

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

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**4617.0002 DEFINITIONS.**

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

Subp. 2. **Agency.** "Agency" means:

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

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

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

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

Subp. 2a. [Repealed, 22 SR 266]

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

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

Subp. 3. **Breast-feeding woman.** "Breast-feeding woman" means a woman who is breast-feeding her infant, up to one year postpartum.

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

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

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

Subp. 4. **Categorical status.** "Categorical status" means the status of a person as a pregnant woman, breast-feeding woman, postpartum woman, infant, or child.

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

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

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

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

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

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

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

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

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

Subp. 11. [Repealed, 19 SR 2089]

Subp. 12. **Competent professional authority.** "Competent professional authority" means a person who meets the requirements of part 4617.0035, subpart 1, and who is qualified to determine nutritional risk, assign priorities to program participant applicants, prescribe supplemental foods, and provide a nutrition education contact.

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

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

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

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

Subp. 14a. **Disqualification.** "Disqualification" of a vendor from the Minnesota WIC program means the act of making the vendor, for a period of time, ineligible to participate or apply to participate as a vendor in the Minnesota WIC program.

Subp. 14b. **Expired or damaged food.** "Expired or damaged food" means a food item which is in stock and available for purchase after the date stamped on the food item, or is dented, rusted, unlabeled or otherwise damaged, or has become moldy or otherwise spoiled.

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

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

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

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

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

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

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

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

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

Subp. 18. **Individual nutrition care plan.** "Individual nutrition care plan" means a plan established under part 4617.0058.

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

Subp. 19a. **Infant formula.** "Infant formula" means any food item formulated to replace human breast milk. The term infant formula includes the formulas specified in part 4617.0067, subpart 3, item B, subitems (1) to (4), and all special infant formulas.

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

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

Subp. 21a. **Management representative.** "Management representative" means an individual who is responsible for training personnel of the vendor or vendor applicant in the procedures for accepting WIC vouchers.

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

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

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

Subp. 24a. [Repealed, 22 SR 266]

Subp. 25. **Nutrition education coordinator.** "Nutrition education coordinator" means a competent professional authority who is a dietitian, home economist, nutritionist, or registered nurse.

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

Subp. 26a. [Repealed, 22 SR 266]

Subp. 27. **Ongoing, routine obstetric care.** "Ongoing, routine obstetric care" means a comprehensive continuation of care from antepartum care through a postpartum review and examination, as provided in the Standards for Obstetric-Gynecologic Services, American College of Obstetricians and Gynecologists, seventh edition, 1989, chapter 2. This document is incorporated by reference, is not subject to frequent change, can be found in the Minnesota Department of Health library, and is available through the Minitex interlibrary loan system.

Subp. 28. **Ongoing, routine pediatric care.** "Ongoing, routine pediatric care" means a comprehensive continuum of care from birth through five years of age that includes physical

examinations at intervals, immunizations, counseling, health education, and a periodic review of health history according to the standards of care in the Guidelines for Health Supervision, American Academy of Pediatrics, first edition (1985). This document is incorporated by reference, is not subject to frequent change, can be found in the Minnesota Department of Health library, and is available through the Minitex interlibrary loan system.

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

Subp. 28b. **Participant.** "Participant" means a pregnant woman, breast-feeding woman, postpartum woman, infant, or child who is receiving WIC-allowed foods or vouchers from a local agency, or an infant being breast-fed by a woman who is receiving vouchers from a local agency.

Subp. 28c. **Participant hardship.** "Participant hardship" exists in an area if the participants in the area cannot be served by the authorized vendors in the area.

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

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

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

Subp. 31a. **Pharmacy vendor.** "Pharmacy vendor" means a vendor that is a pharmacy.

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

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

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

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

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

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

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

Subp. 37a. **Region.** "Region" means a geographical grouping of contiguous counties as specified in this subpart:

A. "Region 1" is comprised of Hennepin county.

B. "Region 2" is comprised of the following counties: Aitkin, Carlton, Cass, Chisago, Cook, Crow Wing, Isanti, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Pine, and St. Louis.

C. "Region 3" is comprised of the following counties: Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Dodge, Faribault, Fillmore, Freeborn, Houston, Jackson, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Martin, Mower, Murray, Nobles, Olmsted, Pipestone, Redwood, Renville, Rock, Steele, Swift, Waseca, Watonwan, Winona, and Yellow Medicine.

D. "Region 4" is comprised of the following counties: Anoka, Ramsey, and Washington.

E. "Region 5" is comprised of the following counties: Becker, Beltrami, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomon, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Traverse, Wadena, and Wilkin.

F. "Region 6" is comprised of the following counties: Benton, Carver, Dakota, Goodhue, Le Sueur, McLeod, Meeker, Morrison, Nicollet, Rice, Scott, Sherburne, Sibley, Stearns, Todd, Wabasha, and Wright.

Subp. 37b. **Regional review period.** "Regional review period" means the designated time, with respect to a particular region, during which the commissioner reviews vendor applications from vendor applicants located in that region, under part 4617.0065, subpart 5.

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

Subp. 39. [Repealed, 22 SR 266]

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

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

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

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

Subp. 40c. **Special infant formula.** "Special infant formula" means any infant formula specified on a voucher, other than the infant formula specified in part 4617.0067, subpart 3, item B, subitems (1) to (4).

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

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

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

Subp. 42. **Vendor.** "Vendor" means a retail food store, a pharmacy, or a store which is both a retail food store and pharmacy, which has been authorized by the commissioner to provide WIC-allowed foods to WIC customers in exchange for vouchers.

Subp. 42a. **Vendor applicant.** "Vendor applicant" means a retail food store, a pharmacy, or a store which is both a retail food store and pharmacy, which has applied to the commissioner to be a vendor, including any currently authorized vendor which has applied to continue as a vendor and any retail food store or pharmacy which has applied for an immediate vendor agreement under part 4617.0066, subpart 3.

Subp. 42b. **Vendor application.** "Vendor application" means all information and documentation submitted to the commissioner by a vendor applicant under part 4617.0065; 4617.0066, subpart 3; or 4617.0069.

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

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

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

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

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

Subp. 44d. **WIC customer.** "WIC customer" means a participant in the WIC program, a proxy, or a representative of the commissioner posing as a participant or proxy.

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

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

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

**History:** *13 SR 1190; 14 SR 164; L 1991 c 106 s 6; 19 SR 2089; 22 SR 266*

#### LOCAL AGENCIES

##### 4617.0005 NOTICE OF AVAILABILITY OF WIC PROGRAM FUNDS.

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

- A. a description of the WIC program;
- B. the format of the notice required under part 4617.0010, item A, and the date by which that notice must be submitted to the department;
- C. the date by which the application required under part 4617.0020, subpart 2, must be submitted to the department;
- D. the timetable for the commissioner's review of applications; and
- E. a description of the process used to authorize an agency to become a local agency under part 4617.0020.

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

**History:** *14 SR 164*

##### 4617.0010 APPLICATION FOR WIC PROGRAM FUNDS.

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

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

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

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

D. An agency shall submit an application form for WIC program funds no later than the date specified under part 4617.0005, item C. An application form must include the name and address of the applicant and must document that the applicant can meet the eligibility criteria under part 4617.0015.

