

Clearinghouse Rule 07-115

PROPOSED ORDER OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICES TO ADOPT RULES

The Wisconsin Department of Health and Family Services proposes to repeal and recreate chapter HFS 149, relating to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) vendors and participants, and affecting small businesses.

SUMMARY OF PROPOSED RULE

Statute interpreted: Sections 46.016 and 253.06, Stats.

Statutory authority: Sections 46.016, 253.06 and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 253.06, Stats., is specific to WIC and requires the Department to promulgate rules to establish the following: minimum qualification standards for the authorization of vendors in the WIC Program, the awarding of a contract to a vendor; and minimum requirements for participants, including prohibited practices.

Related statute or rule:

Plain language analysis:

Under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the federal government provides supplemental foods and nutrition education through payment of cash grants to states that administer the program through local agencies at no cost to eligible persons. The WIC Program serves as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems. In Wisconsin, the WIC Program has 119,000 plus certified participants, comprised of low-income pregnant and breastfeeding women, infants and children under 5 years of age. Seventy local WIC projects (located in city and county public health departments, tribal agencies, private non-profit organizations, and one hospital) administer WIC in designated project service areas. These services include health screening, nutrition assessment and counseling, referrals to other health and social services, and WIC checks to purchase approved nutritious foods at authorized grocery stores and pharmacies (vendors).

The Wisconsin WIC Program is responsible for the authorization of some 1,000 vendors to provide food and infant formula to WIC participants. Applications are screened for basic store and management information, business integrity, and the selection of authorized WIC foods at competitive prices as determined by prices charged by all stores in the same peer group.

This order repeals and recreates ch. HFS 149, the Department's rules for authorizing and monitoring vendors participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), established under 42 USC 1786. The WIC Program in Wisconsin is administered by the Department and local agencies that contract with the Department to provide services such as eligibility determination, nutrition counseling, and food benefit issuance for participants. The existing administrative rules are being repealed and recreated through this

rulemaking order to reflect changes in Wisconsin statutes and federal regulations. The Department proposes to make the following changes to ch. HFS 149:

- Add and revise definitions.
- Increase the standards for eligibility for consideration by the Department as a WIC vendor, including:
 1. The vendor demonstrates business integrity.
 2. The vendor has an acceptable history with WIC and the Food Stamp Program.
 3. The vendor is not delinquent in payment of taxes.
 4. The vendor is not an above-50-percent vendor.
 5. The vendor purchases WIC infant formula only from a supplier listed on the authorized infant formula list.
 6. The vendor has regular, established hours of operation.
- Eliminate specifics about what is on an application for vendor authorization.
- Remove requirement to return incomplete applications to vendors; the state WIC office will work with vendors to complete the application information.
- Clarify vendor responsibilities related to change of ownership. A site visit is required by federal regulation for all initial authorizations, including changes of ownership. The visit can, however, be conducted prior to the legal change, if the vendor will make appropriate assurances that the vendor is accountable for the same information after the sale takes place.
- Consider a store moving within a five mile radius of the closing store a change of location and not a store closing, thus not requiring a new application for authorization.
- Clarify a vendor is required to meet eligibility requirements throughout the vendor's authorization period. If something changes, and the vendor no longer meets the requirements that allowed the vendor to be eligible, the vendor could be disqualified.
- Require vendors to maintain inventory and accounting records for the length of time specified in the agreement and the vendor would make these available as requested.
- Create standards for the use of the WIC logo and acronym.
- Eliminate Class A, B and C designation for vendor violations.
- Incorporate federally mandated sanctions for disqualification of vendors.
- Create discretionary (vs mandatory) sanctions for violations that states can identify.
- Allow forfeitures and corrective plans for some violations by vendors.
- Require civil money penalties in lieu of disqualification if the Department determines that participant access to WIC services is inadequate in the area served by the vendor.
- Allow recoupments and enforcement assessments against vendors.
- Incorporate required sanctions for second, third and subsequent violations by vendors.
- Incorporate Food Stamp Program reciprocal disqualifications for vendors.
- Bar voluntary withdrawal or non-renewal of agreement as an alternative to disqualification of a vendor.
- Specify when a full or abbreviated administrative review may be requested, and those situations where review may not be requested. Allow the Department to summarily suspend a vendor if determined that the violation is a public health emergency.
- Add a new subchapter related to WIC participants and proxies.

