

1.1 **Department of Health**1.2 **Proposed Permanent Rules Relating to WIC Program Funds**1.3 **4617.0002 DEFINITIONS.**1.4 [For text of subps 1 to 2a, see M.R.]1.5 Subp. 2a. **Applicant.** "Applicant" has the meaning given in Code of Federal  
1.6 Regulations, title 7, section 246.2, as amended.1.7 [For text of subps 2b to 3b, see M.R.]1.8 Subp. 3c. **Cash-value voucher.** "Cash-value voucher" has the meaning given in  
1.9 Code of Federal Regulations, title 7, section 246.2, as amended. Cash-value voucher  
1.10 includes the legal equivalent of a paper cash-value voucher, such as an electronic form of  
1.11 the cash-value voucher, as defined in the Check 21 Act, Public Law 108-100.1.12 Subp. 3e ~~3d~~. **Cashier.** "Cashier" means an individual who accepts ~~vouchers~~ a  
1.13 voucher or cash-value voucher on behalf of a vendor.1.14 [For text of subps 4 to 7a, see M.R.]1.15 Subp. 8. **Clinic town.** "Clinic town" means a town or city in which the local agency  
1.16 distributes vouchers and cash-value vouchers to participants and proxies, or where  
1.17 participants are certified, or both.1.18 [For text of subps 9 to 14b, see M.R.]1.19 Subp. 14c. **Food assistance program.** "Food assistance program" means ~~the WIC~~  
1.20 ~~program~~, the Food Stamp Supplemental Nutrition Assistance Program (SNAP), or any  
1.21 other food and consumer service program in Minnesota or in any other state, district,  
1.22 commonwealth or territory of the United States.1.23 [For text of subps 14d and 14e, see M.R.]

2.1 Subp. 14f. **Food sales.** "Food sales" has the meaning given in Code of Federal  
2.2 Regulations, title 7, section 246.2, as amended.

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

2.10 [For text of subps 15 to 17a, see M.R.]

2.11 Subp. 17b. **Incentives.** "Incentives" means goods or services, in addition to the food  
2.12 products specified on a voucher or cash-value voucher, offered or provided to a WIC  
2.13 customer who redeems a voucher or cash-value voucher at a particular vendor.

2.14 [For text of subps 18 to 19a, see M.R.]

2.15 Subp. 19b. **Launder.** "Launder" means to receive, transact, or redeem a voucher or  
2.16 cash-value voucher outside of authorized channels and includes redeeming a voucher or  
2.17 cash-value voucher accepted at a store that is not authorized as a WIC vendor, accepting a  
2.18 voucher or cash-value voucher at a place other than an established check-out lane at the  
2.19 vendor's business site, accepting or redeeming a voucher or cash-value voucher from any  
2.20 source other than a WIC customer, and accepting a voucher or cash-value voucher that  
2.21 is then redeemed through another vendor.

2.22 [For text of subps 20 to 36, see M.R.]

2.23 Subp. 36a. **Provide unauthorized food.** "Provide unauthorized food" means:

2.24 A. to provide any food other than WIC-allowed food in exchange for a voucher  
2.25 or cash-value voucher;

3.1 B. to provide, in exchange for a voucher or cash-value voucher, any  
3.2 WIC-allowed food that is not listed on the voucher or cash-value voucher;

3.3 C. to provide, as a substitute for any WIC-allowed food listed on a voucher or  
3.4 cash-value voucher, an excess quantity of another WIC-allowed food listed on the voucher  
3.5 or cash-value voucher; or

3.6 D. to provide, in exchange for a voucher or cash-value voucher, and to charge  
3.7 the WIC program for, more WIC-allowed food than is listed on the voucher or cash-value  
3.8 voucher.

3.9 [For text of subp 37, see M.R.]

3.10 Subp. 37a. **Rain check.** "Rain check" means a credit provided by a vendor to a WIC  
3.11 customer in exchange for a voucher or cash-value voucher, if the credit can only be used  
3.12 to purchase one or more specific food items listed on the voucher or cash-value voucher  
3.13 but not received by the WIC customer.

3.14 [For text of subps 37b to 40e, see M.R.]

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

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

3.21 [For test of subps 41 to 43, see M.R.]

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

4.1 Voucher includes the legal equivalent of a paper voucher, such as an electronic form of the  
4.2 voucher, as defined in the Check 21 Act, Public Law 108-100.

4.3 Subp. 44a. [Repealed, 22 SR 266]

4.4 Subp. 44b. **WIC-allowed foods.** "WIC-allowed foods" means special infant  
4.5 formula, and foods approved by the commissioner under this chapter for purchase with  
4.6 WIC vouchers and cash-value vouchers.

