

CHAPTER 4617
DEPARTMENT OF HEALTH
WIC PROGRAM

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4617.0002 DEFINITIONS.

[For text of subps 1 to 5, see MR]

Subp 6 [Repealed, 25 SR 805]

[For text of subps 6a to 10, see MR]

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

[For text of subp 12b, see MR]

Subp. 13 [Repealed, 25 SR 805]

[For text of subps 14 and 14a, see MR]

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, is dented, rusted, unlabeled or otherwise damaged, has become moldy or otherwise spoiled, or has been recalled by the manufacturer.

[For text of subps 14c to 15, see MR]

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

[For text of subps 17 to 19a, see MR]

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

Subp 20 [Repealed, 25 SR 805]

[For text of subp 21, see MR]

Subp 21a [Repealed, 25 SR 555]

[For text of subps 22 to 28b, see MR]

Subp. 28c. [Repealed, 25 SR 555]

[For text of subps 29 to 32, see MR]

Subp 33 [Repealed, 25 SR 805]

[For text of subps 34 to 36, see MR]

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

A to provide any food other than WIC-allowed food in exchange for a voucher,

B to provide, in exchange for a voucher, any WIC-allowed food that is not listed on the voucher,

C to provide, as a substitute for any WIC-allowed food listed on a voucher, an excess quantity of another WIC-allowed food listed on the voucher, or

D to provide, in exchange for a voucher, and to charge the WIC program for, more WIC-allowed food than is listed on the voucher

[For text of subp 37, see MR.]

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

Subp 37b **Reauthorization application.** "Reauthorization application" means a vendor application submitted to the commissioner by a currently authorized vendor that is applying to continue as a vendor

Subp 37c **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 Wmg, 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, Wmna, 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, Mahnommen, 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 37d **Regional review period.** "Regional review period" means the designated time, with respect to a particular region, during which the commissioner reviews reauthorization applications from vendors located in that region, under part 4617.0065, subpart 5

[For text of subps 38 to 40b, see MR.]

Subp 40c **Single investigation.** "Single investigation" means all compliance buys, monitoring visits, record reviews, and other investigatory activities conducted in connection with a store or pharmacy until the investigation is complete. The investigation is complete on the earlier of (1) the date the investigatory file is closed, (2) the date the store or pharmacy is disqualified from the WIC program, (3) the date the commissioner assesses a civil money penalty against the store or pharmacy, or (4) the date the commissioner denies the vendor application of the store or pharmacy

Subp 40d **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 40e **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 40f **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

[For text of subps 41 to 42a, see MR]

Subp 42b **Vendor application.** “Vendor application” means all information and documentation submitted to the commissioner by a vendor applicant under part 4617 0065 or 4617 0066, subpart 3

[For text of subps 43 to 44b, see MR]

Subp 44c [Repealed, 25 SR 555]

[For text of subps 44d and 44e, see MR]

Subp 44f **WIC ID folder.** “WIC ID 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

[For text of subp 45, see MR]

Statutory Authority: *MS s 144 11, 144 12, 145 894*

History: *25 SR 555, 25 SR 805*

4617.0035 [Repealed, 25 SR 805]

4617.0044 [Repealed, 25 SR 805]

4617.0045 [Repealed, 25 SR 805]

4617.0049 [Repealed, 25 SR 805]

4617.0050 [Repealed, 25 SR 805]

4617.0052 [Repealed, 25 SR 805]

4617.0054 [Repealed, 25 SR 805]

4617.0056 [Repealed, 25 SR 805]

4617.0058 [Repealed, 25 SR 805]

4617.0059 [Repealed, 25 SR 555]

4617.0065 **VENDOR APPLICATION PROCESS.**

Subpart 1 **Applicability.** This part applies to all vendor applications, except that it applies to applications for immediate vendor agreements under part 4617 0066, subpart 3, only to the extent specified in that subpart. If a vendor applicant is applying to be both a pharmacy vendor and a retail food vendor

[For text of items A and B, see MR]

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

[For text of subitems (1) to (5), see MR]

(6) 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

(7) 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 government licenses required by part 4617 0067, subpart 2, item B, subitem (2), or if the store has applied for but not yet received all of the 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 the pharmacy's registration by the Minnesota Board of Pharmacy under Minnesota Statutes, chapter 151

[For text of item C, see MR]

Subp 3 Submission time frames for applications.

