

**CHAPTER 4617**  
**DEPARTMENT OF HEALTH**  
**WIC PROGRAM**

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**4617.0002 DEFINITIONS.**

**Subpart 1. Scope.** The terms used in this chapter have the meanings given in this part.

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

**Subp. 3. Child.** "Child" means a person who has had a first birthday but who has not had a fifth birthday.

**Subp. 4. Clinic area.** "Clinic area" means a town or city in which a person is certified.

**Subp. 5. Code of Federal Regulations.** "Code of Federal Regulations" refers to those regulations as amended to January 1989, unless otherwise noted.

**Subp. 6. Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Health or the commissioner's designated representative.

**Subp. 7. Infant.** "Infant" means a person who is under one year of age.

**Subp. 8. Local agency.** "Local agency" has the meaning given it in Code of Federal Regulations, title 7, section 246.2.

**Subp. 9. Person.** "Person" includes an individual, partnership, joint venturer, association, corporation or otherwise organized business entity, or combination of them.

**Subp. 10. Pharmacy vendor.** "Pharmacy vendor" means a vendor that is also a business registered by the Minnesota Board of Pharmacy in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or retailed.

**Subp. 11. Restricted pharmacy vendor.** "Restricted pharmacy vendor" means a vendor that meets the requirements of part 4617.0065, subpart 2, item B, subitem (2), and who does not meet the requirements of part 4617.0065, subpart 2, item B, subitem (1).

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

**Subp. 13. Vendor.** "Vendor" means a person that owns a pharmacy or food business for which a vendor stamp has been issued by the commissioner and that is in compliance with this chapter.

**Subp. 14. Vendor stamp.** "Vendor stamp" means a stamp with a number on the imprint face of the stamp that is issued by the commissioner to a vendor to authorize that vendor to accept WIC vouchers.

**Subp. 15. Voucher.** "Voucher" means a written authorization from the commissioner for a vendor to issue food to a participant that is specified on the

voucher by the commissioner and that may be exchanged by a vendor for cash under the WIC program.

**Subp. 16. WIC program.** "WIC program" means the Special Supplemental Food Program for Women, Infants, and Children administered by the United States Department of Agriculture under United States Code, title 42, section 1786, as amended to January 1988.

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

**History:** *13 SR 1190*

## VENDORS

### 4617.0060 GENERAL APPLICATION REQUIREMENTS.

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

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

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

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

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

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

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

**History:** *13 SR 1190*

### 4617.0061 INITIAL APPLICATIONS.

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

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

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

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

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

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

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

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

**History:** *13 SR 1190*

#### **4617.0062 NEW OWNER APPLICATIONS.**

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

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

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

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

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

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

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

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

vendor contract must not exceed six months. The new owner shall sign the temporary vendor contract and return it to the commissioner.

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

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

**History:** *13 SR 1190*

#### **4617.0063 REAPPLICATIONS.**

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

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

A. is eligible under part 4617.0065;

B. has complied with Code of Federal Regulations, title 7, sections 246.1 to 246.25, as amended through January 1, 1988;

C. has complied with this chapter; and

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

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

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

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

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

**History:** *13 SR 1190*

#### **4617.0064 PRIOR VENDOR APPLICATIONS.**

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

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

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

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

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

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

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

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

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

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

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

**History:** *13 SR 1190*

**4617.0065 VENDOR ELIGIBILITY CRITERIA.**

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

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

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

(1) 31 13-ounce cans of concentrated iron fortified infant formula of the brand specified on the voucher;

(2) three eight-ounce containers of plain, dry, infant cereal in any combination of at least two varieties;

(3) 15 4-ounce or 4.2-ounce jars of infant juice in any combination of at least two varieties;

(4) ten gallons of fluid whole, low-fat, or skim milk in gallon or half-gallon containers;

(5) three pounds of domestic cheese in blocks that do not exceed one pound in any combination of at least two varieties;

(6) 72 ounces of cereal in any combination of at least four varieties;

(7) 12 six-ounce or six 12-ounce containers of frozen concentrate juice or six 46-ounce cans of single concentrate juice in any combination of at least two varieties;

(8) four one-dozen containers of medium or large eggs; and

(9) two one-pound containers of dried legumes in two varieties.

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

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

(2) within three business days of a request from a participant or a local agency, any of the following products: Enfamil low-iron; Ensure; Isocal; Isomil; Nursoy; Nutramigen; Osmolite; Portagen; Pregestimil; Prosobee; Similac low-iron; Similac 60/40; SMA low-iron; Sustacal; and Sustacal HC.

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

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

A. A vendor shall operate at least Monday to Friday, 10 a.m. to 4:30 p.m.

B. A vendor shall allow the commissioner access to vouchers that are present in the store on the day of an on-site monitoring visit.

C. A vendor shall operate at an established business site, or on an established business route using route lists that the vendor shall submit to the commissioner by October 1, January 1, April 1, and July 1 of each year.

D. Employees who accept vouchers for the vendor must be able to demonstrate their ability to read and understand a voucher.