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

4.8 Subp. 44d. **WIC cashier trainer.** "WIC cashier trainer" means the employee or  
4.9 other representative of a vendor who is, or, in the case of a vendor applicant, who will  
4.10 be, responsible for training the vendor's cashiers in properly transacting WIC vouchers  
4.11 and cash-value vouchers.

4.12 [For text of subps 44e and 44f, see M.R.]

4.13 Subp. 44g. **WIC ID folder.** "WIC ID folder" means a document issued by a local  
4.14 agency to a participant or proxy which contains eligibility information on a participant  
4.15 and contains the signatures of all individuals authorized to sign vouchers and cash-value  
4.16 vouchers issued to the participant.

4.17 [For text of subp 45, see M.R.]

4.18 Subp. 46. **WIC sales.** "WIC sales" means all sales by a vendor for which the vendor  
4.19 receives payment in the form of a WIC voucher or a cash-value voucher.

#### 4.20 **4617.0025 DISQUALIFICATION.**

4.21 The commissioner shall stop providing WIC program funds to a local agency if the  
4.22 local agency does not comply with parts 4617.0002 to ~~4617.0174~~ 4617.0171 or with Code  
4.23 of Federal Regulations, title 7, part 246, as amended. A local agency shall reimburse the  
4.24 commissioner for WIC program funds that are not distributed according to this chapter.

5.1 **4617.0067 VENDOR ELIGIBILITY REQUIREMENTS.**5.2 [For text of subp 1, see M.R.]5.3 **Subp. 2. Location, licensing, and registration requirements.**5.4 [For text of item A, see M.R.]

5.5 B. A retail food vendor must:

5.6 (1) be licensed by all government entities that require a license for the  
5.7 vendor to be open to the public for business; ~~and~~5.8 (2) be authorized by the United States Department of Agriculture to accept  
5.9 ~~food stamps.~~ SNAP benefits; and5.10 (3) not have any restriction placed on its license that would preclude it  
5.11 from meeting the requirements of subpart 3.5.12 [For text of item C, see M.R.]5.13 **Subp. 3. Minimum in-stock food requirements for retail food vendors.**5.14 A. A retail food vendor located in a Tier 2 county shall at all times have in stock  
5.15 and available for purchase, at a minimum:5.16 [For text of subitems (1) and (2), see M.R.]5.17 (3) ten gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk  
5.18 in gallon or half-gallon containers in any combination of at least two of the following  
5.19 varieties:

5.20 (a) skim or nonfat;

5.21 (b) one percent milkfat; and5.22 (c) two percent milkfat; ~~and~~5.23 (d) ~~whole~~;

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

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

6.4 (6) three ~~14- to 16-ounce~~ packages in sizes up to 16 ounces of WIC-allowed  
6.5 dried legumes, which do not contain any added ingredients;

6.6 (7) 128 ounces of WIC-allowed canned beans or legumes, in any  
6.7 combination of at least three varieties;

6.8 ~~(7)~~ (8) three ~~16- to 18-ounce~~ containers in sizes up to 18 ounces of  
6.9 WIC-allowed peanut butter which does not contain any other food product such as jelly,  
6.10 jam, or chocolate;

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

6.13 (9) 24 pounds of WIC-allowed fresh fruits and vegetables in at least five  
6.14 varieties, two of which must be bananas and carrots;

6.15 ~~(9)~~ (10) ~~four six-ounce containers of WIC-allowed canned tuna~~ 30 ounces  
6.16 of WIC-allowed canned fish;

6.17 ~~(10)~~ (11) 12 containers of any combination of the following, as long as at  
6.18 least four containers are 100 percent citrus juice:

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

6.21 (b) ~~46~~ 64-ounce containers of WIC-allowed pure and unsweetened  
6.22 100 percent juice; ~~and~~

6.23 ~~(11)~~ (12) nine boxes or bags of whole grain WIC-allowed cereal in any  
6.24 combination of at least five varieties;

7.1 (13) 128 ounces of WIC-allowed baby food fruits and vegetables in at least  
 7.2 two varieties of baby food fruits and two varieties of baby food vegetables; and

7.3 (14) three pounds of WIC-allowed whole grains of at least three of the  
 7.4 following varieties: whole grain bread, whole grain tortillas, oatmeal, and brown rice.

