

1 Department of Health

2

3 Adopted Permanent Rules Relating to Health; WIC

4

5 Rules as Adopted

6 4617.0002 DEFINITIONS.

7 [For text of subpart 1, see M.R.]

8 Subp. 2. Agency. "Agency" means:

9 A. a public or private, nonprofit health or human
10 service agency;

11 B. a community health board established pursuant to
12 Minnesota Statutes, chapter 145A;

13 C. an Indian tribe, band, or group recognized by the
14 United States Department of the Interior which operates a health
15 clinic or is provided health services by an IHS service unit; or

16 D. an intertribal council or group that is an
17 authorized representative of Indian tribes, bands, or groups
18 recognized by the United States Department of the Interior,
19 which operates a health clinic or is provided health services by
20 an IHS service unit.

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

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

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

30 [For text of subps 3 to 6, see M.R.]

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

33 [For text of subps 8 to 10, see M.R.]

34 Subp. 11. [See repealer.]

35 [For text of subp 12, see M.R.]

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

4 [For text of subps 13 to 16, see M.R.]

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

8 [For text of subp 17, see M.R.]

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

11 Subp. 18. Individual nutrition care plan. "Individual
12 nutrition care plan" means a plan established under part
13 4617.0058.

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

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

21 [For text of subps 21 to 23, see M.R.]

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

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

27 A. a fruit juice product which does not contain any
28 citrus juice;

29 B. a fruit juice product which contains both:

30 (1) one or more citrus juices; and

31 (2) one or more fruit juices which are not citrus
32 juices; or

33 C. a vegetable juice product.

34 [For text of subps 25 and 26, see M.R.]

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

1 oats.

2 [For text of subps 27 and 28, see M.R.]

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

8 [For text of subps 29 to 32, see M.R.]

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

13 [For text of subp 34, see M.R.]

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

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

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

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

28 [For text of subps 39 and 40, see M.R.]

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

32 [For text of subps 41 to 43, see M.R.]

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

1 institution.

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

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

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

11 [For text of subpart 45, see M.R.]

12 4617.0020 AGENCY APPLICATION REVIEW AND APPROVAL.

13 [For text of subps 1 to 5, see M.R.]

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

17 A. The commissioner shall give:

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

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

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

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

26 [For text of items B to D, see M.R.]

27 [For text of subps 7 to 11, see M.R.]

28 4617.0025 DISQUALIFICATION.

29 The commissioner shall stop providing WIC program funds to
30 a local agency if the local agency does not comply with parts
31 4617.0002 to 4617.0174. A local agency shall reimburse the
32 commissioner for WIC program funds that are not distributed
33 according to this chapter.

34 4617.0030 LOCAL AGENCY CONTRACTS AND AGREEMENTS.

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

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

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

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

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

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

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

19 (3) section 504 of the Rehabilitation Act of
20 1973, United States Code, title 29, section 794;

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

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

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

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

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

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

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

1 (2) includes the criteria used to select
2 participants for high-risk nutrition education; and
3 (3) includes the criteria the local agency uses
4 to determine which participants will receive an individual
5 nutrition care plan.

6 [For text of subps 2 and 3, see M.R.]

7 4617.0043 EVALUATIONS AND MONITORING.

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

15 [For text of subps 2 and 3, see M.R.]

16 4617.0044 NUTRITION EDUCATION PLAN; REQUIREMENT.

17 A local agency must prepare an annual nutrition education
18 plan to be effective beginning on the submission deadline under
19 part 4617.0045. A nutrition education plan must be consistent
20 with this chapter and Code of Federal Regulations, title 7, part
21 246, and must meet all nutrition education plan requirements
22 contained in the local agency's written contract with the
23 commissioner.

24 4617.0045 NUTRITION EDUCATION PLAN SUBMISSION DEADLINES.

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

28 [For text of subps 2 and 3, see M.R.]

29 4617.0049 APPROVAL OF NUTRITION EDUCATION PLAN.

