

**CHAPTER 4617  
DEPARTMENT OF HEALTH  
WIC PROGRAM**

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**4617.0002 DEFINITIONS.**

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

Subp. 2a. **Applicant.** "Applicant" has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

*[For text of subps 2b to 3b, see M.R.]*

Subp. 3c. **Cash-value voucher.** "Cash-value voucher" has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended. Cash-value voucher includes the legal equivalent of a paper cash-value voucher, such as an electronic form of the cash-value voucher, as defined in the Check 21 Act, Public Law 108-100.

Subp. 3d. **Cashier.** "Cashier" means an individual who accepts a voucher or cash-value voucher on behalf of a vendor.

*[For text of subps 4 to 7a, see M.R.]*

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

*[For text of subps 9 to 14b, see M.R.]*

Subp. 14c. **Food assistance program.** "Food assistance program" means the Supplemental Nutrition Assistance Program (SNAP), or any other food and consumer service program in Minnesota or in any other state, district, commonwealth or territory of the United States.

*[For text of subps 14d and 14e, see M.R.]*

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

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

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

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

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

Subp. 19b. **Laundry.** "Laundry" means to receive, transact, or redeem a voucher or cash-value voucher outside of authorized channels and includes redeeming a voucher or cash-value voucher accepted at a store that is not authorized as a WIC vendor, accepting a voucher or cash-value voucher at a place other than an established check-out lane at the

vendor's business site, accepting or redeeming a voucher or cash-value voucher from any source other than a WIC customer, and accepting a voucher or cash-value voucher that is then redeemed through another vendor.

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

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

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

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

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

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

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

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

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

Subp. 40f. **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 Minnesota or United States census or estimated update as compiled by the state demographer.

Subp. 40g. **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 Minnesota or United States census or estimated update as compiled by the state demographer.

*[For text of subps 41 to 43, see M.R.]*

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

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 and cash-value vouchers.

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

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

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

Subp. 44g. **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 and cash-value vouchers issued to the participant.

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

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

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

**History:** *34 SR 790*

#### **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 4617.0171 or with Code of Federal Regulations, title 7, part 246, as amended. 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; 145.894*

**History:** *34 SR 790*

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

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

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

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

##### **B. A retail food vendor must:**

- (1) be licensed by all government entities that require a license for the vendor to be open to the public for business;
- (2) be authorized by the United States Department of Agriculture to accept SNAP benefits; and
- (3) not have any restriction placed on its license that would preclude it from meeting the requirements of subpart 3.

*[For text of item C, see M.R.]*

##### **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:

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

- (3) 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; and
  - (c) two percent milkfat;
- (4) four pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two varieties;
- (5) four one-dozen containers of WIC-allowed fresh eggs;
- (6) three packages in sizes up to 16 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;
- (7) 128 ounces of WIC-allowed canned beans or legumes, in any combination of at least three varieties;
- (8) three containers in sizes up to 18 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;
- (9) 24 pounds of WIC-allowed fresh fruits and vegetables in at least five varieties, two of which must be bananas and carrots;
- (10) 30 ounces of WIC-allowed canned fish;

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

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

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

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

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

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

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) except as provided in item D, 18 containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

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

(3) 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; and

(c) 2 percent milkfat;

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

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

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

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

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

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

(10) 30 ounces of WIC-allowed canned fish;

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

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

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

(12) 12 boxes or bags of whole grain WIC-allowed cereal in any combination of at least six varieties;

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

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

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 that originated from the Commodity Supplemental Food Program.

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

E. If a WIC customer requests one of the following products, the vendor must ensure that a sufficient quantity of the product is in stock and available for purchase at the vendor's location within one week of the WIC customer's request:

- (1) an infant formula approved by the commissioner under part 4617.0171;
- (2) WIC-allowed soy beverage;
- (3) WIC-allowed tofu;
- (4) WIC-allowed baby food meats;
- (5) WIC-allowed canned fruits and vegetables;
- (6) WIC-allowed frozen fruits and vegetables; and
- (7) other WIC-allowed products authorized under Code of Federal Regulations, title 7, part 246, as amended.

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

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

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

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

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 a local agency in a capacity that allows the employee access to WIC vouchers or cash-value vouchers; or
- (3) has a direct or indirect financial interest in a local agency.