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

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

7.10 ~~(2) (1) except as provided in item D, 15 18 containers of milk-based~~  
 7.11 ~~powdered infant formula of the brand, size, and level of iron fortification approved by~~  
 7.12 ~~the commissioner under part 4617.0171;~~

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

7.16 ~~(4) (2) 48 ounces of WIC-allowed plain, dry, infant cereal;~~

7.17 ~~(5) (3) 15 gallons of unsweetened, unflavored, WIC-allowed fluid cow's~~  
 7.18 ~~milk in gallon or half-gallon containers in any combination of at least two of the following~~  
 7.19 ~~varieties:~~

7.20 ~~(a) skim or nonfat;~~

7.21 ~~(b) 1 percent milkfat; and~~

7.22 ~~(c) 2 percent milkfat; and~~

7.23 ~~(d) whole;~~

8.1 ~~(6)~~ (4) six pounds of WIC-allowed domestic cheese in packages of at least  
8.2 one-half pound each, in any combination of at least three varieties;

8.3 ~~(7)~~ (5) six one-dozen containers of WIC-allowed fresh eggs;

8.4 ~~(8)~~ (6) four ~~14- to 16-ounce~~ packages in sizes up to 16 ounces of  
8.5 WIC-allowed dried legumes, which do not contain any added ingredients;

8.6 ~~(7)~~ 192 ounces of WIC-allowed canned beans or legumes, in any  
8.7 combination of at least three varieties;

8.8 ~~(9)~~ (8) four ~~16- to 18-ounce~~ containers in sizes up to 18 ounces of  
8.9 WIC-allowed peanut butter which does not contain any other food product such as jelly,  
8.10 jam, or chocolate;

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

8.13 ~~(9)~~ 30 pounds of WIC-allowed fresh fruits and vegetables in at least seven  
8.14 varieties, two of which must be bananas and carrots;

8.15 ~~(11)~~ (10) ~~four six-ounce containers of WIC-allowed canned tuna~~ 30 ounces  
8.16 of WIC-allowed canned fish;

8.17 ~~(12)~~ (11) 18 containers of any combination of the following, as long as at  
8.18 least six containers are 100 percent citrus juice:

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

8.21 (b) ~~46~~ 64-ounce containers of WIC-allowed pure and unsweetened  
8.22 100 percent juice; ~~and~~

8.23 ~~(13)~~ (12) 12 boxes or bags of whole grain WIC-allowed cereal in any  
8.24 combination of at least six varieties:



9.1 (13) 256 ounces of WIC-allowed baby food fruits and vegetables in at least  
9.2 three varieties of baby food fruits and three varieties of baby food vegetables; and

9.3 (14) five pounds of WIC-allowed whole grains of at least three of the  
9.4 following varieties: whole grain bread, whole grain tortillas, oatmeal, and brown rice.

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

9.8 D. If the vendor has been a vendor for more than six months and, during the  
9.9 most recent six months for which data are available, has not redeemed any voucher for  
9.10 ~~a particular type of~~ the infant formula specified in item A, subitem (1), or B, subitem (1),  
9.11 the vendor does not need to maintain in stock and available for purchase any of that type  
9.12 of infant formula.

9.13 E. If a WIC customer requests ~~a prescribed infant formula approved by the~~  
9.14 ~~commissioner under part 4617.0171~~ one of the following products, the vendor must ensure  
9.15 ~~that the requested formula~~ a sufficient quantity of the product is in stock and available for  
9.16 purchase at the vendor's location within one week of the WIC customer's request.:

9.17 (1) an infant formula approved by the commissioner under part 4617.0171;

9.18 (2) WIC-allowed soy beverage;

9.19 (3) WIC-allowed tofu;

9.20 (4) WIC-allowed baby food meats;

9.21 (5) WIC allowed canned fruits and vegetables;

9.22 (6) WIC allowed frozen fruits and vegetables; and

9.23 (7) other WIC-allowed products authorized under Code of Federal  
9.24 Regulations, title 7, part 246, as amended.

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

10.3 [For text of items A and B, see M.R.]

10.4 C. Employees who accept vouchers and cash-value vouchers for the vendor  
10.5 must be able to demonstrate their ability to process vouchers and cash-value vouchers  
10.6 according to this chapter.

10.7 [For text of item D, see M.R.]

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

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

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

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

10.15 [For text of items F and G, see M.R.]

10.16 Subp. 5. **Vendor prices.** With the exception of the authorized foods in subpart 3,  
10.17 items A, subitem (9), and B, subitem (9), a retail food vendor's price for each of the  
10.18 authorized foods in subpart 3 must not be more than 115 percent of the average price  
10.19 charged by retail food vendors. The commissioner shall determine the average price  
10.20 charged by retail food vendors based on the most recent price information available to the  
10.21 commissioner on prices charged by retail food vendors and according to Code of Federal  
10.22 Regulations, title 7, part 246, and approved by USDA in the annual state plan submitted  
10.23 by the commissioner. A change in the manufacturer's price of an authorized food in  
10.24 subpart 3 is grounds for the commissioner to change the commissioner's calculation of the  
10.25 average price charged by retail food vendors. If the commissioner determines that there

11.1 is a religious need for a vendor to charge a specific price greater than 115 percent of the  
11.2 average price charged by retail food vendors, the vendor may charge that specific price.