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

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

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

**History:** *13 SR 1190*

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

**Subpart 1. Issuance.** The commissioner shall issue a vendor stamp to an applicant who, under parts 4617.0060 to 4617.0064, has been determined eligible to be a vendor for the WIC program. A grocer or pharmacy that applies to become a vendor shall not accept a voucher before receiving a vendor stamp. A vendor shall use the stamp to imprint the number on the stamp onto each voucher accepted by that vendor. The commissioner shall not issue more than one vendor stamp to a vendor, and the number on the stamp must be issued to that vendor only. A vendor shall not possess more than one vendor stamp, shall not use a vendor stamp issued to another vendor, and shall not duplicate a vendor stamp.

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

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

**History:** *13 SR 1190*

#### **4617.0075 VENDOR CONTRACTS.**

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

- A. names of the contracting parties;
- B. the method by which the contract must be terminated;
- C. terms that are consistent with Code of Federal Regulations, title 7, sections 246.12, paragraphs (f)(2) and (k)(1)(iii), and 278.1, paragraph (o)(1), as amended through January 1, 1988;
- D. a warning that a vendor's authorization to participate in the food stamp program can be withdrawn according to Code of Federal Regulations, section 278.1(0)(1) if the vendor is disqualified from the WIC program;
- E. assurances that:
  - (1) no conflict of interest exists with the Department of Health;
  - (2) the vendor will use the vendor stamp to validate only those vouchers accepted at the vendor outlet for which the stamp was issued;
  - (3) the vendor will redeem vouchers only for authorized persons identified on the Minnesota WIC program authorization/transfer of certification card;
  - (4) the vendor will make no alterations on the voucher with the exception of properly executed price corrections, and will not accept vouchers that appear to have been altered by a participant;
  - (5) the vendor will respond within 45 days to a letter requesting justification of or reimbursement for vouchers identified as potentially over-priced;
  - (6) the vendor will return the vendor stamp to the commissioner when the vendor permanently closes business, ownership of the business or vendor outlet changes, the vendor is disqualified, the vendor's application is disapproved, or the vendor contract ends;
  - (7) the vendor will comply with this chapter and Code of Federal Regulations, title 7, part 246, as amended through January 1, 1988; and

(8) the vendor will only accept a voucher for authorized supplemental foods provided at the time the voucher is countersigned;

F. a beginning date that is the same as the date of the notice of approval of the vendor's application and an ending date that is not more than two years beyond the beginning date; and

G. the signatures of the commissioner and the vendor and the dates of the signatures.

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

**History:** *13 SR 1190*

#### **4617.0080 IDENTIFYING AND MONITORING HIGH RISK VENDORS.**

The commissioner shall identify a vendor as a high-risk vendor according to the criteria in Code of Federal Regulations, title 7, section 246.12, paragraph (i)(1), as amended through January 1, 1988, or because of vendor activities observed by or reported to the commissioner or local agency staff that are suspected by the commissioner or local agency staff to not comply with this chapter. Vendor activities that staff suspect do not comply with this chapter must be reported to or by the commissioner on a form supplied by the commissioner. The form must require a description of the suspected abuse, the name and address of the vendor, and the signature of the staff member.

A high-risk vendor must be monitored according to Code of Federal Regulations, title 7, section 246.12, paragraph (i), as amended through January 1, 1988.

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

**History:** *13 SR 1190*

#### **4617.0085 SANCTIONS.**

**Subpart 1. Procedures.** The commissioner shall impose a sanction on a vendor for noncompliance with this chapter.

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

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

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

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

A. Disqualification is three months for the first offense and six months for each subsequent offense in a contract period for:

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

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

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

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



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

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

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

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

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

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

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

(5) is approved after November 21, 1988, and who charges a total price for the minimum amount of authorized foods specified in part 4617.0065 that is not competitive under part 4617.0065, subpart 4, with prices charged by other vendors in that vendor's geographic area;

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

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

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

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

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

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

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

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

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

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

(1) violates the nondiscrimination requirements of Code of Federal Regulations, title 7, section 246.8, as amended through January 1, 1988;

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

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

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

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

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

(7) alters a voucher; or  
 (8) charges the WIC program for foods not received by a participant.

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

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

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

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

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

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

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

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

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

A. requesting reimbursement from a participant for a rejected voucher;

B. not recording the price on a voucher at the time the voucher is used to buy food;

C. providing cash, unauthorized food, or other items instead of authorized foods;

D. charging the WIC program more for unauthorized foods than the vendor's usual and customary charge for those foods;

E. charging the WIC program for foods not received by a participant;

F. altering a voucher; or

G. the same length of time as a disqualification from another food and nutrition service program.

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

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

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

**History:** *13 SR 1190*

**4617.0090 RETURNING VOUCHERS TO VENDORS.**

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

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

A. the issue date or the last-day-to-use date on the voucher was not written on the voucher by the commissioner;

B. the first signature on the voucher is missing; or

C. the bank under contract with the commissioner returned the voucher to the vendor for a reason not authorized by this part.

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

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

**History:** *13 SR 1190*

**4617.0095 REIMBURSEMENT OF VOUCHER OVERCHARGES.**

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

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

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

**History:** *13 SR 1190*

**APPEALS****4617.0100 APPEALS BY VENDORS AND LOCAL AGENCIES.**

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

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

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

# MINNESOTA RULES 1989

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WIC PROGRAM 4617.0100

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

**History:** *13 SR 1190*