30 The commissioner shall approve or disapprove a nutrition
31 education plan based on whether the local agency has complied
32 with all nutrition education plan requirements as contained in
33 its written contract with the commissioner and in Code of
34 Federal Regulations, title 7, part 246. Within 120 days after

1 receiving a nutrition education plan, the commissioner shall
2 notify the local agency in writing of the commissioner's
3 approval or disapproval of that local agency's nutrition
4 education plan. If a plan is disapproved, the commissioner
5 shall advise the local agency of the items that must be revised
6 or completed for the plan to be consistent with this chapter. A
7 local agency shall complete revisions of the plan within 30 days
8 after the date it receives the commissioner's written
9 disapproval.

10 4617.0050 ROLE OF NUTRITION EDUCATION COORDINATOR.

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

20 4617.0056 CONTENTS OF NUTRITION EDUCATION SESSIONS.

21 [For text of subps 1 and 2, see M.R.]

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

28 4617.0058 INDIVIDUAL NUTRITION CARE PLAN.

29 A competent professional authority from the local agency
30 must prepare an individual nutrition care plan for each
31 participant who meets the individual nutrition care plan
32 criteria in the local agency nutrition education plan, for each
33 participant who requests a plan, and for each participant for
34 whom a competent professional authority has determined that an

1 individual nutrition care plan is needed. An individual
2 nutrition care plan must include:

3 A. an identification of the health and nutritional
4 needs of the participant;

5 B. a plan and schedule for meeting the needs
6 identified in item A;

7 C. methods for documenting progress of the plan's
8 implementation;

9 D. the name title of the person who will monitor
10 implementation of the individual nutrition care plan;

11 E. the signature and title of the person who
12 developed the individual nutrition care plan; and

13 F. the signature and title of the nutrition education
14 coordinator who approved the plan, if a nutrition education
15 coordinator did not develop the plan.

16 WIC-APPROVED FOODS

17 4617.0171 INFANT FORMULA APPROVAL PROCESS.

18 In accordance with Code of Federal Regulations, title 7,
19 section 246.16(m), the commissioner shall solicit bids and
20 approve for purchase using WIC vouchers one or more brands of
21 milk-based iron fortified infant formula and soy-based iron
22 fortified infant formula. The nutritional content, size, and
23 packaging of each approved brand of infant formula must be
24 consistent with Code of Federal Regulations, title 7, section
25 246.10(c).

26 4617.0172 NONCOMPETITIVE FOOD APPROVAL PROCESS.

27 Subpart 1. Definition of noncompetitive food product.

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

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

35 B. pure, unsweetened infant fruit juice in a

1 container which does not exceed eight ounces and which is
2 labeled as infant fruit juice;

3 C. unsweetened, unflavored milk which is:

4 (1) fluid cow's milk in a container of at least
5 32 ounces;

6 (2) evaporated cow's milk in a 12-ounce or
7 13-ounce container; or

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

10 D. cheese;

11 E. pure and unsweetened citrus juice which:

12 (1) contains no additives other than vitamin C
13 and calcium; and

14 (2) is either frozen concentrate citrus juice in
15 six-ounce or 12-ounce containers, or single strength citrus
16 juice in containers of not more than 46 ounces;

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

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

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

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

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

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

35 4617.0173 COMPETITIVE FOOD APPROVAL PROCESS.

1 Subpart 1. Definition of competitive food product.

2 "Competitive food product" means a food product listed in items

3 A to C:

4 A. adult cereal;

5 B. noncitrus juice; or

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

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

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

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

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

29 (2) the approval criteria under subpart 4;

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

35 (4) the final date for submission of an
36 application for competitive food product approval to the

1 commissioner; and

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

4 B. The commissioner shall not consider an application
5 that does not provide the information required by item A,
6 subitem (3), or is not submitted according to item A, subitem
7 (4).