11.3 **Subp. 6. Special requirements for vendor applicants.**

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

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

11.14 [For text of subitems (1) and (2), see M.R.]

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

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

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

11.22 (b) within one year before the date the commissioner received the  
11.23 vendor application or at any time on or after the date the commissioner received the  
11.24 application, accepted a voucher or cash-value voucher when the retail store or pharmacy

12.1 did not have a fully executed vendor agreement and the voucher or cash-value voucher  
12.2 was then paid by the WIC program's bank.

12.3 [For text of subitems (2) and (3), see M.R.]

12.4 [For text of item D, see M.R.]

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

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

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

12.12 [For text of items F to H, see M.R.]

12.13 **4617.0068 OPERATING REQUIREMENTS.**

12.14 Subpart 1. **Acceptance and pricing of vouchers and cash-value vouchers.**

12.15 A. A pharmacy vendor shall not accept WIC cash-value vouchers or vouchers  
12.16 for any foods other than special infant formula, ~~infant cereal, and juice~~, unless the  
12.17 pharmacy vendor is also a retail food vendor.

12.18 B. For each voucher or cash-value voucher accepted by a vendor, the vendor  
12.19 shall ensure that:

12.20 (1) the voucher or cash-value voucher is accepted at a check-out lane at  
12.21 the vendor's business site;

12.22 (2) the voucher or cash-value voucher is accepted on a date between the  
12.23 first-day-to-use date and the last-day-to-use date, inclusive, on the voucher or cash-value  
12.24 voucher;

13.1 (3) the date that the voucher or cash-value voucher is accepted is inserted  
13.2 on the voucher or cash-value voucher when the voucher or cash-value voucher is accepted;

13.3 (4) the price of the food purchased with the voucher or cash-value voucher  
13.4 is inserted in the space provided on the voucher or cash-value voucher before the WIC  
13.5 customer signs the voucher;

13.6 (5) the price inserted on the voucher or cash-value voucher reflects  
13.7 a discount in the amount of any store or manufacturer coupons presented by a WIC  
13.8 customer for the food purchased;

13.9 (6) the vendor does not charge the WIC program more for WIC-allowed  
13.10 food than the vendor's usual and customary charge to non-WIC customers;

13.11 (7) the vendor does not charge the WIC program more than the vendor's  
13.12 shelf price for the WIC-allowed food provided to the WIC customer at the time the vendor  
13.13 accepts the voucher or cash-value voucher in exchange for the food;

13.14 (8) the WIC customer signs the voucher or cash-value voucher at the time  
13.15 the WIC customer uses the voucher to obtain food;

13.16 (9) the cashier verifies that the signature of the individual who signs the  
13.17 voucher or cash-value voucher matches an authorized signature on the WIC ID folder;

13.18 (10) before deposit in the vendor's bank, the number on the vendor stamp  
13.19 has legibly been imprinted onto the voucher or cash-value voucher; and

13.20 (11) the voucher or cash-value voucher does not contain any alteration of  
13.21 the first-day-to-use date, last-day-to-use date, or food prescription.

13.22 Subp. 2. **Deposit of vouchers.** A vendor shall deposit each voucher and cash-value  
13.23 voucher in the vendor's bank within 60 days of the first-day-to-use date on the voucher or  
13.24 cash-value voucher, except as provided in part 4617.0084, subpart 18, item C. The vendor  
13.25 may only deposit into the vendor's account vouchers and cash-value vouchers which were

14.1 accepted at a check-out lane at the vendor's business site. The vendor may not transfer any  
14.2 vouchers or cash-value vouchers accepted by the vendor to anyone else for deposit in an  
14.3 account other than the vendor's account.

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

14.10 Subp. 4. **Three-year documentation of purchases.**

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

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

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

14.18 [For text of items B and C, see M.R.]

14.19 [For text of subps 4a to 9, see M.R.]

14.20 Subp. 10. **Shelf labels.** If the commissioner requests it due to a violation of this  
14.21 chapter, a vendor shall display in proximity to each WIC-allowed food a current shelf  
14.22 label provided or approved by the commissioner which indicates that the food item is a  
14.23 WIC-allowed food.

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

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

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

15.11 [For text of subps 14 and 15, see M.R.]