A The commissioner must receive a vendor's complete reauthorization application on or before the first business day of the applicable regional review period specified in subpart 4. If the commissioner receives the complete reauthorization application after the first business day of the applicable regional review period, the vendor applicant's existing vendor agreement may expire before the commissioner approves or disapproves the reauthorization application.

B A vendor applicant that is not a current vendor may submit a vendor application to the commissioner at any time, except that a retail food store or pharmacy whose vendor application has been disapproved cannot submit a new vendor application until one year after the date of the written notice of disapproval.

Subp 4 Regional review periods. The commissioner shall review reauthorization applications during the following regional review periods

[For text of items A to F, see MR]

Subp 5 Application review and approval process. The commissioner shall, in accordance with this subpart, review vendor applications except applications submitted too early under subpart 3, item B.

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, the commissioner shall contact the applicant and give the applicant an opportunity to submit complete information, unless subitem (2) applies. If the commissioner does not receive complete information within two months after the commissioner first contacts the applicant for complete information, the commissioner shall disapprove the application.

(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 A, B, or E, 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, or

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

B. When required by item A, subitem (3), the commissioner shall conduct an 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 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, the commissioner shall approve the application

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

(4) If the second 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, the commissioner shall disapprove the application

Subp. 6 Notification of status of application.

A The commissioner shall, in writing, inform each vendor that has submitted a complete reauthorization application of the commissioner's approval or disapproval of the application by the later of

(1) the last day of the applicable regional review period, or

(2) four months after the commissioner received the complete reauthorization application

B For a vendor application that is not a reauthorization application, the commissioner shall inform the vendor applicant in writing of the commissioner's approval or disapproval of the application within four months after the commissioner received the complete application

C If the commissioner disapproves an application under subpart 5, item A, subitem (1), the commissioner must notify the vendor applicant of the commissioner's disapproval of the application within four months after the commissioner first requests the complete information from the vendor applicant

D A notice of disapproval must state the reasons for the commissioner's disapproval

Subp 7 Mandatory training of vendor representative.

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

B Item A does not apply if

(1) a representative of the vendor applicant has completed WIC-approved training within two years before the commissioner's deadline under subpart 6 for notifying the applicant of the approval or disapproval of the application,

(2) the representative has signed and submitted to the commissioner a training verification form provided by the commissioner to verify completion of the training; and

(3) the vendor application is not from an applicant that is applying after being disqualified from the WIC program for three months or more

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 a vendor agreement to the

applicant or agent designated by the applicant. The applicant or designated agent shall submit the vendor agreement, signed 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 or designated agent. 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 or designated agent fails to submit the signed vendor agreement within 30 days after the specified deadline, the commissioner shall disapprove the vendor application, notwithstanding the commissioner's prior approval of the vendor application.

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

A the applicant does not comply with all applicable requirements in part 4617 0067 at any time between the final 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 part 4617 0067, subpart 2, item B, by the date the applicant signs any vendor agreement, or

[For text of item C, see MR]

Statutory Authority: *MS s 144 11, 145 894*

History: 25 SR 555

4617.0066 CHANGE OF OWNERSHIP, NAME, OR BUSINESS SITE.

[For text of subpart 1, see MR]

Subp 2 **Effect of change of ownership.** If there is a change of vendor ownership

A the vendor agreement shall be immediately null and void with respect to that vendor,

B the vendor stamp for that vendor must be returned to the commissioner within five business days after the effective date of the change, and

C if the vendor agreement in effect before the change includes one or more other vendors that have not changed ownership, a duly authorized agent of each of the other vendors shall execute, by the effective date of the change, an amended vendor agreement that does not include the vendor that changed ownership.

Subp 3 **Immediate vendor agreement.** If there is a change of vendor ownership, the retail food store or pharmacy which had been a vendor before the change may apply for an immediate vendor agreement under this subpart.