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

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

**History:** *14 SR 164*

#### **4617.0015 AGENCY ELIGIBILITY CRITERIA.**

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

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

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

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

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

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

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

**History:** *14 SR 164*

#### **4617.0020 AGENCY APPLICATION REVIEW AND APPROVAL.**

Subpart 1. **General procedure.** The commissioner shall authorize an agency to administer the WIC program as a local agency by following in order the steps in subparts 2 to 7.

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

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

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

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

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

#### **Subp. 4. Performance record determination.**

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

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

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

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

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

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

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

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

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

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

A. The commissioner shall give:

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

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

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

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

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

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

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

(2) an agency that has applied before; and

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

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

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

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

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

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

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

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



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

Subp. 9. **Table of Performance points.**

- A. Participation Level
- 15 – Average participation level that is at least 98 percent but not more than 102 percent of the authorized level
  - 10 – Average participation level that is 96 to 97.9 percent or 102.1 to 104 percent of the authorized level
  - 5 – Average participation level that is 90 to 95.9 percent or 104.1 to 110 percent of the authorized level
  - 0 – Average participation level that is less than 90 percent or more than 110 percent of the authorized level
- B. Participation by Pregnant Women
- 15 – Participation by pregnant women increased by at least ten percent
  - 10 – Participation by pregnant women increased by at least five percent but less than ten percent
  - 5 – Participation by pregnant women maintained or increased by less than five percent
  - 0 – Participation by pregnant women decreased
- C. Response to Written Findings of Management Evaluation
- 15 – Response submitted within 30 days, or no response required
  - 10 – Response submitted within 90 days but after 30 days
  - 5 – Response submitted within 180 days but after 90 days
  - 0 – Response submitted after 180 days, or not submitted
- D. Response to Written Findings of Financial Review
- 15 – Response submitted within 30 days, or no response required
  - 10 – Response submitted within 90 days but after 30 days
  - 5 – Response submitted within 180 days but after 90 days
  - 0 – Response submitted after 180 days, or not submitted

## E. Corrective Action Taken in Response to Management Evaluation

- 15 – No correction needed
- 10 – Corrective action taken within six months from date of approval of corrective action plan
- 5 – Corrective action taken within one year but after six months from date of approval of corrective action plan
- 0 – Corrective action taken after one year from date of approval of corrective action plan, or not taken

## F. Corrective Action Taken in Response to Financial Review

- 15 – No corrective action needed
- 10 – Corrective action taken within six months from date of approval of corrective action plan
- 5 – Corrective action taken within one year but after six months from date of approval of corrective action plan
- 0 – Corrective action taken after one year from date of approval of corrective action plan, or not taken

## G. Nutrition Education Plan

- 15 – Nutrition education plan and required revisions submitted by the established deadline
- 10 – Nutrition education plan and required revisions submitted within 30 days after established deadline
- 5 – Nutrition education plan and required revisions submitted within 90 days but after 30 days after established deadline
- 0 – Nutrition education plan and required revisions submitted more than 90 days after established deadline, or not submitted

Subp. 10. **Notice of approval or disapproval.** Within 30 days after receiving a complete application, the commissioner shall give written notice to an agency that the commissioner has approved or disapproved its application. A notice of approval or disapproval must state:

## A. that an application is:

- (1) approved as originally submitted;
- (2) approved with changes;
- (3) disapproved because of inadequate WIC program funds for WIC program expansion or initiation;
- (4) disapproved because the agency does not meet the application requirements; or
- (5) disapproved because the commissioner has approved another agency under subpart 6 or 7;

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

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

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

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

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

**4617.0025 DISQUALIFICATION.**

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

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

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

**4617.0030 LOCAL AGENCY CONTRACTS AND AGREEMENTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) includes the criteria used to select participants for high-risk nutrition education; and

(3) includes the criteria the local agency uses to determine which participants will receive an individual nutrition care plan.

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

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

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

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

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

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

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

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

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

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

#### 4617.0035 STAFF QUALIFICATIONS.

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

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

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

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

B. A nutrition education coordinator shall review at least 25 percent of a certifier's charts biweekly, shall audit and document at least ten of the certifier's charts at least quarterly, and shall observe and document at least three certifications at least quarterly.

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

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

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

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

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

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

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

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

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

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

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

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

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

B. A licensed practical nurse approved by the commissioner to be a competent professional authority before October 1, 1987, must be supervised on-site at least four hours a month by a nutrition education coordinator.

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

- (1) within 30 days after the first day of employment, enroll in a self-study course designed by the commissioner;
- (2) within six months after enrolling in the self-study course under subitem (1), take an examination on the course; and
- (3) within one year after enrolling in the self-study course under subitem (1), pass the examination in subitem (2) in no more than three attempts.

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

Subp. 7. **Physician's assistant.** A physician's assistant must meet the requirements of item A and of item B or C.

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

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

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

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

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

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

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

**History:** *14 SR 164*

#### **4617.0037 AUTHORIZED PARTICIPATION LEVELS.**

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

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

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

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

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

**History:** *14 SR 164*

#### **4617.0040 ADMINISTRATIVE FUNDING.**

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

Subp. 2. **Administrative funding for operating costs.** Before the beginning of a federal fiscal quarter, the commissioner shall determine the amount of administrative funds available to a local agency for operating costs, based on an estimate of funding available to the WIC program for the quarter. Each local agency shall receive a proportion of the available administrative funds that bears the same relation to total administrative funds as the local agency's authorized participation level bears to the statewide authorized participation level.

Subp. 3. **Allocation of remaining administrative funds.** Any administrative funds remaining after the allocation of funds under subparts 1 and 2 must be made available to local agencies by the commissioner. Local agency costs that the commissioner must consider when allocating these administrative funds include:

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

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

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

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

**History:** *14 SR 164*

#### 4617.0042 REPORTING REQUIREMENTS.

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

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

B. The local agency must submit a claim for reimbursement and report of expenditures to the commissioner by the 20th calendar day of the month following the month for which the report is being submitted.

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

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

**History:** *14 SR 164*

#### 4617.0043 EVALUATIONS AND MONITORING.

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

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

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

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

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

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

#### 4617.0044 NUTRITION EDUCATION PLAN; REQUIREMENT.

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

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

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

#### 4617.0045 NUTRITION EDUCATION PLAN SUBMISSION DEADLINES.

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

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

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

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

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

**4617.0046** [Repealed, 19 SR 2089]

**4617.0047** [Repealed, 19 SR 2089]

**4617.0049 APPROVAL OF NUTRITION EDUCATION PLAN.**

The commissioner shall approve or disapprove a nutrition education plan based on whether the local agency has complied with all nutrition education plan requirements as contained in its written contract with the commissioner and in Code of Federal Regulations, title 7, part 246. Within 120 days after receiving a nutrition education plan, the commissioner shall notify the local agency in writing of the commissioner's approval or disapproval of that local agency's nutrition education plan. If a plan is disapproved, the commissioner shall advise the local agency of the items that must be revised or completed for the plan to be consistent with this chapter. A local agency shall complete revisions of the plan within 30 days after the date it receives the commissioner's written disapproval.