#### 15.12 **4617.0070 VENDOR STAMPS.**

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

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

#### 15.24 **4617.0084 VENDOR SANCTIONS.**

15.25 [For text of subp 1, see M.R.]

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

16.3 A. buying or selling one or more vouchers or cash-value vouchers for cash; or

16.4 B. selling any firearms, ammunition, explosives, or controlled substances, as  
16.5 defined under the federal Controlled Substances Act, United States Code, title 21, section  
16.6 802, clause (6), as amended, for one or more vouchers or cash-value vouchers.

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

16.9 A. buys or sells one or more vouchers or cash-value vouchers for cash; or

16.10 B. sells any firearms, ammunition, explosives, or controlled substances, as  
16.11 defined under the federal Controlled Substances Act, United States Code, title 21, section  
16.12 802, clause (6), as amended, for one or more vouchers or cash-value vouchers.

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

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



17.1 different food items during two different ~~months~~ periods of time, or one food item during  
17.2 two different ~~months~~ periods of time.

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

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

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

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

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

17.19 [For text of item A, see M.R.]

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

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

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

18.2 (a) no price was entered on the voucher or cash-value voucher at the  
18.3 time it was accepted by the vendor;

18.4 (b) the price on the voucher or cash-value voucher was at any time  
18.5 altered to reflect a price higher than the price originally entered on the voucher or  
18.6 cash-value voucher;

18.7 (c) the price the WIC program paid the vendor for the voucher or  
18.8 cash-value voucher was more than 20 percent greater than the correct price for the  
18.9 voucher or cash-value voucher;

18.10 (d) no receipt was provided at the time the voucher or cash-value  
18.11 voucher was accepted by the vendor;

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

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

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

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

18.25 Subp. 9. **Providing unauthorized food.**

19.1 A. A vendor shall not provide unauthorized food.

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

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

19.10 Subp. 10. **Food-stamp SNAP or food support sanctions.**

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

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

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

19.21 A. The commissioner shall disqualify a vendor for one year if, during any  
19.22 12-month period within the last three years, the dollar amount of the vendor's WIC sales  
19.23 was greater than 50 percent of the vendor's total food sales.

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

20.1 [For text of subitems (1) to (4), see M.R.]

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

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

20.7 Subp. 12. ~~Six-month~~ One-year **disqualification for two violations.**

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

20.11 [For text of subitems (1) and (2), see M.R.]

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

20.15 (4) offering an incentive for a WIC customer to redeem a voucher or  
20.16 cash-value voucher at the vendor's business site or advertising that the vendor would  
20.17 provide such an incentive; and

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

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

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

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

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

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

21.10 (2) requesting any reimbursement or payment from a WIC customer for a  
21.11 WIC voucher or cash-value voucher returned by the bank;

21.12 (3) failing to enter a dollar amount on a voucher or cash-value voucher at  
21.13 the time the vendor accepts the voucher or cash-value voucher from a WIC customer;

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

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

21.20 [For text of item B, see M.R.]

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

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

22.1 (1) failing to verify that the signature of the individual who signs the  
22.2 voucher or cash-value voucher matches an authorized signature on the WIC ID folder;

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

22.6 [For text of subitems (3) and (4), see M.R.]

22.7 [For text of item B, see M.R.]

22.8 Subp. 14. [Repealed, 29 SR 1202]

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

22.10 [For text of item A, see M.R.]

22.11 B. If a vendor commits a violation under subitems (1) to (12), the commissioner  
22.12 shall issue a written warning to the vendor. The vendor must correct the violation within  
22.13 15 days after the vendor receives the warning. If the vendor fails to correct the violation or  
22.14 commits the same violation at any time more than 15 days but less than six months after  
22.15 receiving the written warning, the commissioner shall terminate the vendor agreement.  
22.16 The commissioner shall issue a written warning if the vendor:

22.17 (1) violates part 4617.0067, subpart 4, item A, B, C, D, or E, or 5; or  
22.18 4617.0068, subpart 4a;

22.19 (2) is a retail food vendor and does not meet any license or authorization  
22.20 required requirement under part 4617.0067, subpart 2, ~~item B, is suspended or revoked~~  
22.21 ~~or is not renewed;~~

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

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

23.4 ~~(5)~~ (4) is a retail food vendor that fails to maintain the required minimum  
23.5 stock under part 4617.0067, subpart 3;

23.6 ~~(6)~~ (5) on two occasions, fails to ensure that a prescribed infant formula is  
23.7 in stock and available for purchase within one week of a WIC customer's request under  
23.8 part 4617.0067, subpart 3, item E;