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 applicant, during the two years immediately preceding the change of ownership, had no history of violations under part 4617 0084 and no history of any Class A or Class B violations under Minnesota Rules 1997, part 4617 0086,

(2) 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,

(3) the vendor applicant meets all applicable eligibility requirements under part 4617 0067, and

(4) within two years before the change of ownership, a representative of the vendor applicant

(a) completed WIC-approved training under part 4617 0065, subpart 7, or 4617 0068, subpart 7, and

(b) signed and submitted to the commissioner the corresponding training verification form

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, the commissioner shall review the application according to part 4617 0065, subparts 5 and 9. If the commissioner approves the application under part 4617 0065, then part 4617 0065, subparts 7 and 8, shall apply.

D If the commissioner approves an application for an immediate vendor agreement, then with respect to the immediate vendor agreement, the commissioner and the applicant shall comply with 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.

[For text of item E, see MR.]

Statutory Authority: *MS s 144 11, 145 894*

History: 25 SR 555

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 requirements in subpart 2, item B, no later than the date the applicant signs any vendor agreement.

Subp 2 Location, licensing, and registration requirements.

A A retail food vendor must be a retail food store located in Minnesota, unless

(1) the retail food vendor is located in a state adjacent to Minnesota,

(2) there is a clinic town with no retail food vendors, and

(3) the distance from the clinic town to the retail food vendor is less than the distance from the clinic town to any other retail food vendor.

B A retail food vendor must be licensed by

(1) the Minnesota commissioner of agriculture according to Minnesota Statutes, chapter 28A, if the vendor is located in Minnesota, and

(2) all other government entities, such as the city government, that require a license before the vendor can be open to the public for business.

C 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) the following infant formula

(a) 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, and 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, or

(b) 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, and 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,

(2) 24 ounces of WIC-allowed plain, dry, infant cereal,
 (3) 60 ounces of pure, unsweetened, WIC-allowed infant juice,
 (4) 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;

(5) three pounds of WIC-allowed domestic cheese in packages of at least
 one-half pound each, in any combination of at least two varieties;

(6) four one-dozen containers of WIC-allowed fresh eggs,

(7) 28 ounces of WIC-allowed dried legumes, which do not contain any
 added ingredients,

(8) 36 ounces of WIC-allowed peanut butter which does not contain any
 other food product such as jelly, jam, or chocolate,

(9) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots
 packed in water,

(10) 26 ounces of WIC-allowed canned tuna fish,

(11) three containers of any combination of the following

(a) 11 5 to 12-ounce containers of WIC-allowed pure and unsweet-
 ened frozen or nonfrozen concentrate 100 percent citrus juice, or

(b) 46-ounce containers of WIC-allowed pure and unsweetened 100
 percent citrus juice,

(12) three containers of any combination of the following

(a) 11 5 to 12-ounce containers of WIC-allowed pure and unsweet-
 ened frozen or nonfrozen concentrate juice which is not 100 percent citrus juice, or

(b) 46-ounce containers of WIC-allowed pure and unsweetened juice
 which is not 100 percent citrus juice, and

(13) 72 ounces of WIC-allowed cereal in any combination of at least four
 varieties

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

[For text of subitems (1) to (13), see MR]

(14) six containers of any combination of the following

(a) 11 5 to 12-ounce containers of WIC-allowed pure and unsweet-
 ened frozen or nonfrozen concentrate 100 percent citrus juice, or

(b) 46-ounce containers of WIC-allowed pure and unsweetened 100
 percent citrus juice,

(15) six containers of any combination of the following.

(a) 11 5 to 12-ounce containers of WIC-allowed pure and unsweet-
 ened frozen or nonfrozen concentrate juice which is not 100 percent citrus juice, or

(b) 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.