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

12 A. A competitive food product must meet the
13 nutritional requirements of Code of Federal Regulations, title
14 7, section 246.10(c). A product must not contain any
15 nonnutritive or artificial sweeteners. Single strength
16 noncitrus juice must be pure and unsweetened juice, and contain
17 a minimum of 30 milligrams of vitamin C per 100 milliliters.
18 Single strength fruit juice products must contain no additives
19 other than vitamin C and calcium. Frozen concentrate noncitrus
20 juice must be pure and unsweetened juice, and contain a minimum
21 of 30 milligrams of vitamin C per 100 milliliters when
22 reconstituted at a ratio of one ounce of juice to three ounces
23 of water. Frozen concentrate fruit juice products must contain
24 no additives other than vitamin C and calcium. Adult cereal
25 must contain a minimum of 28 milligrams of iron per 100 grams of
26 dry cereal and not more than 21.2 grams of sucrose and other
27 sugars per 100 grams of dry cereal (six grams per ounce).

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

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

36 D. A brand of competitive food product will not be

1 approved if the price per ounce of that brand, less any rebate
2 received by the commissioner for the brand, exceeds 130 percent
3 of the average price per ounce of all brands of the same
4 competitive food product which meet the criteria in items A to C.

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

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

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

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

20 (1) 18 brands of adult cereal;

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

23 (3) six brands of single strength noncitrus juice.

24 G. If the number of applications received by the
25 commissioner for brands which satisfy the requirements of items
26 A to D exceeds the relevant minimum number in item F, the
27 commissioner may disapprove one or more applications if the
28 commissioner determines that disapproval is necessary for
29 administrative efficiency. In considering administrative
30 efficiency, the commissioner shall consider the number of brand
31 names which could reasonably be printed on a participant's WIC
32 authorization card, the number of brands which would be readily
33 identifiable to an adult WIC customer or to vendor cashiers, the
34 number of brands which a local agency could reasonably be
35 expected to communicate to a participant, and the number of WIC
36 approved foods which could reasonably be printed on an 8-1/2

1 inch by 11 inch piece of paper. If the commissioner decides to
2 disapprove one or more applications, the commissioner shall
3 consider the factors in subitems (1) to (4) in determining which
4 application or applications to disapprove:

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

7 (2) the cost of the applicant brands;

8 (3) the availability of the applicant brands; and

9 (4) the variety of the applicant brands,

10 including the distribution of adult cereal brands among corn
11 cereals, rice cereals, oat cereals, bran cereals, wheat cereals
12 and hot cereals, and the distribution of noncitrus juice brands
13 among apple juice, grape juice, pineapple juice, vegetable
14 juice, and fruit or vegetable juice combinations.

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

21 Subp. 6. Revocation of approval. Notwithstanding subparts
22 2 and 4, item F, the commissioner may, at any time, revoke
23 approval of a brand of a competitive food product if it no
24 longer meets one or more of the requirements in subpart 4, items
25 A to D. If the commissioner revokes approval of a brand, the
26 commissioner shall provide the food manufacturer with written
27 notice of the revocation.

28 4617.0174 GENERAL PROVISIONS.

29 Subpart 1. Expiration of prior approvals. All WIC food
30 product approvals by the commissioner in effect on the effective
31 date of this rule, except the approval of infant formula, expire
32 at 12:01 a.m., October 1, 1995.

33 Subp. 2. Cultural preference. Notwithstanding the
34 provisions of this chapter, the commissioner shall approve for
35 purchase using WIC vouchers any food product or brand of food

1 product authorized under Code of Federal Regulations, title 7,
2 section 246.10(c), if the commissioner believes, based on the
3 best information available, that there is a need for the food
4 product or brand of food product within a specific cultural or
5 ethnic group. If the commissioner approves any food product or
6 brand of food product under this subpart, the commissioner shall
7 provide notice of the approval to all retail food vendors and
8 local agencies.

9 REPEALER. Minnesota Rules, parts 4617.0002, subpart 11;
10 4617.0046; 4617.0047; 4617.0170; 4617.0175; and 4617.0180, are
11 repealed.