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

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

**4617.0050 ROLE OF NUTRITION EDUCATION COORDINATOR.**

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

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

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

**4617.0052 QUALIFICATIONS OF NUTRITION EDUCATION INSTRUCTORS.**

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

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

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

**History:** *14 SR 164*

**4617.0054 SCHEDULE OF NUTRITION EDUCATION SESSIONS.**

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



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

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

**History:** *14 SR 164*

#### **4617.0056 CONTENTS OF NUTRITION EDUCATION SESSIONS.**

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

A. encouragement of pregnant participants to breast-feed unless the participant's health does not allow breast-feeding; and

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

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

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

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

(4) the importance of health care;

(5) the nutritional value of supplemental foods;

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

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

(8) the relationship between diet and health;

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

(10) the nutritional concerns of participants; and

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

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

A. appropriate feeding practices for an infant;

B. the introduction of solid food for the infant;

C. weaning the infant from a bottle or breast-feeding to a cup;

D. progressing to table foods; and

E. the value of using infant formula or breast-feeding until the infant is one year of age.

Subp. 3. **Contents of high-risk nutrition education.** If a participant meets the high-risk criteria in the local agency nutrition education plan, the contents of nutrition education

for that participant must be developed according to the needs indicated by the individual nutrition care plan required under part 4617.0058.

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

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

#### **4617.0058 INDIVIDUAL NUTRITION CARE PLAN.**

A competent professional authority from the local agency must prepare an individual nutrition care plan for each participant who meets the individual nutrition care plan criteria in the local agency nutrition education plan, for each participant who requests a plan, and for each participant for whom a competent professional authority has determined that an individual nutrition care plan is needed. An individual nutrition care plan must include:

- A. an identification of the health and nutritional needs of the participant;
- B. a plan and schedule for meeting the needs identified in item A;
- C. methods for documenting progress of the plan's implementation;
- D. the title of the person who will monitor implementation of the individual nutrition care plan;
- E. the signature and title of the person who developed the individual nutrition care plan; and
- F. the signature and title of the nutrition education coordinator who approved the plan, if a nutrition education coordinator did not develop the plan.

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

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

### **VENDORS**

#### **4617.0059 RETAIL FOOD VENDOR LIMITATION CRITERIA.**

Subpart 1. **Determining maximum number of retail food vendors.** Before the first day of each applicable regional review period, the commissioner shall establish a maximum number of retail food vendors for each county within that region, according to this subpart.

- A. The minimum number of participants per vendor for each Tier 1 county shall be 120.
- B. The minimum number of participants per vendor for each Tier 2 county shall be 50.
- C. The maximum number of retail food vendors for each county shall be calculated by dividing the number of participants in that county by the applicable minimum number of participants per vendor for that county, rounded up to the nearest whole number, except as provided in part 4617.0069, subpart 4, and the maximum number of retail food vendors for each county shall not be less than the number of clinic towns in that county.

Subp. 2. **Process for selection of retail food vendors.** When required by parts 4617.0065, subpart 5, item C, subitem (2), unit (a), and 4617.0069, subpart 2, item B, the commissioner shall follow the process in this subpart.

A. When selecting which retail food vendor applications to approve, the commissioner's decision must be based on the following factors:

- (1) the geographic accessibility to participants as indicated by:
  - (a) whether the vendor applicant is located in a clinic town;
  - (b) the number of participants residing in geographic proximity to the vendor applicant;
  - (c) the proximity of the vendor applicant to other eligible retail food vendor applicants; and
  - (d) the availability of public roads and public transportation between the vendor applicant and participants;
- (2) the business history, as indicated by:
  - (a) whether any controlling person of the vendor applicant has had a business-related violation;

(b) whether the vendor applicant has ever been disqualified or suspended from any food assistance program, or has ever been assessed a civil money penalty in lieu of disqualification or suspension from any food assistance program;

(c) whether any controlling person of the vendor applicant has ever been a controlling person of any retail food store or pharmacy disqualified or suspended from any food assistance program, or has ever been a controlling person of a retail food store or pharmacy assessed a civil money penalty in lieu of disqualification or suspension from any food assistance program;

(d) the proportion of WIC vouchers improperly presented for payment by the vendor applicant during each of the most recent 12 months for which voucher presentation information is available for review, if the vendor applicant is a retail food vendor or was a retail food vendor at any time during the previous two years. For the purpose of this unit, a voucher has been improperly presented for payment if its price exceeds the maximum price printed on the voucher, if it does not include the legible imprint of the vendor stamp, if it does not include the signature of a WIC customer authorized to sign the voucher, if the vendor accepted the voucher before the first-day-to-use date or after the last-day-to-use date, or if any of the information on the voucher has been altered; and

(e) the history of class B and class C violations committed by the vendor applicant during the previous two years, if the vendor applicant is or has been a retail food vendor;

(3) the availability of WIC-allowed foods, as indicated by:

(a) the variety and quantity of WIC-allowed foods stocked by the vendor applicant; and

(b) the number of the vendor applicant's WIC-allowed food items available for purchase which are expired or damaged foods; and

(4) the cost of WIC-allowed foods as indicated by the vendor applicant's prices for the foods listed in part 4617.0067, subpart 3, item A.

B. The commissioner shall select for approval at least one retail food vendor application in each clinic town.

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0060** [Repealed, 22 SR 266]

**4617.0061** [Repealed, 22 SR 266]

**4617.0062** [Repealed, 22 SR 266]

**4617.0063** [Repealed, 22 SR 266]

**4617.0064** [Repealed, 22 SR 266]

## VENDORS

**4617.0065** MR 1995 [Renumbered 4617.0067]

### **4617.0065** VENDOR APPLICATION PROCESS.

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

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

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

#### Subp. 2. **Application.**

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

- (1) name of the applicant;
- (2) mailing address and location of the applicant's business site;
- (3) whether the applicant is seeking to be a retail food vendor, a pharmacy vendor, or both;
- (4) names and current addresses of all controlling persons of the applicant;
- (5) hours of operation of the applicant;
- (6) if the applicant is a retail food vendor applicant, then the price, size, quantity, and variety information on WIC-allowed foods stocked by the applicant;
- (7) other information requested by the commissioner which relates to whether the applicant is in compliance with all applicable vendor eligibility requirements in part 4617.0067; and
- (8) the signature of an authorized representative of the applicant, attesting that the information in the application is true and correct to the best of the authorized representative's knowledge and belief.

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

- (1) A retail food vendor applicant must submit to the commissioner:

- (a) if the applicant is located in Minnesota:

- i. a copy of the Minnesota Food Handler License for the store, as required by Minnesota Statutes, section 28A.04; or

- ii. if the store has applied for but not yet received a Minnesota Food Handler License, a copy of the receipt for the license; and

- (b) a copy of all other applicable government licenses, or, if the store has applied for but not yet received all other applicable government licenses, a copy of all licenses received and the receipts for all licenses not yet received.

- (2) A pharmacy vendor applicant must submit to the commissioner a copy of all applicable government licenses and registrations.

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

**Subp. 3. Submission deadlines for applications.** The commissioner must receive a vendor applicant's vendor application on or before the first business day of the applicable regional review period specified in subpart 4. If the commissioner receives the application, other than a resubmitted application as permitted in subpart 5, item A, subitem (1), after the first business day of the applicable regional review period, then the commissioner shall disapprove the application.

**Subp. 4. Regional review periods.** The commissioner shall review vendor applications during the following regional review periods:

A. January 1 to April 30 of even-numbered years if the applicant is located in Region 1;

B. May 1 to August 31 of even-numbered years if the applicant is located in Region 2;

C. September 1 to December 31 of even-numbered years if the applicant is located in Region 3;

D. January 1 to April 30 of odd-numbered years if the applicant is located in Region 4;

E. May 1 to August 31 of odd-numbered years if the applicant is located in Region 5; and

F. September 1 to December 31 of odd-numbered years if the applicant is located in Region 6.

**Subp. 5. Application review and approval process.** The commissioner shall, in accordance with this subpart, review vendor applications which have not been disapproved under subpart 3.