[For text of item C, see MR]

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

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

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

C Employees who accept vouchers for the vendor must be able to demonstrate their ability to process vouchers according to this chapter

D. 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

E 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 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 three years immediately preceding the date the commissioner received the vendor application, and at any time on or after the date the commissioner received the application, an applicant must not have accepted a WIC voucher when the applicant did not have a fully executed vendor agreement, unless the voucher was never paid by the WIC program's bank

B An applicant must not be disqualified from any food assistance program at any time between the commissioner's receipt of the vendor application and the commissioner's execution of a vendor agreement with the vendor applicant. 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 date the commissioner received the vendor application 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 date the commissioner received the vendor application is before the date of the notice of the civil money penalty or is less than six months after the date of the notice of the civil money penalty

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

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

(a) is disqualified from a food assistance program,

(b) has not fully paid a civil money penalty assessed by a food assistance program,

(c) 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 date the commissioner received the vendor application and the commissioner's execution of a vendor agreement with the vendor applicant, or

(d) within three years before the date the commissioner received the vendor application or at any time on or after the date the commissioner received the application, accepted a voucher when the retail store or pharmacy did not have a fully executed vendor agreement and the voucher was then paid by the WIC program's bank

(2) A vendor applicant must not have as a controlling person someone with a business-related violation which occurred within ten years before the date the commissioner receives the vendor application or at any time on or after the date the commissioner receives the application

D If on the date the commissioner receives the application the vendor applicant is 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 the applicant is the only vendor in a clinic town.

Statutory Authority: *MS s 144 11, 145 894*

History: *25 SR 555*

4617.0068 OPERATING REQUIREMENTS.

Subpart 1 Acceptance of vouchers.

[For text of item A, see MR]

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

[For text of subitems (1) to (3), see MR]

(4) the price inserted on the voucher is not greater than any maximum price printed on the voucher,

(5) the WIC customer signs the voucher at the time the WIC customer uses the voucher to obtain food,

(6) the cashier verifies that the signature of the individual who signs the voucher matches an authorized signature on the WIC ID folder,

(7) before deposit in the vendor's bank, the number on the vendor stamp has legibly been imprinted onto the voucher, and

(8) the voucher does not contain any alteration of the maximum price, first-day-to-use date, last-day-to-use date, or food prescription

[For text of subp 2, see MR]

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 and access to any cash register or other area of the vendor's premises where vouchers may be located.

[For text of subps 4 to 6, see MR]

Subp 7 **Biannual training requirements.** A vendor shall ensure that

A. a representative of the vendor completes WIC-approved training on the WIC program at least once every two calendar years,

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

C the 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 [Repealed, 25 SR 555]

[For text of subps 9 and 10, see MR]

Statutory Authority: *MS s 144 11, 145 894*

History: *25 SR 555*

4617.0069 [Repealed, 25 SR 555]

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 each vendor included in the agreement that does not already have a valid vendor stamp. The number on each stamp must be issued to only one vendor. 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 0084, 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 0084, 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) a change of ownership of the vendor; or (iii) 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 for that vendor is executed.

[For text of subp 2, see MR]

Statutory Authority: *MS s 144 11, 145.894*

History: *25 SR 555*

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, except that all vendors with identical ownership in a region may elect to be included in one vendor agreement. A vendor agreement must contain:

- A the names and addresses of all vendors included in the vendor agreement,
- 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), (k)(2)(i), (k)(2)(ii), and (r)(5)(iv), and 278 1, paragraph (o), as amended,

D a statement that disqualification from the WIC program may result in disqualification as a retailer in the food stamp program and that such disqualification may not be subject to administrative or judicial review under the food stamp program, and

E an ending date that is not more than two years beyond the beginning date and that is the last day of a regional review period for the region in which the vendor is located

Statutory Authority: *MS s 144 11, 145 894*

History: *25 SR 555*

4617.0084 VENDOR SANCTIONS.

Subpart 1 **Notice of violation.** If a violation described in subpart 7, 8, 9, 12, or 13 does not result in disqualification or a civil money penalty, the commissioner shall mail or deliver to the vendor a notice of violation

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

A buying or selling one or more vouchers for cash, or

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

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

A buys or sells one or more vouchers for cash, or

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

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

Subp 5 **Redeeming vouchers in excess of inventory.** Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if, on two occasions within any two-year period, the vendor claims reimbursement for the sale of an amount of a specific supplemental food item during a month and the amount claimed exceeds the store's documented inventory of that supplemental food item by at least 15 units for the month. The two occasions can be established during a single review of inventory records

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

Subp 7 **Providing credit or a nonfood item.** If a vendor provides credit or a nonfood item, other than any alcohol, alcoholic beverage, tobacco product, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), then

A except as provided in subparts 15 and 16, the commissioner shall disqualify the vendor for three years if the vendor commits the violation twice within any two-year period and neither of the two violations involved providing a rain check,

B except as provided in item A and subparts 15 and 16, the commissioner shall disqualify the vendor for three years if the vendor commits the violation three times within any two-year period and only one of the three violations involved providing a rain check, or

C except as provided in items A and B and subparts 15 and 16, the commissioner shall disqualify the vendor for three years if the vendor commits this violation four times within any two-year period

Subp. 8 Overcharging.