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

Subp. 5. **Vendor prices.** With the exception of the authorized foods in subpart 3, items A, subitem (9), and B, subitem (9), a retail food vendor's price for each of the authorized foods in subpart 3 must not be more than 115 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 retail food vendors and according to Code of Federal Regulations, title 7, part 246, and approved by USDA in the annual state plan submitted by the commissioner. A change in the manufacturer's price of an authorized food in subpart 3 is grounds for the commissioner to change the commissioner's calculation of the average price charged by retail food vendors. If the commissioner determines that there is a religious need for a vendor to charge a specific price greater than 115 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 one year immediately preceding the date the commissioner received the vendor application, and at any time on or after the date the commissioner received the application, a vendor applicant must not have accepted a WIC voucher or cash-value

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voucher when the vendor applicant did not have a fully executed vendor agreement, unless the voucher or cash-value voucher was never paid by the WIC program's bank.

B. An applicant must not be disqualified from any WIC program or 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 WIC program or food assistance program, and:

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

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 WIC program or food assistance program; or

(b) within one year 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 or cash-value voucher when the retail store or pharmacy did not have a fully executed vendor agreement and the voucher or cash-value voucher was then paid by the WIC program's bank.

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

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

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

(1) was permanently disqualified from the SNAP; or

(2) received a civil money penalty in lieu of permanent disqualification from the SNAP.

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

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

**History:** *34 SR 790*

**4617.0068 OPERATING REQUIREMENTS.****Subpart 1. Acceptance and pricing of vouchers and cash-value vouchers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Subp. 2. Deposit of vouchers and cash-value vouchers.** A vendor shall deposit each voucher and cash-value voucher in the vendor's bank within 60 days of the first-day-to-use date on the voucher or cash-value voucher, except as provided in part 4617.0084, subpart 18, item C. The vendor may only deposit into the vendor's account vouchers and cash-value vouchers which were accepted at a check-out lane at the vendor's business site. The vendor may not transfer any vouchers or cash-value vouchers accepted by the vendor to anyone else for deposit in an account other than the vendor's account.

**Subp. 3. Access to vouchers and cash-value vouchers.** A vendor shall allow representatives of the Minnesota Department of Health and representatives of the United States Department of Agriculture access to vouchers and cash-value 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 or cash-value vouchers may be located.

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

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

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

(2) 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 or cash-value vouchers.

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

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

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

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

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

**Subp. 13. Bank account information.** If the commissioner has provided notice under part 4617.0090, subpart 1a, and if there is a change in the vendor's bank name, bank routing number, or bank account number for the account to which the vendor deposits WIC

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vouchers and cash-value vouchers, the vendor shall promptly inform the commissioner in writing of the change.

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

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

**History:** *34 SR 790*

**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 or cash-value voucher other than a voucher or cash-value 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.

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

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

**History:** *34 SR 790*

**4617.0084 VENDOR SANCTIONS.**

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

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 or cash-value 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), as amended, for one or more vouchers or cash-value 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 or cash-value 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), as amended, for one or more vouchers or cash-value 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 or cash-value vouchers.

Subp. 5. **Redeeming vouchers or cash-value 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 specified period of time and the amount claimed exceeds the store's documented inventory of that supplemental food item by at least 15 units for that period of time. The two occasions may be established during a single review of inventory records and may involve two different food items during the same period of time, two different food items during two different periods of time, or one food item during two different periods of time.

Subp. 6. **Laundering vouchers or cash-value 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 or cash-value vouchers.



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

A. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for three years if, twice within any two-year period, the vendor provides credit, other than a rain check, or provides 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), as amended, in exchange for a voucher or cash-value voucher.

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

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

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

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

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

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

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

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

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

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

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

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

C. Except as provided in item B and subparts 15, 16, and 19, 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, for each violation, the price the WIC program paid the vendor for the voucher or cash-value voucher was \$2 or more greater than the correct price for the voucher or cash-value voucher.

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

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

**Subp. 10. SNAP or food support sanctions.**

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

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

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

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

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

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

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

**Subp. 12. One-year 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:

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

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

(4) offering an incentive for a WIC customer to redeem a voucher or cash-value 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 one year if the vendor commits a violation under item A twice within any two-year period.