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

(1) If the commissioner determines during the initial office review of the application that the application is incomplete or that the applicant's prices, stock, or hours of operation do not comply with the applicable requirements of part 4617.0067, then the commissioner shall give the applicant one opportunity to complete and modify the application and resubmit it to the commissioner, unless subitem (2) applies. The commissioner must, unless subitem (2) applies, advise the applicant in writing of the portions of the application which the commissioner has determined to be incomplete or not in compliance with the applicable pricing, stock, or hours of operation requirements in part 4617.0067.

(a) The commissioner must receive any resubmitted application within 15 business days after the date the commissioner mailed the notice advising the applicant of the need to complete or modify the application.

(b) The commissioner shall disapprove a resubmitted application if:

- i. the resubmitted application is still incomplete;
- ii. based on all information available to the commissioner at the time of reviewing the resubmitted application, the application does not meet all applicable eligibility requirements in part 4617.0067; or
- iii. the applicant did not resubmit the application by the deadline in unit (a).

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

(3) If, based on all information available to the commissioner at the time of the initial office review of the application or the review of a vendor application resubmitted in accordance with subitem (1), the applicant meets all applicable eligibility requirements in part 4617.0067, then:

(a) if the applicant is a pharmacy vendor, the commissioner shall approve the application;

(b) if the applicant is not a vendor, the commissioner shall conduct an unannounced on-site inspection according to item B; or

(c) if the applicant is a retail food vendor, the commissioner shall follow the procedures in item C.

B. When required by item A, subitem (3), the commissioner shall conduct an unannounced on-site inspection of the applicant to verify the information in the application and to verify that the applicant is in full compliance with part 4617.0067:

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

(a) if the applicant is a retail food vendor applicant, the commissioner shall notify the applicant in writing that the applicant has ten business days from the date of the written notice to bring the applicant into full compliance with part 4617.0067, and the commissioner shall conduct a second unannounced on-site inspection no sooner than 11 business days after the date of this written notice; or

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

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

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

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

C. This item applies to all retail food vendor applicants which are in full compliance with part 4617.0067.

(1) For the purpose of this item, a retail food vendor applicant is in full compliance with part 4617.0067 if:

(a) the applicant is a retail food vendor whose initial application or application resubmitted according to item A, subitem (1), shows that the applicant meets all applicable eligibility requirements in part 4617.0067; or

(b) either the initial or second unannounced on-site inspection of the retail food vendor applicant under item B shows that the applicant meets all applicable eligibility requirements of part 4617.0067.

(2) If an applicant is a retail food vendor applicant which is in full compliance with part 4617.0067, then:

(a) if the applicant is located in a county in which the total number of retail food vendor applicants in full compliance with part 4617.0067 exceeds the maximum number of retail food vendors for the county, as calculated according to part 4617.0059, subpart 1, then the commissioner shall follow the selection process in part 4617.0059, subpart 2; or

(b) if the applicant is located in a county in which the total number of retail food vendor applicants in full compliance with part 4617.0067 is less than or equal to the maximum number of retail food vendors for the county, as calculated according to part 4617.0059, subpart 1, then the commissioner shall approve the application.

Subp. 6. **Notification of status of application.** No later than the last day of the applicable review period, the commissioner shall inform each vendor applicant in writing of the commissioner's approval or disapproval of the application. A notice of disapproval must state the reasons for the commissioner's disapproval.

Subp. 7. **Mandatory training of vendor management representative.**

A. If a vendor's application is approved, then at least one management representative of that applicant must complete a WIC-approved training course specified by the commissioner, sign a training verification form provided by the commissioner to verify completion of the WIC-approved training course, and submit this signed training verification form to the commissioner.

B. If a management representative of the vendor applicant has completed a WIC-approved training course within one year before the end of the applicable regional review period and has signed and submitted to the commissioner a training verification form provided by the commissioner to verify completion of the training, then the requirements of item A shall not apply.

Subp. 8. **Execution of vendor agreement.**

A. Upon the commissioner's verification of the vendor applicant's compliance with subpart 7, the commissioner shall mail or deliver to the applicant a vendor agreement. The applicant shall submit the vendor agreement, signed by the applicant according to part 4617.0075, to the commissioner by the deadline specified by the commissioner. This deadline shall be no sooner than 14 days after the commissioner mails or delivers the vendor agreement to the applicant. Upon receipt of a timely signed and submitted vendor agreement, the commissioner shall:

(1) execute the vendor agreement; and

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

B. If the applicant fails to submit the signed vendor agreement by the specified deadline, the commissioner shall not execute the vendor agreement or issue the applicant a vendor stamp, and the applicant shall not be authorized to accept WIC vouchers.

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

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

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

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

(1) on the application; or

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

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

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

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

Subp. 2. **Effect of change of ownership or business site.** The vendor agreement shall be immediately null and void if there is a change of vendor ownership or business site, and the vendor stamp must be returned to the commissioner within five business days after the effective date of the change.

Subp. 3. **Immediate vendor agreement.** If a vendor agreement is rendered null and void under subpart 2, then the retail food store or pharmacy which had been a vendor under the voided agreement may apply for an immediate vendor agreement under this subpart as long as the retail food store or pharmacy has not changed its business site to a different county.

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

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

(1) the vendor, during the two years immediately preceding the change of ownership or change of business site, had no history of sanctions under Minnesota Rules 1995, part 4617.0085 and no history of any Class A or Class B violations under part 4617.0086;

(2) during the most recent 12 months for which voucher redemption information is available for the commissioner's review, the vendor under the voided agreement redeemed WIC vouchers in an average total amount of:

(a) at least \$150 per month if the vendor is located in a Tier 1 county; or

(b) at least \$100 per month if the vendor is located in a Tier 2 county.

Subitem (2) does not apply if:

i. the vendor under the voided agreement was the only vendor in a clinic town;

ii. the vendor applicant is not a retail food vendor applicant; or

iii. under part 4617.0069, subpart 1, the commissioner determines that participant hardship exists in the particular area where the vendor applicant is located;

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

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

(5) the commissioner has not previously approved an immediate vendor agreement for the same retail food store or pharmacy at any time since the first day of the

most recent regional review period under part 4617.0065, subpart 4, for the region in which the retail food store or pharmacy is located.

C. If a retail food store or pharmacy which is applying for an immediate vendor agreement does not meet all the requirements in item B, then the commissioner shall deny the application for an immediate vendor agreement.

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

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

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

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

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

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** *22 SR 266*

#### **4617.0067 VENDOR ELIGIBILITY REQUIREMENTS.**

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

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

A. Except as provided in part 4617.0069, subpart 3, item A, a retail food vendor must be a retail food store located in Minnesota.

B. Except as provided in part 4617.0069, subpart 3, item A, a retail food vendor must be licensed by the Minnesota commissioner of agriculture according to Minnesota Statutes, chapter 28A.

C. Except as provided in part 4617.0069, subpart 3, item B, a pharmacy vendor must be a pharmacy located in Minnesota which is registered by the Minnesota Board of Pharmacy according to Minnesota Statutes, chapter 151.