A This subpart applies to violations under subitems (1) and (2). The violation described in subitem (1) is distinct from the violation described in subitem (2) and is accumulated separately to determine the number of violations

(1) charging the WIC program more for WIC-allowed food than the vendor's usual and customary charge to non-WIC customers or charging the WIC program more than the vendor's current shelf price of the food, and

(2) charging the WIC program for WIC-allowed food not received by a WIC customer

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

(1) each violation involved an overcharge to the WIC program of \$2 or more, and

(2) each violation involved any of the following circumstances

(a) no price was entered on the voucher at the time it was accepted by the vendor,

(b) the price on the voucher was at any time altered to reflect a price higher than the price originally entered on the voucher, or

(c) the price the WIC program paid the vendor for the voucher was more than 30 percent greater than the correct price for the voucher

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

(1) each violation involved an overcharge to the WIC program of \$2 or more, or

(2) two of the violations meet the criteria in item B, subitems (1) and (2)

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

Subp 9 Providing unauthorized food.

A A vendor shall not provide unauthorized food

B Except as provided in subparts 15 and 16, the commissioner shall disqualify the vendor for one year if the vendor violates item A twice within any two-year period and both violations involved providing unauthorized food in exchange for any of the infant formula listed on the voucher

C Except as provided in item B and subparts 15 and 16, the commissioner shall disqualify the vendor for one year if the vendor violates item A three times within any two-year period and if

(1) two of the violations involved providing unauthorized food in exchange for any of the infant formula listed on the voucher; or

(2) all three of the violations involved providing unauthorized food in exchange for any of the juice specified on the voucher and the unauthorized food provided did not include any beverage that is 100 percent juice

D Except as provided in items B and C and subparts 15 and 16, the commissioner shall disqualify the vendor for one year if the vendor violates item A four times within any two-year period.

Subp 10 Food stamp sanctions.

A. If a vendor is disqualified from the food stamp program, the commissioner shall disqualify the vendor from the WIC program for an equal amount of time, except as provided in subpart 15

B If the food stamp program assesses a vendor a civil money penalty for hardship instead of disqualifying the vendor from the food stamp program, the commissioner shall disqualify the vendor from the WIC program for the amount of time the vendor would have been disqualified from the food stamp program absent the hardship determination, except as provided in subpart 15.

Subp 11 **One-year disqualification for one violation.** Except as provided in subpart 15, the commissioner shall disqualify the vendor for one year if

A the vendor provides false or misleading material information on any document submitted to the commissioner,

B a controlling person of the vendor commits a business-related violation, unless the business-related violation results in permanent disqualification under subpart 1,

C the vendor fails 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 or 5,

D the real estate where the vendor's business is located is not owned or leased by one or more controlling persons of the vendor, or

E during an on-site inspection, the vendor fails to allow the commissioner access to any voucher located on the vendor's premises or to any cash register or other area of the vendor's premises where vouchers may be located

Subp 12 Six-month disqualification for two violations.

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

(1) duplicating a vendor stamp or using a counterfeit vendor stamp,

(2) 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, or failing to offer a WIC customer the same courtesies offered to other customers,

(3) altering the maximum price, first-day-to-use date, last-day-to-use date, or food prescription on a voucher or signing a voucher that the vendor has accepted without a signature,

(4) 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, and

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

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

Subp 13 Three-month disqualification for three violations.

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

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

(2) requesting any reimbursement or payment from a WIC customer for a WIC voucher returned by the bank,

(3) failing to enter a dollar amount on a voucher at the time the vendor accepts the voucher from a WIC customer,

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

(5) accepting a voucher on which the maximum price, last-day-to-use date, first-day-to-use date, or food prescription has been altered, and

(6) failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the WIC ID folder

B Except as provided in subpart 15, the commissioner shall disqualify the vendor for three months if the vendor commits a violation under item A three times within any two-year period

Subp 14 Two-month disqualification.