23.9 ~~(7)~~ (6) fails to ensure that a representative of the vendor receives required  
23.10 ~~WIC-approved training at least once every year;~~

23.11 ~~(8)~~ (7) fails to make full payment to the commissioner within 120 days of a  
23.12 request by the commissioner under part 4617.0090, subpart 4;

23.13 ~~(9)~~ (8) has in stock and available for purchase any expired infant formula  
23.14 of the brand and level of iron fortification approved by the commissioner under part  
23.15 4617.0171;

23.16 ~~(10)~~ (9) is a pharmacy vendor, is not also a retail food vendor, and accepts  
23.17 a WIC voucher or cash-value voucher for any foods other than special infant formula;  
23.18 ~~infant cereal, and juice;~~

23.19 ~~(11)~~ (10) fails to be open for business during the business hours that the  
23.20 vendor has reported to the WIC program; or

23.21 ~~(12)~~ (11) fails to provide to the commissioner by the applicable deadline  
23.22 the corrective action plan required under subpart 15, item G.

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

23.24 [For text of item A, see M.R.]

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

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

24.7 [For text of subitem (2), see M.R.]

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

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

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

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

24.21 [For text of subitems (1) and (2), see M.R.]

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



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

25.3 [For text of items E to G, see M.R.]

25.4 [For text of subps 16 and 17, see M.R.]

25.5 Subp. 18. **General provisions.**

25.6 [For text of items A and B, see M.R.]

25.7 C. A retail food store or pharmacy that has been disqualified or terminated  
25.8 must deposit each voucher and cash-value voucher in the store's or pharmacy's bank  
25.9 account by the earlier of:

25.10 (1) 60 days after the first-day-to-use date on the voucher or cash-value  
25.11 voucher; or

25.12 (2) five days after the effective date of the disqualification or termination.

25.13 [For text of items D and E, see M.R.]

25.14 F. If a violation involves a vendor's acceptance of a voucher or cash-value  
25.15 voucher, the violation occurs on the date the vendor accepts the voucher or cash-value  
25.16 voucher.

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

25.23 Subp. 19. **Previous history of disqualification.** Notwithstanding subparts 7 to 9, if  
25.24 a vendor was previously disqualified under this subpart or subparts 3 to 10, and if any

26.1 controlling person of the vendor was a controlling person at the time of the previous  
26.2 disqualification, except as provided in subparts 15 and 16, the commissioner shall  
26.3 disqualify the vendor for:

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

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

26.10 **4617.0090 REJECTION OF VOUCHERS AND CASH-VALUE VOUCHERS AND**  
26.11 **REIMBURSEMENT BY VENDORS.**

26.12 Subpart 1. **Return without payment.** The bank which processes WIC vouchers and  
26.13 cash-value vouchers on behalf of the commissioner shall return a voucher or cash-value  
26.14 voucher to a vendor without payment if:

26.15 A. the voucher or cash-value voucher is not stamped with a vendor stamp;

26.16 B. the voucher or cash-value voucher is stamped with a vendor stamp which is  
26.17 illegible;

26.18 C. the voucher or cash-value voucher is not signed by a WIC customer;

26.19 D. the space provided on the voucher or cash-value voucher for the price of the  
26.20 food purchased is left blank by the vendor;

26.21 E. there is no first-day-to-use or last-day-to-use date on the voucher or  
26.22 cash-value voucher;

26.23 F. the commissioner has placed a stop-payment order on the voucher or  
26.24 cash-value voucher;

27.1 G. the date that the WIC customer used the voucher or cash-value voucher to  
27.2 obtain food is before the first-day-to-use date or after the last-day-to-use date on the  
27.3 voucher or cash-value voucher;

27.4 H. the vendor deposits the voucher or cash-value voucher before the  
27.5 first-day-to-use date on the voucher or cash-value voucher;

27.6 I. the vendor does not initially deposit the voucher or cash-value voucher in the  
27.7 vendor's bank by the earlier of:

27.8 (1) 60 days after the first-day-to-use date on the voucher or cash-value  
27.9 voucher; or

27.10 (2) five days after the effective date of the vendor's disqualification or  
27.11 termination;

27.12 J. the voucher or cash-value voucher was returned to the vendor under item A  
27.13 or B and the vendor does not redeposit the voucher or cash-value voucher in the vendor's  
27.14 bank by the earlier of:

27.15 (1) 90 days after the first-day-to-use date on the voucher or cash-value  
27.16 voucher; or

27.17 (2) five days after the effective date of the vendor's disqualification or  
27.18 termination;

27.19 K. the first-day-to-use date, last-day-to-use date, or food prescription on the  
27.20 voucher or cash-value voucher has been altered; or

27.21 L. the voucher or cash-value voucher is stamped with a vendor stamp other than  
27.22 a vendor stamp issued to the vendor by the commissioner under part 4617.0070.