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

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

(1) 31 containers of milk-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171, or 31 containers of soy-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(2) nine containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171, or nine containers of soy-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(3) 24 ounces of WIC-allowed plain, dry, infant cereal;

(4) 60 ounces of pure, unsweetened, WIC-allowed infant juice;

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

(a) skim or nonfat;



- (b) one percent milkfat;
- (c) two percent milkfat; and
- (d) whole;
- (6) three pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two varieties;
- (7) four one-dozen containers of WIC-allowed fresh eggs;
- (8) 28 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;
- (9) 36 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;
- (10) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;
- (11) 26 ounces of WIC-allowed canned tuna fish;
- (12) three 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent citrus juice, or three 46-ounce containers of WIC-allowed pure and unsweetened 100 percent citrus juice;
- (13) three 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate juice which is not 100 percent citrus juice, or three 46-ounce containers of WIC-allowed pure and unsweetened juice which is not 100 percent citrus juice; and
- (14) 72 ounces of WIC-allowed cereal in any combination of at least four varieties.

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

- (1) 31 containers of milk-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;
- (2) 31 containers of soy-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;
- (3) nine containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;
- (4) nine containers of soy-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;
- (5) 48 ounces of WIC-allowed plain, dry, infant cereal;
- (6) 120 ounces of pure, unsweetened, WIC-allowed infant juice;
- (7) 15 gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:
  - (a) skim or nonfat;
  - (b) 1 percent milkfat;
  - (c) 2 percent milkfat; and
  - (d) whole;
- (8) four pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two varieties;
- (9) six one-dozen containers of WIC-allowed fresh eggs;
- (10) 42 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;
- (11) 54 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;
- (12) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;
- (13) 26 ounces of WIC-allowed canned tuna fish;
- (14) six 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent citrus juice, or six 46-ounce containers of WIC-allowed pure and unsweetened 100 percent citrus juice;

(15) six 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate juice which is not 100 percent citrus juice, or six 46-ounce containers of WIC-allowed pure and unsweetened, juice which is not 100 percent citrus juice; and

(16) 108 ounces of WIC-allowed cereal in any combination of at least four varieties.

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

**Subp. 4. Additional requirements.** All vendors shall comply with the following requirements:

A. A vendor must be open to the public for business at least Monday through Saturday, 10 a.m. to 6 p.m., unless the commissioner determines that the vendor needs to be open for business during different hours because of a religious or cultural reason.

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

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

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

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

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

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

(2) is employed by the local agency in whose jurisdiction the vendor is located; or

(3) has a direct or indirect financial interest in the local agency in whose jurisdiction the vendor is located.

**Subp. 5. Vendor prices.** A retail food vendor's total price for the minimum amount of authorized foods in subpart 3, item A, must not be more than 120 percent of the average price charged by retail food vendors. The commissioner shall determine the average price charged by retail food vendors based on the most recent price information available to the commissioner on prices charged by a statistically significant sample of retail food vendors.

If the commissioner determines that there is a religious or cultural need for a vendor to charge a specific price greater than 120 percent of the average price charged by retail food vendors, the vendor may charge that specific price.

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

A. Within the six months immediately preceding the date of the vendor application, and at any time on or after the date of the application, an applicant must not have accepted or held itself out as able to accept a WIC voucher when the applicant did not have a fully executed vendor agreement.

B. An applicant must not currently be disqualified from any food assistance program. If a vendor applicant is subjected to a civil money penalty by a food assistance program, and:

(1) the notice of the civil money penalty specifies that the penalty is in lieu of disqualification for a specific period of time, then the vendor applicant is not eligible to become a vendor if there is any overlap between that period of time and the period of time between the relevant application deadline under part 4617.0065, subpart 3, and the commissioner's execution of a vendor agreement with the vendor applicant; or

(2) the notice of the civil money penalty does not specify that the penalty is in lieu of disqualification for a specific period of time, then the vendor applicant is not eligible to become a vendor if the relevant vendor application deadline under part 4617.0065, subpart 3, is less than six months after the date of the notice of the civil money penalty.

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C. A vendor applicant must not have as a controlling person someone who is, or has been, within the year immediately preceding the application deadline under part 4617.0065, subpart 3, a controlling person of a retail food store or pharmacy at any location in the United States which:

- (1) is disqualified from a food assistance program;
- (2) has not fully paid a civil money penalty assessed by a food assistance program; or
- (3) was assessed a civil money penalty by a food assistance program in lieu of disqualification for a specific period of time, and there is any overlap between that period of time and the period of time between the vendor application deadline and the commissioner's execution of a vendor agreement with the vendor applicant.

D. A vendor applicant must not have as a controlling person someone with a business-related violation which occurred within ten years before the vendor application deadline under part 4617.0065, subpart 3.

E. If at the time of the application the vendor applicant is currently authorized as a retail food vendor, then during the most recent 12 months for which voucher redemption information is available for the commissioner's review, the vendor must have redeemed WIC vouchers in an average monthly amount of:

- (1) at least \$150 per month if the vendor is located in a Tier 1 county; or
- (2) at least \$100 per month if the vendor is located in a Tier 2 county.

This item does not apply if: (a) the applicant is the only vendor in a clinic town; or (b) under part 4617.0069, subpart 1, the commissioner determines that participant hardship exists in the particular area where the applicant is located.

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

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

## 4617.0068 OPERATING REQUIREMENTS.

## Subpart 1. Acceptance of vouchers.

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

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

- (1) the voucher is accepted at a check-out lane at the vendor's business site;
- (2) the voucher is accepted on a date between the first-day-to-use date and the last-day-to-use date, inclusive, on the voucher;
- (3) the price of the food purchased with the voucher is inserted in the space provided on the voucher before the WIC customer signs the voucher;
- (4) the WIC customer signs the voucher at the time the WIC customer uses the voucher to obtain food;
- (5) the cashier verifies that the signature of the individual who signs the voucher matches an authorized signature on the WIC authorization folder;
- (6) before deposit in the vendor's bank, the number on the vendor stamp has legibly been imprinted onto the voucher; and
- (7) the voucher does not contain any alteration of the maximum price, first-day-to-use date, last-day-to-use date, or food prescription.

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

**Subp. 3. Access to vouchers.** A vendor shall allow representatives of the Minnesota Department of Health and representatives of the United States Department of Agriculture access to vouchers that are present at the vendor's business site on the day of an on-site monitoring visit.

**Subp. 4. Documentation of purchases.**

A. For a minimum of two years, a vendor shall maintain documentation, including receipts or invoices, showing all purchases by the vendor while a vendor agreement was in effect of all WIC-allowed foods for which the vendor accepted one or more vouchers.

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

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

(1) the documentation required under this subpart; and

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

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

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

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

A. a management representative of the vendor completes WIC-approved training on the WIC program at least once per calendar year;

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

C. the management representative who completes this training signs and submits to the commissioner, within 30 days after completing this training, a form provided by the commissioner to verify completion of this training.

**Subp. 8. Pharmacy stock requirement.** A pharmacy vendor shall have available for purchase the special infant formula listed on a WIC customer's voucher within three business days of a request from a WIC customer or local agency.

**Subp. 9. Shelf price surveys.** Within 15 business days of a request by the commissioner, a vendor shall provide the commissioner with accurate and complete shelf price survey information in the format requested.