- Incorporate mandatory sanctions (1 year disqualification) for participation by a participant in more than one WIC project or clinic at the same time, and the fraudulent receipt of more than \$100 in WIC benefits.
- Include mandatory repayment for all benefits received fraudulently by a participant.
- Specify sanctions for 1, 3 and 6 month state-identified violations by a WIC participant or proxy.
- Specify that disqualification applies to the participant, proxy and all of the participant's family members unless the local project determines that a serious health risk would result.

Summary of, and comparison with, existing or proposed federal regulations: The Department operates the WIC Program under a State Plan pursuant to 7 CFR 246.4. The State Plan is a plan of program operation and administration that describes the manner in which the Department implements and operates all aspects of the WIC Program in Wisconsin. The State Plan addresses vendor management including selection and authorization, training and monitoring, compliance investigations, and vendor sanctions that are related to this rule. The State Plan also addresses participant certification and eligibility including dual participation, participant rights and responsibilities, fair hearing procedures, and a sanction system that are related to this rule.

Comparison with rules in adjacent states:

Iowa: Iowa Administrative Code 641 IAC 73.19(135) and 641 IAC 73.8(135) were revised effective 2006 to incorporate the P.L. 108-265 Child Nutrition and WIC Reauthorization Act of 2004 and subsequent policy and federal regulation revisions. They include the federal requirements related to vendor authorization, responsibilities of vendors, vendor monitoring, participant violations, vendor violations, reciprocal food stamp disqualifications, civil money penalties in lieu of vendor disqualification, approved purchases of infant formula, and elimination of "above 50%" stores. In addition to the violations and sanctions required by regulation, Iowa includes additional requirements for authorization, including a variety of groceries (likely the requirements to be a food stamp authorized store), limited sales from gasoline, alcoholic or tobacco products, regular store hours, and a requirement to order special infant formulas within 48 or 72 hours. The IAC utilizes a point system for assigning sanctions for various violations by vendors and participants.

Minnesota: Minnesota Rule Chapter 4617 was revised in April 2005 and addressed local agencies (not participants), vendors, appeals by vendors and local agencies and vendor applicants, and WIC approved foods. Ch. 4617 also incorporates the P.L. 108-265 and subsequent policy and rule requirements for vendor authorization, responsibilities of vendors, vendor monitoring, vendor violations, reciprocal food stamp disqualifications, civil money penalties in lieu of vendor disqualification, approved purchases of infant formula, and elimination of "above 50%" stores. Added requirement to be authorized to accept food stamps, requires cash registers that generate a receipt and provide a receipt to the participant, regular store hours. Ch. 4617 increased the sanctions for discretionary violations by lengthening the period of disqualification and changing the number of incidents from 3 to 2 before sanctioning, and defines inadequate participant access. Minnesota WIC does not appear to have Rule for participant fraud and abuse; instead it is addressed through program policy and guidance from the state WIC office on a case by case basis.

Illinois: 77 Illinois Administrative Code Ch.X, Part 672, subchapter i was revised effective September 2006 and includes the same federal requirements as stated in Minnesota and Iowa. Additional state requirements include less than 70% gross receipts from the sale of non-alcoholic products; specifies that neither the vendor applicant, vendor, nor any owner of 30% or more ownership shall have been terminated or disqualified from the WIC Program in the previous 3 years. Part 672 has sections on state major violations and sanctions, and state minor violations and sanctions. Illinois does not appear to have Administrative Code for participant fraud and abuse.