**Subp. 13. 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) 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 or cash-value voucher returned by the bank;

(3) failing to enter a dollar amount on a voucher or cash-value voucher at the time the vendor accepts the voucher or cash-value 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 or cash-value voucher, unless the customer is exchanging expired or damaged food for the identical size and type of food; and

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

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

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

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

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

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

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

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

Subp. 14. [Repealed, 29 SR 1202]

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

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

B. If a vendor commits a violation under subitems (1) to (11), the commissioner shall issue a written warning to the vendor. The vendor must correct the violation within 15 days after the vendor receives the warning. If the vendor fails to correct the violation or commits the same violation at any time more than 15 days but less than six months after receiving the written warning, the commissioner shall terminate the vendor agreement. The commissioner shall issue a written warning if the vendor:

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

(2) is a retail food vendor and does not meet any license or authorization requirement under part 4617.0067, subpart 2;

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

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

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

(6) fails to ensure that a representative of the vendor receives required WIC-approved training;

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

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

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

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

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

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

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

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 and cash-value voucher redemption information is available for the commissioner's review, the vendor redeemed WIC vouchers and cash-value vouchers in an average monthly amount of at least \$150; and

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

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 and cash-value voucher redemption information is available for the commissioner's review, the vendor redeemed WIC vouchers and cash-value 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.

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

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

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

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

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

**Subp. 18. General provisions.**

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

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

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

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

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

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

G. If a vendor provides food in exchange for a voucher or cash-value voucher under circumstances where the vendor informs the WIC customer that the customer may return the food for cash or a nonfood item and if the WIC customer subsequently does return

the food for cash or a nonfood item, the vendor shall be sanctioned in the same way as if the vendor had provided the cash or nonfood item directly to the WIC customer in exchange for the voucher or cash-value voucher.

Subp. 19. **Previous history of disqualification.** Notwithstanding subparts 7 to 9, if a vendor was previously disqualified under this subpart or subparts 3 to 10, and if any controlling person of the vendor was a controlling person at the time of the previous disqualification, except as provided in subparts 15 and 16, the commissioner shall disqualify the vendor for:

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

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

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

**History:** *34 SR 790*

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

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

- A. the voucher or cash-value voucher is not stamped with a vendor stamp;
- B. the voucher or cash-value voucher is stamped with a vendor stamp which is illegible;
- C. the voucher or cash-value voucher is not signed by a WIC customer;
- D. the space provided on the voucher or cash-value voucher for the price of the food purchased is left blank by the vendor;
- E. there is no first-day-to-use or last-day-to-use date on the voucher or cash-value voucher;
- F. the commissioner has placed a stop-payment order on the voucher or cash-value voucher;
- G. the date that the WIC customer used the voucher or cash-value voucher to obtain food is before the first-day-to-use date or after the last-day-to-use date on the voucher or cash-value voucher;
- H. the vendor deposits the voucher or cash-value voucher before the first-day-to-use date on the voucher or cash-value voucher;
- I. the vendor does not initially deposit the voucher or cash-value voucher in the vendor's bank by the earlier of:
  - (1) 60 days after the first-day-to-use date on the voucher or cash-value voucher; or
  - (2) five days after the effective date of the vendor's disqualification or termination;
- J. the voucher or cash-value voucher was returned to the vendor under item A or B and the vendor does not redeposit the voucher or cash-value voucher in the vendor's bank by the earlier of:
  - (1) 90 days after the first-day-to-use date on the voucher or cash-value voucher; or
  - (2) five days after the effective date of the vendor's disqualification or termination;

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

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

Subp. 1a. **Return with credit.** Before this subpart applies, the commissioner shall give at least two months' written notice to vendors. If the price of the food purchased with a voucher or cash-value voucher exceeds the maximum price calculated by the commissioner for that voucher or cash-value voucher under part 4617.0088, subpart 1, the bank that processes WIC vouchers and cash-value vouchers on behalf of the commissioner shall:

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

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

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

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

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

A. A voucher or cash-value 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 or cash-value voucher.

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

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

(2) for a voucher or cash-value voucher returned to the vendor under subpart 1, item D, 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.