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

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0069 EXCEPTIONS BASED ON PARTICIPANT HARDSHIP.**

**Subpart 1. Determination of participant hardship.** In determining whether participant hardship exists in a particular area, the commissioner shall consider the following factors:

A. the number of participants in the area;

B. the number of retail food vendors or pharmacy vendors in that area;

C. the proximity of retail food vendors or pharmacy vendors to participants in that area;

D. the availability of public roads and public transportation in that area; and

E. whether there is a documented cultural or religious need for an additional retail food vendor in that area.

**Subp. 2. Exception to application process.** Notwithstanding part 4617.0065, subpart 4, the commissioner shall review vendor applications from retail food vendor applicants or pharmacy vendor applicants located in a particular area if and when the commissioner deter-

mines that participant hardship exists in that area. If a retail food vendor application is being reviewed because the commissioner has found that participant hardship exists in a particular area, then the commissioner shall:

A. approve the application if the retail food vendor applicant is the only retail food vendor applicant in a particular area and is in full compliance with part 4617.0067, as defined in part 4617.0065, subpart 5, item C, subitem (1); or

B. follow the selection process in part 4627.0059, subpart 2, if the retail food vendor applicant is one of two or more retail food vendor applicants located in a particular area which are in full compliance with part 4617.0067, as defined in part 4617.0065, subpart 4, item C, subitem (1).

**Subp. 3. Exception to location, licensing, and registration requirements.**

A. Retail food vendors, retail food vendor applicants, pharmacy vendors, and pharmacy vendor applicants need not comply with part 4617.0067, subpart 2, if:

(1) the commissioner determines that, for reasons of participant hardship as determined under subpart 1, there is a need for a retail food vendor in a town adjacent to Minnesota, and the retail food store is located in the town specified by the commissioner and is licensed by the applicable state agency; or

(2) the commissioner determines that, for reasons of participant hardship as determined under subpart 1, there is a need for a pharmacy vendor in a town adjacent to Minnesota, and the pharmacy is located in the town specified by the commissioner and is licensed or registered by the applicable state board or agency.

B. If the commissioner approves the application of a retail food store or pharmacy located in a state other than Minnesota according to item A, then the regional review period for that retail food store or pharmacy shall be the same as the regional review period for the region closest to the retail food store or pharmacy.

**Subp. 4. Exception to maximum number of retail food vendors.** Notwithstanding part 4617.0059, subpart 1, a determination of participant hardship in a county under this part shall be grounds for the commissioner to increase the maximum number of retail food vendors for that county.

**Subp. 5. Notification of status of application.** Notwithstanding part 4617.0065, subpart 6, for vendor applications reviewed because of a commissioner determination that participant hardship exists, the commissioner shall inform each vendor applicant in writing of the commissioner's approval or disapproval of the vendor application within 120 days of the commissioner's receipt of the application.

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0070 VENDOR STAMPS.**

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

**Subp. 1a. Returning vendor stamp.** If a vendor is disqualified under part 4617.0086, the vendor must return the vendor stamp to the commissioner no later than the effective date of the disqualification. In addition to disqualification under part 4617.0086, the vendor must return the vendor stamp to the commissioner within five business days after the earlier of: (i) the date that the vendor permanently closes the business; (ii) the date that the business site changes; (iii) a change of ownership of the vendor; or (iv) the expiration of the vendor's current vendor agreement if the vendor's application is disapproved, or if the vendor agreement ends and no subsequent agreement is executed.

**Subp. 2. Replacement vendor stamp.** A vendor shall orally or in writing notify the commissioner of a lost, stolen, or damaged vendor stamp. If a vendor wants a stamp to re-

place a lost, stolen, or damaged stamp, the vendor shall request one from the commissioner orally or in writing. The commissioner shall issue one replacement vendor stamp to a vendor at no cost to the vendor. A vendor shall pay \$10 for each additional replacement vendor stamp.

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

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

#### **4617.0075 VENDOR AGREEMENTS.**

A duly authorized agent of a retail food store or pharmacy which has been approved to be a vendor shall sign and date a vendor agreement. A separate vendor agreement must be signed for each vendor. A vendor agreement must contain:

A. the name and address of the vendor;

B. the method by which the agreement must be terminated;

C. terms that are consistent with this chapter and Code of Federal Regulations, title 7, sections 246.12, paragraphs (f)(2) and (k)(1)(iii), and 278.1, paragraph (n)(1), as amended;

D. a warning that a vendor's authorization to participate in the food stamp program can be withdrawn according to Code of Federal Regulations, title 7, section 278.1, paragraph (n)(1), as amended, if the vendor is disqualified from the WIC program; and

E. an ending date that is not more than two years beyond the beginning date.

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

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

#### **4617.0080 MONITORING VENDORS.**

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

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

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

#### **4617.0085 [Repealed, 22 SR 266]**

#### **4617.0086 NONCOMPLIANCE WITH PROGRAM REQUIREMENTS.**

Subpart 1. **General provisions.** Under subpart 2, the commissioner shall impose sanctions on a vendor for noncompliance with one or more program requirements as contained in the vendor agreement. Each noncompliant action shall be classified as a Class A, B, or C violation according to subparts 3 to 5. If two or more instances of the same noncompliant action occur simultaneously, all such instances of the noncompliant action shall be considered one violation, unless the noncompliant action is classified as a Class A violation. Each instance of a noncompliant action classified as a Class A violation shall be considered a separate violation.

##### **Subp. 2. Sanctions for noncompliance.**

A. Class A violations. The commissioner shall disqualify a vendor if the vendor commits a Class A violation under subpart 3. The disqualification shall be effective for one year for the vendor's first Class A violation. For each additional Class A violation committed by the vendor, the commissioner shall disqualify the vendor for the maximum period authorized in Code of Federal Regulations, title 7, section 246.12 (k)(1)(ii), as amended.

B. Class B violations. This item applies if a vendor has committed one or more Class B violations under subpart 4.

(1) For a first violation within any two-year period of a particular item in subpart 4, the commissioner shall mail or deliver to the vendor a notice of violation.

(2) For a second violation within any two-year period of a particular item in subpart 4, the commissioner shall disqualify the vendor for six months.

C. Class C violations. This item applies if a vendor has committed one or more Class C violations under subpart 5.

(1) For each first and second violation within any two-year period of a particular item in subpart 5, the commissioner shall mail or deliver to the vendor a notice of violation.

(2) For a third violation within any two-year period of a particular item in subpart 5, the commissioner shall disqualify the vendor for three months.

**Subp. 3. Itemization of Class A violations.** Each of the following actions shall be a Class A violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

- A. charging the WIC program for items not received by a WIC customer;
- B. providing one or more nonfood items in exchange for a voucher, regardless of whether food items are also provided;
- C. substituting for the infant formula specified on a voucher any other brand, size, or type of infant formula, any infant formula with a different level of iron fortification, or a food item which is not infant formula;
- D. substituting for the infant formula specified on a voucher, store credit which can be used to purchase a brand, size, or type of infant formula which is not specified on the voucher, an infant formula with a different level of iron fortification than the infant formula specified on the voucher, or a food item which is not infant formula;
- E. allowing a WIC customer to return or exchange infant formula bought with a voucher, unless the WIC customer is exchanging spoiled or damaged infant formula for infant formula of the identical brand, size, type, and level of iron fortification;
- F. providing any cash in exchange for a voucher;
- G. providing, in exchange for a voucher, any store credit which can be used to purchase one or more nonfood items;
- H. accepting or redeeming a voucher from any source other than a WIC customer;
- I. accepting a voucher which is then redeemed by another vendor;
- J. bribing or attempting to bribe a representative of the WIC program;
- K. altering the maximum price, first-day-to-use date, last-day-to-use date, or food prescription on a voucher;
- L. charging the WIC program more money for an item than the vendor's usual and customary charge for that item;
- M. seeking reimbursement from the WIC program for the sale of a WIC-allowed food item which exceeds the vendor's documented inventory for that food;
- N. violating the nondiscrimination clause of the vendor agreement, as specified in Code of Federal Regulations, title 7, section 246.12, paragraph (f)(2)(xv), as amended;
- O. providing false or misleading material information on any document submitted to the commissioner; and
- P. accepting a voucher at a place other than an established check-out lane at the vendor's business site.