Michigan: The Michigan WIC Program does not have administrative rules for WIC; all vendor and participant requirements are either in the vendor contract or in State WIC Program policy.

Summary of factual data and analytical methodologies: The Department referred to all of the following to determine the impact on small businesses, specifically grocers and pharmacies that are directly affected by the proposed rules:

1. The 1997 Economic Census – Wisconsin Geographic Series, which is compiled by the U.S. census bureau every 5 years for each year ending in “2” and “7” and is the latest available economic data compiled on businesses located in Wisconsin.
2. Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department’s proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department’s criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index or reduces revenues by more than the prior year’s consumer price index. For the purposes of this rulemaking, 2006 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2006 is 3.2%.
3. The Department’s WIC vendor and vendor redemption records. Each vendor is placed in a vendor peer group according to the number of cash registers, a valid indicator for the size of store. Small stores are those with 4 or less registers and would be considered a small store.
4. The Wisconsin WIC Program Advisory Committee’s Retailer Sub-committee that includes the Wisconsin Grocers Association and retailers representing large and small grocery stores and pharmacies, reviewed and commented on the draft rule.

Analysis and supporting documents used to determine effect on small business:

The Wisconsin WIC Program assigns each vendor (grocery store and pharmacy) to a vendor peer group based on the number of cash registers, a criteria that has been validated as an accurate indicator of the store size. As of July 2007, peer group 1 consisted of 433 grocery stores with 1-4 cash registers, i.e., a small store. The total redemption of the 433 grocery stores in Peer Group 1 for the month of July 2007 was \$1,567,237, compared to \$1,409,331 for the 222 grocery stores in Peer Group 2 (5-10 registers), and \$3,465,249 for the 232 grocery stores in Peer Group 3 (11 or more registers).

All 165 WIC pharmacies are placed in Peer Group 9, regardless of the number of registers, with a July 2007 total redemption of \$224,150.

All 9 above-50-percent vendors are placed in Peer Group 7. There are 6 small stores and 1 pharmacy in the above-50-percent Peer Group. Total redemption for July 2007 was \$108,450.

The WIC Program is entirely federally funded. No state funding is used for administrative expenses or for food purchases. It is not anticipated that federal food expenditures will be increased as a result of this rule; in fact, food expenditures should be less when the rule is in place. There would be tighter pricing requirements for above-50-percent vendors, and stronger sanctions for fraud and abuse, including recoupsments as a result of overcharging for WIC foods.

Effect on small business:

The proposed rules will affect 439 small grocery stores; however, the proposed rules will not have a significant economic impact on these small businesses that are compliant with this rule. Small stores that do not currently maintain regular established hours of operation may have to increase the time open to at least five days a week for a minimum of two four-hour blocks of time. This requirement may result in an increase in sales that would off-set any increase in costs.

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. Chapter HFS 149 is repealed and recreated to read:

Chapter HFS 149

THE SPECIAL SUPPLEMENTAL NUTRITION
PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

Subchapter I General Provisions

- HFS 149.01 Authority and purpose.
- HFS 149.02 Applicability.
- HFS 149.03 Definitions.

Subchapter II Vendor Authorization and Responsibilities

- HFS 149.04 Food distribution centers.
- HFS 149.05 Minimum requirements for vendor authorization.
- HFS 149.06 Application requirements.
- HFS 149.07 Action on application.
- HFS 149.08 Vendor responsibilities.

Subchapter III Monitoring, Vendor Violations and Sanctions

- HFS 149.09 Monitoring of vendors.
- HFS 149.10 Mandatory vendor disqualification.
- HFS 149.11 Discretionary vendor sanctions.
- HFS 149.12 Civil money penalty in lieu of disqualification.
- HFS 149.13 Recoupment.
- HFS 149.14 Reciprocal food stamp program actions.
- HFS 149.15 Written notice.
- HFS 149.16 Voluntary withdrawal or non-renewal of agreement.
- HFS 149.17 Summary suspension.
- HFS 149.18 Vendor and food distribution centers appeals.