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

Subp. 3. [Repealed, 29 SR 1202]

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, the amount paid by the commissioner to the vendor in excess of the maximum price of the voucher or cash-value voucher calculated under part 4617.0088, subpart 1, the amount erroneously paid by the commissioner to the vendor for a voucher or cash-value voucher that should have been returned to the vendor without payment according to subpart 1, 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 or cash-value vouchers accepted by the vendor while there was not in effect a WIC vendor agreement for the vendor. If the vendor does not pay these amounts within 90 days of the initial request by the commissioner, then, in addition to any other sanction specified in this chapter, the vendor must pay interest to the commissioner computed in the same manner that interest on judgments is computed under Minnesota Statutes, section 549.09.

Subp. 5. **Prohibited vendor conduct.** A vendor shall not seek reimbursement from any WIC customer for a voucher or cash-value 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 cash-value 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 or cash-value voucher was used to buy food from the vendor.

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

**History:** *34 SR 790*

#### **4617.0100 APPEALS.**

##### **Subpart 1. Procedures for appeals by applicants and participants.**

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

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

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

##### **Subp. 1a. Procedures for appeals by local agencies, local agency applicants, vendors, and vendor applicants.**

A. A local agency, local agency applicant, vendor, or vendor applicant 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, the termination of the vendor agreement, 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;

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

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

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

B. An appeal by a vendor, vendor applicant, local agency, or local agency applicant must be in writing and be received by the commissioner not more than 30 days after notice of adverse action was mailed. An appeal by a local agency, local agency applicant, vendor, or vendor applicant 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.

C. All appeals by local agencies and local agency applicants are subject to full administrative reviews under item D. Appeals by vendors and vendor applicants are subject

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to full administrative reviews under item D, except that appeals of the following actions by the commissioner are subject to abbreviated administrative reviews under item E:

- (1) denial of authorization based on the vendor applicant's failure to comply with part 4617.0067, subpart 6, item B; C, subitems (1) and (2); D; or E, subitem (1);
- (2) termination of a vendor agreement under part 4617.0066, subpart 2; and
- (3) disqualification of a vendor under part 4617.0084, subpart 2 or 10, item

B.

D. Full administrative reviews shall be conducted under the contested case provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14, and rules adopted thereunder. 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.

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

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

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

(3) The decision maker shall determine whether to uphold the WIC program's action based solely on whether the WIC program has correctly applied federal and state statutes, rules, regulations, policies, and procedures governing the WIC program, according to the information provided to the appellant concerning the cause for the adverse action and the appellant's response. The decision maker shall notify the WIC program and the appellant in writing of the decision maker's determination, including the basis for the determination. If the decision maker is unable to make a determination on the basis of the information filed, the decision maker shall notify the WIC program and the appellant that the procedures described in item D should be followed in connection with the appeal.

Subp. 2. **Judicial review.** An applicant, participant, local agency, local agency applicant, vendor, or vendor applicant aggrieved by the decision of the commissioner or other decision maker 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 applicant or vendor applicant 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 an applicant, participant, local agency, or vendor appeals a disqualification or other sanction, the commissioner has the burden of proof.

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

**History:** *34 SR 790*

**4617.0121 TRANSITION PERIOD.**

Subpart 1. [Repealed, 29 SR 1202]

Subp. 2. [Repealed, 34 SR 790]

Subp. 3. **Effective date.** The provisions in parts 4617.0002, subparts 2a, 3c, 3d, 8, 14c, 14f, 14g, 17b, 19b, 36a, 37a, 40f, 40g, 44, 44b, 44d, 44g, and 46; 4617.0025; 4617.0067, subparts 2 to 6; 4617.0068, subparts 1 to 4, 10, 11, and 13; 4617.0070, subpart 1; 4617.0084,



subparts 2 to 15, 18, and 19; 4617.0090, subparts 1, 1a, 2, 4, and 5; 4617.0100, subparts 1 to 3; and 4617.0176, subparts 1 and 2, are effective August 1, 2009.

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

**History:** *34 SR 790*

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

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

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

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

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

A. whether the food item meets all specifications in the applicable subitem of part 4617.0067, subpart 3, items A, B, and E;

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

C. whether the food item contains any nonnutritive or artificial sweetener; and

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

Subp. 3. [Repealed, 34 SR 790]

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

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

**History:** *34 SR 790*