**Subp. 4. Itemization of Class B violations.** Each of the following actions shall be a Class B violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

- A. failing to provide as required, by the deadline and in the manner specified by the commissioner, documentation requested by the commissioner under part 4617.0068, subpart 4;
- B. except as specified in subpart 3, item C, providing any food other than WIC-allowed food in exchange for a voucher;
- C. failing to allow the commissioner access to any voucher located on the vendor's premises at the time of an on-site inspection;
- D. offering an incentive for a WIC customer to redeem a voucher at the vendor's business site, or advertising that the vendor would provide such an incentive;
- E. except as specified in subpart 3, item D, providing in exchange for a voucher any store credit which can be used to purchase food other than WIC-allowed food;
- F. failing to comply with part 4617.0066, subpart 1;
- G. requesting any reimbursement or payment from a WIC customer in connection with any WIC purchase;

H. if the vendor is a food vendor, failing to maintain the required minimum stock under part 4617.0067, subpart 3, but only if this failure is with respect to two or more types of food;

I. requiring the purchase of a specific brand or type of WIC-allowed food when that specific brand or type of food is not specified on the front of the voucher;

J. requiring that a WIC customer make a cash purchase in order to redeem a voucher;

K. duplicating a vendor stamp or using a counterfeit vendor stamp;

L. allowing a WIC customer to return or exchange food other than infant formula bought with a voucher, unless the customer is exchanging a spoiled or damaged item for the identical size and type of food;

M. failing to comply with part 4617.0068, subpart 9; and

N. failing to comply with part 4617.0068, subpart 7, item A.

**Subp. 5. Itemization of Class C violations.** Each of the following actions shall be a Class C violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

A. except as specified in subpart 3, item C, providing in exchange for a voucher, one or more WIC-allowed food items not specified on the voucher;

B. providing a service to a WIC customer that is lower in quality than the comparable service provided to non-WIC customers;

C. entering a dollar amount on a voucher after the WIC customer has signed the voucher;

D. failing to obtain the WIC customer's authorized signature on a voucher at the time that voucher is accepted by the vendor;

E. failing to reimburse the WIC program within 30 days of a written request for an amount paid by the WIC program for an improperly redeemed voucher;

F. violating part 4617.0067, subpart 3, with respect to any one type of WIC-allowed food;

G. violating part 4617.0067, subpart 5;

H. violating part 4617.0068, subpart 8;

I. failing to either display for viewing or mark on the food the price of one or more WIC-allowed foods;

J. except as provided in subpart 3, item D, providing in exchange for a voucher store credit which can only be used to purchase one or more WIC-allowed foods;

K. refusing to allow a WIC customer to use a manufacturer's coupon for a WIC-allowed food item when redeeming a voucher which includes that WIC-allowed food item;

L. providing in exchange for a voucher one or more expired or damaged WIC-allowed food items, regardless of whether other items are also provided;

M. failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the WIC Authorization Folder;

N. requiring a WIC customer to provide information or identification other than the WIC Authorization Folder;

O. providing to a WIC customer and charging the WIC program for more WIC-allowed food than is specified on the WIC customer's voucher; and

P. accepting a voucher on which the maximum price, last-day-to-use date, first-day-to-use date, or food prescription has been altered.

**Subp. 6. Disqualification.**

A. Notice. The commissioner shall notify a vendor in writing of the vendor's disqualification.

B. Effective date. Disqualification is effective 15 days after the date of a written notice of disqualification, unless the vendor appeals the disqualification and the vendor is the only vendor in the clinic town, in which case the disqualification is effective 15 days after the date of the commissioner's order for disqualification.



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C. **Reapplication.** A disqualified vendor may apply for WIC vendor authorization after expiration of the disqualification period, according to part 4617.0065, subpart 3.

D. **Termination of vendor agreement.** A vendor may not terminate the vendor's WIC vendor agreement in lieu of disqualification.

**Subp. 7. Additional grounds for disqualification.** In addition to the grounds for disqualification specified in subpart 1, a vendor shall be disqualified from the WIC program according to this subpart, but the period of disqualification shall not exceed the maximum period authorized in Code of Federal Regulations, title 7, section 246.12 (k)(1)(ii), as amended.

A. If a vendor is disqualified from any other food assistance program, then the commissioner shall disqualify the vendor from the Minnesota WIC program for an equal amount of time.

B. If a vendor is assessed a civil money penalty in lieu of disqualification from any other food assistance program, and the penalty is in lieu of disqualification for a specified period of time, and disqualification of the vendor will not create undue hardships for WIC participants, then the commissioner shall disqualify the vendor from the Minnesota WIC program for the amount of time specified in the notice of assessment of the civil money penalty.

C. If a controlling person of a vendor is convicted of a crime which involves one or more vouchers, or one or more food instruments of another food assistance program, then the commissioner shall disqualify the vendor for the greater of three years or the maximum period authorized in Code of Federal Regulations, title 7, section 246.12 (k)(1)(ii), as amended.

D. If a vendor's license or registration required under part 4617.0067, subpart 2, item B or C; 4617.0069, subpart 3, item A, subitem (2); or 4617.0069, subpart 3, item B, subitem (2), is suspended or revoked, then the commissioner shall disqualify the vendor until any suspension is over and the license or registration has been reinstated.

**Subp. 8. Effect of expiration, termination, or nullification of vendor agreement.** The expiration or termination of the vendor agreement, or the rendering of the vendor agreement null and void under part 4617.0066, shall not affect the commissioner's duty to disqualify the vendor, and shall not affect the vendor's right to appeal this disqualification under part 4617.0100.

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0087 WIC FOOD CENTERS.**

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

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0088 MAXIMUM PRICES OF VOUCHERS.**

**Subpart 1. Calculation of maximum prices.** Beginning no sooner than November 18, 1997, a maximum price shall be printed on each computer-generated voucher. The maximum price shall be the sum of the maximum prices of all products on the voucher. The maximum price for each food product shall be 120 percent of the average price of the food product. The commissioner shall compute an average price for each food product listed on a voucher based on the most recent price information available to the commissioner on prices charged by a statistically significant sample of vendors.

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

**Subp. 3. Special infant formula.** If there is not a statistically significant sample from which to compute an average price for a particular special infant formula, then no maximum price shall be printed on any vouchers for that special infant formula.