A This subpart applies to the following violations

(1) the vendor is a retail food vendor and any of the vendor's licenses required under part 4617.0067, subpart 2, item B, is suspended or revoked,

(2) the vendor is a pharmacy vendor and the vendor's Minnesota Board of Pharmacy registration is suspended or revoked,

(3) the vendor fails to ensure that a representative of the vendor receives WIC-approved training at least once every two calendar years,

(4) a controlling person of the vendor or a spouse, child, or parent of a controlling person of the vendor

(a) is employed by the Minnesota Department of Health in connection with the WIC program, or

(b) is employed by or has a direct or indirect financial interest in the local agency in whose jurisdiction the vendor is located,

(5) the vendor is a retail food vendor and the vendor's total price for the required minimum amount of authorized foods listed in part 4617.0067, subpart 3, exceeds 120 percent of the average price charged by retail food vendors,

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

(7) the vendor is a retail food vendor that fails to maintain the required minimum stock under part 4617.0067, subpart 3, with respect to two or more types of food

B If a vendor commits a violation under item A, the commissioner shall issue a written warning to the vendor. The vendor must correct the violation within 15 days after the vendor receives this warning. If the vendor fails to correct the violation, the commissioner shall disqualify the vendor for two months except as provided in subpart 15

Subp 15 Inadequate participant access.

A Before disqualifying a vendor under any subpart except subpart 2, the commissioner shall determine whether disqualification of the vendor would result in inadequate participant access, unless under subpart 16, item C, the vendor is not eligible for a civil money penalty instead of disqualification

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

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

(2) as of the date of the notice of disqualification or civil money penalty
(a) the next closest retail food vendor is more than one mile by public road from the vendor, not including roads on which pedestrians are prohibited, and

(b) there is no bus stop or other public transportation within one-half mile by public road from the vendor, not including roads on which pedestrians are prohibited.

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

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

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

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

(1) If during the course of a single investigation the commissioner determines that the vendor committed multiple violations, the commissioner shall impose a civil money penalty for each violation that would constitute grounds for disqualification in the absence of inadequate participant access.

(2) For each violation described in subparts 3 to 9 and subpart 10, item A, the civil money penalty is calculated as follows:

(a) determine the vendor's average monthly WIC redemptions for the six months immediately before the month that the notice of civil money penalty is dated,

(b) multiply the monthly average from unit (a) by ten percent, and

(c) multiply the product from unit (b) by the number of months the store would have been disqualified for the violation. The product is the civil money penalty for the violation except as provided in subpart 16 and except that, if this product exceeds \$10,000, the civil money penalty for the violation shall be reduced to \$10,000

(3) For each violation described in subparts 11 to 14, the civil money penalty is \$700

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

E A civil money penalty assessed under this part must be paid in full no later than 30 days after the date of the notice of assessment. If the vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed under this part, the commissioner shall disqualify the vendor for the length of time that the vendor would have been disqualified if there had been no determination of inadequate participant access

F If disqualification of a vendor under subpart 10, item B, would result in inadequate participant access, then the commissioner shall not disqualify the vendor under subpart 10, item B, or impose a civil money penalty in lieu of disqualification under subpart 10, item B

Subp. 16 **Second and subsequent sanctions.**

A For the purpose of this subpart, "federally mandated sanction" means any disqualification or civil money penalty assessed based on this subpart or the violations described in subparts 3 to 9

B If a vendor that has on one occasion received a federally mandated sanction subsequently engages in conduct warranting a second federally mandated sanction, the second federally mandated sanction shall be doubled, except that:

(1) a civil money penalty for one violation shall not exceed \$10,000, and

(2) the total of all civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000

C If a vendor that has on two or more occasions received a federally mandated sanction subsequently engages in conduct warranting a third or subsequent federally mandated sanction.

