration of approval. The approval of a food
25 product approved under subpart 5 must be for two years,
26 beginning on the first day of the federal fiscal year following
27 the date of the notification of approval. However, if the food
28 stops meeting the approval criteria under part 4617.0180, the
29 approval of the food product ends when the food stops meeting
30 the approval criteria.

31 Subp. 5. Approval process. Food required to be approved
32 under this part must be approved according to the following
33 items:

- 34 A. The commissioner shall annually send a written
35 request for food product applications to food manufacturers who

1 have asked in writing to receive the request, to food
2 manufacturers of products that were previously approved, and to
3 food manufacturers identified by the commissioner. The request
4 must include the following information:

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

7 (2) the approval criteria under part 4617.0180;

8 (3) the list of information that must be
9 submitted as a part of an application for food approval;

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

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

14 B. The commissioner shall not consider an application
15 that does not provide the information required by item A,
16 subitem (3), or is not submitted according to item A, subitem
17 (4).

18 4617.0180 APPROVAL CRITERIA FOR FOODS.

19 Subpart 1. Requirement. A food product must meet the
20 criteria in subparts 2 to 6 to be approved by the commissioner
21 for use by the WIC program.

22 Subp. 2. Nutritional acceptability. A food product must
23 be nutritionally acceptable according to Code of Federal
24 Regulations, title 7, section 246.10, paragraph (c). A product
25 must not contain a nonnutritive or artificial sweetener. Infant
26 cereal must not contain added fruit or formula. Infant fruit
27 juice must be pure and unsweetened and be marked as infant fruit
28 juice. Milk must be unsweetened, unflavored cow's milk that is
29 not buttermilk. Colby longhorn and co-jack may be included as
30 domestic cheeses. Juice other than infant fruit juice must be
31 pure and unsweetened with no additives other than vitamin C
32 (ascorbic acid). Frozen concentrate juice must contain a
33 minimum of 30 milligrams of vitamin C per 100 milliliters when
34 reconstituted at a ratio of one ounce of juice to three ounces
35 of water. Eggs must be fresh and either medium or large size.

1 Subp. 3. Packaging. A food product must be packaged
2 according to items A to H.

3 A. Infant cereal must be in containers of at least
4 eight ounces and not more than 24 ounces.

5 B. Infant fruit juice must be in 4.0 or 4.2-ounce
6 jars.

7 C. Fluid milk must be in gallon or half-gallon
8 containers.

9 D. Evaporated milk must be in 12- or 13-ounce cans.

10 E. Dry milk must be in containers that do not exceed
11 28 quarts when reconstituted.

12 F. Cheese must be in blocks that do not exceed one
13 pound.

14 G. Eggs must be in cartons that contain a dozen eggs.

15 H. Legumes must be in one-pound containers.

16 I. Frozen juice must be in six-ounce or 12-ounce
17 containers.

18 J. Canned fruit or vegetable juice must be in
19 46-ounce containers.

20 K. Hot cereals must not be in individual serving
21 packets.

22 L. Ready-to-eat cereal must be in 14 ounce or larger
23 containers.

24 Subp. 4. Cost. The cost of food products must be
25 competitive with the prices of like products acceptable for
26 use. Food product prices must be less than or equal to the
27 average price of the food product plus one standard deviation of
28 the other food products in the same food category.

29 Subp. 5. Availability. A food product must be stocked by
30 at least three authorized vendors in the state. The
31 commissioner shall do on-site inspections to verify
32 availability. If an on-site inspection shows that a food
33 product is not stocked by at least three food vendors in
34 Minnesota, the commissioner shall disapprove that food product.

35 Subp. 6. Distinction. The container, container label, or
36 appearance of an approved food must make that food readily

- 1 distinguishable from similar food products that do not meet the
- 2 other approval criteria under this part.