

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 [Repealed, 22 SR 266]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. [Repealed, 25 SR 805]

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 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. [Repealed, 25 SR 805]

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

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.

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. 19b. **Launder.** "Launder" 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]

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

Subp. 21a. [Repealed, 25 SR 555]

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. [Repealed, 25 SR 555]

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. [Repealed, 25 SR 805]

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. 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.

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. **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 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. 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.

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. **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.

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 or 4617.0066, subpart 3.

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. [Repealed, 25 SR 555]

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. 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.

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; 144.12; 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164; L 1991 c 106 s 6; 19 SR 2089; 22 SR 266; 25 SR 555; 25 SR 805*

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 [Repealed, 25 SR 805]

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 [Repealed, 25 SR 805]

4617.0045 [Repealed, 25 SR 805]

4617.0046 [Repealed, 19 SR 2089]

4617.0047 [Repealed, 19 SR 2089]

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]

4617.0060 [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 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:

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) 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.

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 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:

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 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.

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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

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; 25 SR 555

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.** 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.

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; 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 unsweetened 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 unsweetened 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 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 containers of any combination of the following:
 - (a) 11.5 to 12-ounce containers of WIC-allowed pure and unsweetened 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 unsweetened 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.

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.** 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; 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164; 22 SR 266; 25 SR 555*

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 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.

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

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. **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]

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; 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.

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

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

History: *13 SR 1190; 22 SR 266; 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; 145.891 to 145.897*

History: *13 SR 1190; 14 SR 164; 22 SR 266; 25 SR 555*

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*

4617.0084 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.

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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 in 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 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

4617.0085 [Repealed, 22 SR 266]

4617.0086 [Repealed, 25 SR 555]

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 provide 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. 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.

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; 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*

4617.0170 [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 (2) to (13); 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.

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:

(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 (12) and (13), 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; 25 SR 555

4617.0180 [Repealed, 19 SR 2089]