(1) the vendor shall be disqualified and shall not be eligible for a civil money penalty instead of disqualification, and

(2) the third and each subsequent sanction shall be doubled

Subp 17 **Multiple violations.**

A If, during a single investigation, a vendor commits multiple violations that warrant disqualification, then.

(1) the commissioner shall include all of the violations in the notice of disqualification,

(2) the commissioner shall disqualify the vendor for the period corresponding to the most serious violation, except as provided in subpart 15, and

(3) if disqualification under subparts 2 to 9 or subpart 10, item A, is not upheld on appeal and the vendor has also committed one or more violations warranting disqualification under subpart 10, item B, or subparts 11 to 14, the commissioner shall disqualify the vendor for the period corresponding to the most serious violation described in subpart 10, item B, or subparts 11 to 14, except as provided in subpart 15

B For the purpose of this subpart, a violation warranting disqualification that is described in subparts 2 to 9 or subpart 10, item A, shall be considered more serious than any violation warranting disqualification that is described in subpart 10, item B, or in subparts 11 to 14

Subp 18 General provisions.

A A vendor commits a violation described in subparts 3 to 9, 11 to 13, or 14, item A, subitem (3), (5), (6), or (7), if any controlling person, employee, or agent of the vendor committed the described conduct.

B The commissioner shall notify a vendor in writing of the vendor's disqualification. If a disqualification is based on subpart 2, the disqualification shall be effective on the date the vendor receives the written notice of disqualification. If a disqualification is based on any subpart other than subpart 2, the disqualification shall be effective 30 days after the date the written notice of disqualification is mailed.

C After expiration of the disqualification period, a disqualified vendor may apply for WIC vendor authorization.

D A vendor may not terminate the vendor's WIC vendor agreement or otherwise withdraw from the WIC program instead of disqualification. 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 the disqualification under part 4617.0100.

E. If a violation involves a vendor's acceptance of a voucher, the violation occurs on the date the vendor accepts the voucher.

Statutory Authority: *MS s 144 11, 145 894*

History: *25 SR 555*

4617.0086 [Repealed, 25 SR 555]

4617.0100 APPEALS BY VENDORS AND LOCAL AGENCIES.

Subpart 1 Procedures.

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

(1) a notice of violation under part 4617.0084 is not subject to appeal unless the violation results in the vendor's disqualification, a civil money penalty imposed on the vendor, or denial of the vendor's reauthorization application,

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

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

B 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 according to this part, parts 1400.5100 to 1400.8401, Minnesota Statutes, sections 14.57

to 14 62, and Code of Federal Regulations, title 7, section 246 18, as amended
Expiration of a contract or agreement with a local agency or vendor is not subject to
appeal

[For text of subps 2 and 3, see MR]

Statutory Authority: *MS s 144 11, 145 894*

History: 25 SR 555

4617.0120 [Repealed, 25 SR 555]

4617.0121 TRANSITION PERIOD.

Subpart 1 **Existing agreements.** If a retail food store or pharmacy is an authorized vendor on August 28, 2000, and if the ending date of the vendor's most recent vendor agreement is more than 15 days after August 28, 2000, the vendor must execute a new vendor agreement no later than 30 days after the commissioner mails or delivers the new vendor agreement to the vendor. The new vendor agreement shall reflect the requirements in effect on August 28, 2000.

Subp 2 **Applications.** If the commissioner has received but has neither approved nor denied a vendor application before August 28, 2000, the commissioner shall approve the application if the applicant complies with all requirements in effect before August 28, 2000. If the commissioner approves this application, the resulting vendor agreement shall reflect the requirements in effect on August 28, 2000.

Statutory Authority: *MS s 144 11, 145 894*

History: 25 SR 555

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 (2) to (13), and

[For text of item B, see MR]

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.

A For food products in part 4617 0067, subpart 3, item A, subitems (2) to (11), the commissioner's determination must be based on the following factors

[For text of subitems (1) to (4), see MR]

B For food products in part 4617 0067, subpart 3, item A, subitems (12) and (13), the commissioner's determination must be based on the factors in item A, subitems (1) to (4), and the following factors

[For text of subitems (1) to (3), see MR]

[For text of subps 3 to 5, see MR]

Statutory Authority: *MS s 144 11, 145 894*

History: 25 SR 555