Subchapter IV Participants and Proxies

- HFS 149.19 Conditions of eligibility.
- HFS 149.20 Notification of participant responsibilities.
- HFS 149.21 Denial or disqualification.
- HFS 149.22 Repayments.
- HFS 149.23 Terminating or suspending WIC benefits due to shortage of funds.
- HFS 149.24 Mandatory participant or proxy disqualification.
- HFS 149.25 Participant appeals.

SUBCHAPTER I – GENERAL PROVISIONS

HFS 149.01 Authority and purpose. This chapter is adopted pursuant to ss. 46.016, 227.11 (2) (a) and 253.06 (5) (a), Stats., and a state plan under s. 253.03, Stats., and 7 CFR 246. The rule establishes the criteria for approval of grocery stores and pharmacies as authorized vendors to sell foods to participants under the special supplemental nutrition program for women, infants and children (WIC). This chapter also establishes criteria for individuals who receive or apply to receive benefits under the WIC program. The WIC program was established under s. 17 of the Child Nutrition Act of 1966, as amended, 42 USC 1786 and 7 CFR 246.

HFS 149.02 Applicability. This chapter applies to applicants for WIC vendor authorization, authorized vendors, WIC participants, applicants for WIC program benefits, and persons serving as proxies for participants.

HFS 149.03 Definitions. In this chapter:

(1) "Above-50-percent vendor" means an authorized vendor who derives more than 50 percent of annual food sales revenue from WIC checks. It includes vendor applicants applying for an initial authorization who estimate they will derive more than 50 percent of annual food sales revenue from WIC checks.

(2) "Agreement" means the document signed by a vendor and the state WIC office that contains the terms and conditions under which the vendor is authorized to accept and redeem WIC checks in exchange for authorized food; the completed application form; the vendor's stock price surveys; the vendor manual; the list of authorized food; memos or other formal instructions; and the terms of participation issued by the state WIC office to vendors.

(3) "Authorized food" means food identified by the department in accordance with 7 CFR 246.10 as acceptable for use under the federal special supplemental food program for women, infants and children under 42 USC 1786. "Authorized food" is a reference to the types, brands, or varieties of foods approved by the state WIC office and is commonly referred to by the department and local projects as "approved foods".

(4) "Authorized infant formula provider list" means the list of wholesalers, distributors, retailers and manufacturers approved by the state WIC office to provide infant formula to authorized vendors.

(5) "Authorized vendor" means a vendor that has been authorized by the department to accept WIC checks from participants and have the WIC checks redeemed by the department.

(6) "Change of ownership" means any transfer of the right to control the assets or management of an authorized vendor, or any majority changes in ownership of a vendor

(7) "Civil money penalty" means a monetary penalty imposed on an authorized vendor in lieu of disqualification as specified under 7 CFR 246.12 (l) (1) (ix-x).

(8) "Contract period" means the period of time a vendor is an authorized vendor.

(9) "Customer area" means the portion of a grocery store or pharmacy that is normally frequented by customers and does not include storage or other areas that are normally not frequented by customers.

(10) "Department" means the Wisconsin department of health and family services.

(11) "Disqualification" means the official act by the department of ending WIC participation of either an authorized vendor or of a participant because of a program violation.

(12) "Draft" means the negotiable instrument distributed by the department for use by a participant to purchase authorized food. "Drafts" are commonly referred to by the department, local projects, vendors, and participants as "WIC checks".

(13) "Enforcement assessment" means the supplemental food enforcement surcharge added to a forfeiture or recoupment.

(14) "Food distribution center" means an entity, other than a vendor, that is under contract with the department under s. 253.06 (3m), Stats., to distribute authorized food to participants.

(15) "Food sales" means the sales of all foods that are eligible items under the food stamp program.

(16) "Food stamp program" means the assistance program under 7 USC 2011 to 2029, and known in Wisconsin as the FoodShare Program.