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0090 REJECTION OF VOUCHERS AND REIMBURSEMENT BY VENDORS.**

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

- A. the voucher is not stamped with a vendor stamp;
- B. the voucher is stamped with a vendor stamp which is illegible;
- C. the voucher is not signed by a WIC customer authorized to sign the voucher;
- D. the price of the food purchased exceeds the maximum price printed on the voucher according to part 4617.0088, subpart 1;
- E. the space provided on the voucher for the price of the food purchased is left blank by the vendor;
- F. there is no first-day-to-use or last-day-to-use date on the voucher;
- G. the commissioner has placed a stop-payment order on the voucher;
- H. the date the vendor accepted the voucher is before the first-day-to-use date or after the last-day-to-use date on the voucher;
- I. the vendor deposits the voucher before the first-day-to-use date on the voucher;
- J. the vendor does not initially deposit the voucher in the vendor's bank within 60 days of the first-day-to-use date on the voucher;
- K. the vendor does not redeposit the voucher in the vendor's bank within 90 days of the first-day-to-use date on the voucher, if the voucher was returned to the vendor under item A or B;
- L. the maximum price, first-day-to-use date, last-day-to-use date, or food prescription on the voucher has been altered; or
- M. the vendor is a pharmacy vendor and the voucher includes any food product other than infant formula, infant cereal, or infant juice.

**Subp. 2. Payment of rejected vouchers.**

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

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

(1) the voucher is received by the commissioner not more than 120 days after the first-day-to-use date on the voucher; and

(2) for a voucher returned to the vendor under subpart 1, item D or E, the vendor inserts the correct price and provides to the commissioner documentation showing that the vendor had failed to insert the correct price due to inadvertent error, oversight, or some other reason not inconsistent with the purposes of this chapter.

C. The commissioner is not liable for any bank fees incurred by a vendor.

**Subp. 3. Reimbursement by vendor.** If the bank which processes WIC vouchers on behalf of the commissioner erroneously pays a voucher which should have been returned to the vendor without payment according to subpart 1, then the vendor shall pay to the commissioner, within 30 days of a request by the commissioner, the amount erroneously paid to the vendor.

**Subp. 4. Vendor liability.** A vendor shall pay to the commissioner, within 30 days of a request by the commissioner, the amount of any overcharges paid by the commissioner to the vendor, all money paid by the commissioner to the vendor for food items not received by a WIC customer, all money paid by the commissioner to the vendor for products other than WIC-allowed foods, and all money paid by the commissioner to the vendor for vouchers accepted by the vendor while there was not in effect a WIC vendor agreement for the vendor.

**Subp. 5. Prohibited vendor conduct.** A vendor shall not seek reimbursement from any WIC customer for a voucher not paid according to this part, for any banking charges paid by the vendor as a result of the nonpayment of a voucher, or for any money paid by the vendor to the commissioner according to this part. A vendor shall not require a WIC customer to pro-

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vide a signature that was not provided at the time the voucher was used to buy food from the vendor.

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

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

**4617.0095** [Repealed, 22 SR 266]

**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. A notice of violation under part 4617.0086, subpart 2, item B, subitem (1), or 4617.0086, subpart 2, item C, subitem (1), is not subject to appeal unless the violation results in the vendor's disqualification or denial of the vendor's application for reauthorization as a vendor in the WIC program. 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; Minnesota Rules, parts 1400.5100 to 1400.8401; Code of Federal Regulations, title 7, section 246.18, as amended; 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.

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

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

**4617.0120 TRANSITION PERIOD.**

**Subpart 1. Existing guarantees.** The commissioner and vendor shall comply with the terms of each fully executed vendor agreement or vendor guarantee, unless the vendor and the commissioner agree in writing to an amendment of the vendor guarantee or vendor agreement.

**Subp. 2. Reauthorization applications.**

A. If a retail food store or pharmacy is an authorized vendor on August 18, 1997, and if the last day of the guarantee period in that vendor's most recent vendor guarantee is August 18, 1997, or is not more than four months after August 18, 1997, then the commissioner shall approve a reauthorization application submitted by that vendor if the vendor complies with all reauthorization requirements in effect prior to August 18, 1997. If the commissioner approves this reauthorization application, then the resulting vendor guarantee shall reflect the requirements in effect prior to August 18, 1997, and the requirements of part 4617.0090, subpart 1, item D; this vendor guarantee shall not be renewable. The ending date of this vendor guarantee will be the last day of the next applicable regional review period under part 4617.0065, subpart 4.

B. If a retail food store or pharmacy is a vendor on August 18, 1997, and the last day of the guarantee period specified in the vendor's most recent guarantee is more than four months after August 18, 1997, and is not the same as the last day of the next applicable regional review period under part 4617.0065, subpart 4, then the commissioner and the vendor may execute a new vendor agreement so that the ending date of the new agreement will be the last day of the next applicable review period under part 4617.0065, subpart 4, and so that the new agreement reflects the requirements in effect on August 18, 1997.

**Subp. 3. New vendor applications and new owner applications.**

A. All new retail food or pharmacy vendor applications and all new owner applications received by the commissioner before August 18, 1997, shall be processed according to the requirements in effect prior to August 18, 1997.

B. Approval of an application processed under item A shall result in a vendor guarantee that reflects the requirements in effect prior to August 18, 1997, and the requirements of part 4617.0090, subpart 1, item D. This vendor guarantee shall not be renewable.

C. Notwithstanding item B, the ending date of a vendor guarantee issued under this subpart will be the last day of the next applicable regional review period under part 4617.0065, subpart 4.

Subp. 4. **Optional vendor agreements.** Notwithstanding subparts 2 and 3, if an application processed under subpart 2, item A, or subpart 3, item A, is approved by the commissioner, the commissioner and vendor applicant may execute a vendor agreement which reflects the requirements in effect on August 18, 1997.

Subp. 5. **Receipt of applications.** For the purpose of this part, an application is received by the commissioner on the date that the commissioner receives a complete and correct application.

Subp. 6. **Disqualification provisions.** The commissioner shall enforce the disqualification provisions in each fully executed vendor agreement or vendor guarantee, notwithstanding anything in part 4617.0086.

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0170** [Repealed, 19 SR 2089]

**WIC-APPROVED FOODS****4617.0171 INFANT FORMULA APPROVAL PROCESS.**

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

**Statutory Authority:** *MS s 144.11; 145.894*

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

**4617.0172** [Repealed, 22 SR 266]

**4617.0173** [Repealed, 22 SR 266]

**4617.0174** [Repealed, 22 SR 266]

**4617.0175** [Repealed, 19 SR 2089]

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

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

A. food items within each food product in part 4617.0067, subpart 3, item A, subitems (3) to (14); and

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

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

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A. For food products in part 4617.0067, subpart 3, item A, subitems (3) to (12), the commissioner's determination must be based on the following factors:

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

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

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

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

B. For food products in part 4617.0067, subpart 3, item A, subitems (13) and (14), the commissioner's determination must be based on the factors in item A, subitems (1) to (4), and the following factors:

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

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

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

**Subp. 3. Nutritional, cultural, religious, or ethnic need.** The commissioner shall approve for purchase using WIC vouchers a food item or food product which meets the requirements of Code of Federal Regulations, title 7, section 246.10(c), as amended, if the commissioner determines, based on the information available, that there is a nutritional need for the item or product, or that there is a need for the item or product within a specific cultural, religious, or ethnic group.

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

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

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

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

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

**Statutory Authority:** *MS s 144.11; 145.894*

**History:** 22 SR 266

**4617.0180** [Repealed, 19 SR 2089]