27.23 Subp. 1a. **Return with credit.** Before this subpart applies, the commissioner shall  
27.24 give at least two months' written notice to vendors. If the price of the food purchased  
27.25 with a voucher or cash-value voucher exceeds the maximum price calculated by the

28.1 commissioner for that voucher or cash-value voucher under part 4617.0088, subpart  
28.2 1, the bank that processes WIC vouchers and cash-value vouchers on behalf of the  
28.3 commissioner shall:

28.4 A. return the voucher or cash-value voucher to the vendor;

28.5 B. not pay the price listed on the voucher or cash-value voucher;

28.6 C. for a voucher, credit the vendor in an amount equal to the maximum price  
28.7 calculated by the commissioner ~~for that voucher~~ under part 4617.0088, subpart 1, or for a  
28.8 cash-value voucher, credit the vendor in an amount equal to the maximum price listed  
28.9 on the cash-value voucher; and

28.10 D. notwithstanding item C, not credit the vendor in any amount if the bank is  
28.11 unable to credit the vendor because of the vendor's failure to comply with part 4617.0068,  
28.12 subpart 13, or failure to provide accurate information on the vendor's most recent vendor  
28.13 application.

28.14 Subp. 2. **Payment of rejected vouchers and cash-value vouchers.**

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

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

28.21 (1) the voucher or cash-value voucher is received by the commissioner  
28.22 not more than ~~120~~ 90 days after the first-day-to-use date on the voucher or cash-value  
28.23 voucher; and

28.24 (2) for a voucher or cash-value voucher returned to the vendor under  
28.25 subpart 1, item D, the vendor inserts the correct price and provides to the commissioner

29.1 documentation showing that the vendor had failed to insert the correct price due to  
29.2 inadvertent error, oversight, or some other reason not inconsistent with the purposes  
29.3 of this chapter.

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

29.6 Subp. 3. [Repealed, 29 SR 1202]

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

29.21 Subp. 5. **Prohibited vendor conduct.** A vendor shall not seek reimbursement from  
29.22 any WIC customer for a voucher or cash-value voucher not paid according to this part, for  
29.23 any banking charges paid by the vendor as a result of the nonpayment of a voucher or  
29.24 cash-value voucher, or for any money paid by the vendor to the commissioner according  
29.25 to this part. A vendor shall not require a WIC customer to provide a signature that was

30.1 not provided at the time the voucher or cash-value voucher was used to buy food from  
30.2 the vendor.

30.3 **~~4617.0100 APPEALS BY VENDORS, VENDOR APPLICANTS, LOCAL~~**  
30.4 **~~AGENCIES, AND LOCAL AGENCY APPLICANTS.~~**

30.5 Subpart 1. Procedures for appeals by applicants and participants.

30.6 A. An applicant or participant may appeal an action which results in a claim for  
30.7 repayment of the cash value of vouchers and cash-value vouchers redeemed in violation of  
30.8 Code of Federal Regulations, title 7, part 246, or this chapter; a finding of ineligibility; the  
30.9 denial of benefits; or disqualification from the program.

30.10 B. An appeal by or on behalf of an applicant or participant must be received by  
30.11 the commissioner not more than 60 days after notice of adverse action was mailed or given  
30.12 to the applicant or participant or the applicant's or participant's parent or legal guardian.

30.13 C. An appeal by an applicant or participant of an action cited in item A will be  
30.14 decided according to this part and procedures established by the commissioner according  
30.15 to Code of Federal Regulations, title 7, part 246.9, and approved by USDA in the state  
30.16 plan submitted by the commissioner.

30.17 ~~Subpart 1.~~ Subp. 1a. Procedures for appeals by local agencies, local agency  
30.18 applicants, vendors, and vendor applicants.

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

30.23 (1) a notice of violation under part 4617.0084 is not subject to appeal  
30.24 unless the violation results in the vendor's disqualification, the termination of the vendor

31.1 agreement, a civil money penalty imposed on the vendor, or denial of the vendor's  
31.2 reauthorization application;

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

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

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

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

31.12 B. An appeal by a vendor, vendor applicant, local agency, or local agency  
31.13 applicant must be in writing and be received by the commissioner not more than 30 days  
31.14 after notice of adverse action was mailed. An appeal by a local agency, local agency  
31.15 applicant, vendor, or vendor applicant must be decided according to this part; parts  
31.16 1400.5100 to 1400.8401; Minnesota Statutes, sections 14.57 to 14.62; and Code of Federal  
31.17 Regulations, title 7, section 246.18, as amended. Expiration of a contract or agreement  
31.18 with a local agency or vendor is not subject to appeal.