(17) "Forfeiture" means the sum of money required to be paid to the state WIC office as a result of a vendor violation.

(18) "Grocery store" means a retail store that sells a general line of food for the household to eat, such as breads and cereals; fruits and vegetables; meats, fish, and poultry; and dairy products or a store authorized by the food stamp program as a specialty store.

(19) "Initial authorization" means the authorization for a vendor when the vendor was not an authorized vendor at the time an application for authorization was submitted.

(20) "Local project" means an agency that has a contract with the department to provide WIC services such as eligibility determination, WIC check distribution and nutrition counseling for participants.

(21) "Local project clinic" means a site established by a local project that carries out the functions of the local project in a facility separate from the local project.

(22) "Maximum food price" is the maximum amount a vendor within each vendor peer group may charge for an authorized food item or for a standardized combination of foods.

(23) "Minimum stock requirement" means the types, varieties, brands and quantities of foods that authorized vendors are required to keep in the customer area as specified in the WIC vendor manual and stock price survey.

(24) "Non-sale" means the price of an item that has not been reduced in price.

(25) "Preauthorization site visit" means the on-site review of the vendor conducted by the state WIC office staff or its designee to verify the information on the WIC vendor application, to evaluate the cleanliness of the establishment, and to evaluate the freshness of the authorized foods on the premises.

(26) "Participant" means a person who is eligible for and receives services under s. 253.06, Stats.. In administering the WIC program under s. 253.06, Stats., and 7 CFR 246, the department has determined that a participant includes an infant, child under age 5, and a pregnant, breastfeeding, or postpartum woman.

(27) "Pharmacy" means an establishment that is issued a license to operate as a pharmacy under s. 450.06, Stats.

Note: Under this chapter, "Pharmacy" includes the persons conducting transactions on behalf of the pharmacy, including the owner, manager, a representative, an employee or any other individual who directly or indirectly participates in the operation of the pharmacy.

(28) "Proxy" means a person who has been designated in writing by a participant or by the department to obtain and exchange WIC checks for authorized food on behalf of the participant.

(29) "Sanction" means a penalty imposed by the local project or state WIC office on a vendor, participant, or participant's proxy because of a violation of this chapter and includes disqualification, recoupment, forfeiture, enforcement assessments under s. 253.06 (5) (b) 5., Stats., or civil money penalties.

(30) "Standardized combination of foods" means a group of authorized foods selected by the state WIC office.

(31) "State WIC office" means the section of the department assigned to administer WIC.

(32) "Stock price survey" means the department form on which a vendor's prices for authorized food are listed.

Note: The stock price survey can be obtained from the WIC Portal at <https://www.wicvendorwi.org/> or http://dhfs.wisconsin.gov/wic/wicPro/Vendor_Auth/index.htm, or write to the State WIC Office, Vendor Management, Division of Public Health, P. O. Box 2659, Madison, WI 53701-2659, or call 608-266-6912, or submit a fax request at 608-266-1514.

(33) "USDA" means the United States department of agriculture.

(34) "Vendor" means a grocery store or pharmacy that sells authorized foods. A vendor can be a sole proprietorship, a partnership, a cooperative association, a corporation, or another business entity operating one or more grocery stores or pharmacies.

(35) "Vendor manual" means the manual that the state WIC office publishes that describes the WIC program and program policies related to the provision of authorized food to participants, including program policies, periodic updates and amendments, applicable rules, and other requirements.

(36) "Vendor peer group" means 2 or more vendors who have similar characteristics as determined by the state WIC office.

(37) "Vendor stamp" means a rubber stamp provided to an authorized vendor or food distribution center by the state WIC office to validate WIC checks.

(38) "WIC benefit" means WIC checks, authorized food purchased with WIC checks, and WIC breast pumps.

(39) "WIC participant identification" means the document issued by a local project to the participant or the participant's parent or guardian that includes the signature of the participant or the participant's parent or guardian as well as the signature of each proxy authorized to spend the participant's WIC checks.