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

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

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

32.2 (3) disqualification of a vendor under part 4617.0084, subpart 2 or 10,

32.3 item B.

32.4 D. Full administrative reviews shall be conducted under the contested case  
32.5 provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter  
32.6 14, and rules adopted thereunder. The commissioner shall provide an appellant not less  
32.7 than ten days' advance written notice of the time and place of a hearing. The appellant  
32.8 must be given one opportunity to request that a hearing date be rescheduled.

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

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

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

32.21 (3) The decision maker shall determine whether to uphold the WIC  
32.22 program's action based solely on whether the WIC program has correctly applied federal  
32.23 and state statutes, rules, regulations, policies, and procedures governing the WIC program,  
32.24 according to the information provided to the appellant concerning the cause for the adverse  
32.25 action and the appellant's response. The decision maker shall notify the WIC program and  
32.26 the appellant in writing of the decision maker's determination, including the basis for the



33.1 determination. If the decision maker is unable to make a determination on the basis of the  
33.2 information filed, the decision maker shall notify the WIC program and the appellant that  
33.3 the procedures described in item D should be followed in connection with the appeal.

33.4 Subp. 2. **Judicial review.** ~~A~~ An applicant, participant, local agency, local agency  
33.5 applicant, vendor, or vendor applicant aggrieved by the decision of the commissioner or  
33.6 other decision maker on an appeal is entitled to a judicial review of the decision under  
33.7 Minnesota Statutes, sections 14.63 to 14.69.

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

33.13 **4617.0121 TRANSITION PERIOD.**

33.14 Subpart 1. [Repealed, 29 SR 1202]

33.15 Subp. 2. [See repealer.]

33.16 Subp. 3. **Effective date.** The provisions in parts 4617.0002, subparts 2a, 3c, 3d,  
33.17 8, 14c, 14f, 14g, 17b, 19b, 36a, 37a, 40f, 40g, 44, 44b, 44d, 44g, and 46; 4617.0025;  
33.18 4617.0067, subparts 2 to 6; 4617.0068, subparts 1 to 4, 10, 11, and 13; 4617.0070, subpart  
33.19 1; 4617.0084, subparts 2 to 15, 18, and 19; 4617.0090, subparts 1, 1a, 2, 4, and 5;  
33.20 4617.0100, subparts 1 to 3; and 4617.0176, subparts 1 and 2, are effective August 1, 2009.

33.21 **4617.0176 APPROVAL PROCESS FOR WIC FOODS OTHER THAN INFANT**  
33.22 **FORMULA.**

33.23 Subpart 1. **Approval process.** The commissioner shall approve for purchase using  
33.24 WIC vouchers and cash-value vouchers:

34.1 A. food items within each food product in part 4617.0067, subpart 3, ~~item~~ items  
34.2 A, subitems (2) to ~~(11)~~ (14); B, subitems (2) to (14); and E, subitems (2) to (7); and

34.3 B. any other food item permitted under Code of Federal Regulations, title 7,  
34.4 part 246, as amended, other than infant formula, if the commissioner determines that there  
34.5 is a nutritional need for participants to obtain such food item or that there is a need for the  
34.6 item or product within a specific cultural, religious, or ethnic group.

34.7 Subp. 2. **Approval criteria.** At least once every three years, the commissioner  
34.8 shall determine using the following factors which food items within each food product in  
34.9 part 4617.0067, subpart 3, items A, subitems (2) to (14); B, subitems (2) to (14); and E,  
34.10 subitems (2) to (7), to approve for purchase using WIC vouchers: ~~and cash-value vouchers:~~

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

34.13 ~~(1)~~ whether the food item meets all specifications in the applicable subitem  
34.14 of part 4617.0067, subpart 3, ~~item~~ items A, B, and E;

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

34.17 C. ~~(3)~~ whether the food item contains any nonnutritive or artificial sweetener;  
34.18 and

34.19 D. ~~(4)~~ for foods other than those listed in part 4617.0067, subpart 3, items A,  
34.20 subitem (9); and B, subitem (9), the price per ounce of the food item compared to other  
34.21 brands, sizes, and varieties of the food product.

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

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

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

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

35.9 Subp. 3. [See repealer.]

35.10 [For text of subps 4 and 5, see M.R.]

35.11 **REPEALER.** Minnesota Rules, parts 4617.0121, subpart 2; and 4617.0176, subpart  
35.12 3, are repealed.