(40) "WIC program" or "WIC" means the special supplemental nutrition program for women, infants and children established pursuant to 42 USC s.1786, and 7 CFR 246, and s. 253.06, Stats.

SUBCHAPTER II - VENDOR AUTHORIZATION AND RESPONSIBILITIES

HFS 149.04 Food distribution centers. Food distribution centers shall comply with this chapter and s. 253.06, Stats.

HFS 149.05 Minimum requirements for vendor authorization. A vendor may be eligible to become an authorized vendor, remain an authorized vendor, or be eligible for renewal as an authorized vendor if all of the following conditions are met:

- (1) The vendor is located in Wisconsin.
- (2) The vendor has a fixed location unless otherwise allowed by the state WIC office, as in the case of a designated disaster or emergency.
- (3) The vendor demonstrates business integrity.
- (4) The vendor and any of its representatives, agents, managers, employees, or other persons who directly or indirectly participates in the operation of the grocery store or pharmacy has not been convicted of a crime, or have had a civil or criminal judgment entered against them in Wisconsin or any other state during the last 6 years for an activity that would indicate a lack of business integrity.

Note: Activities that would indicate a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or aiding and abetting.

- (5) The vendor and any of its representatives, agents, managers, employees or other persons who directly or indirectly participate in the operation of the grocery store or pharmacy, who has current or prior involvement with WIC or the food stamp program, has an acceptable history with WIC and the food stamp program. In determining whether the history is acceptable, the state WIC office shall consider the person's history with either WIC or the food stamp program, including

whether the person conducts or has conducted business without authorization by WIC or the food stamp program as applicable.

(6) The vendor is not currently disqualified from the food stamp program and has not had a food stamp program civil money penalty suspended for hardship where the disqualification period that would otherwise have been imposed has not expired.

(7) The vendor has not been adjudged to be delinquent in the payment of taxes under chs. 71, 72, 76, 77, 78 or 139, Stats.

(8) The vendor has not been sold by its previous owner to another vendor or owner in an attempt to circumvent a WIC sanction. The state WIC office may consider such factors as whether the previous owner sold the grocery store or pharmacy to a person who is related by blood or marriage to the previous owner or sold to any individual or organization for less than the grocery store or pharmacy's fair market value.

(9) The vendor has no outstanding forfeitures, recoupment assessments, enforcement assessments, or civil money penalties that were levied against that vendor for a violation of this chapter, or for a violation of s. 253.06, Stats., or 7 CFR 246.

(10) The vendor is not an above-50-percent vendor at the time of the initial application for authorization to be a WIC vendor.

(11) The vendor's maximum price for a standardized combination of foods is the same or less than the prices charged by other vendors in the vendor's peer group.

(12) The vendor purchases infant formula provided to participants only from a supplier listed on the authorized infant formula provider list.

(13) The vendor has regular, established hours of operation which include a minimum of two 4-hour blocks of time on each of 5 days per week and daily operating hours are consistent from week to week.

(14) The vendor has not accepted WIC checks before becoming an authorized vendor.

(15) The vendor meets the minimum stock requirement on shelves or in coolers in the customer area, unless otherwise specified in the contract.

HFS 149.06 Application requirements.

(1) Only persons who meet the eligibility requirements under s. HFS 149.05 may apply for authorization. An eligible person who wishes to apply for authorization shall apply to the state WIC office on an application form obtained from the state WIC office. The person applying for initial authorization shall complete each application form fully and accurately; submit for each application a stock price survey indicating the non-sale prices of approved food available on the day the application is submitted to the state WIC office; participate in training as requested under sub. (2); and provide additional information requested from the state WIC office or the state WIC office

designee. An application for authorization shall be submitted under each of the following circumstances:

(a) *Multiple locations.* If a person wishes to accept and redeem WIC checks at multiple locations, a separate application shall be completed and submitted for each grocery store or pharmacy for which the person wishes to accept and redeem WIC checks.

(b) *Change of ownership.* If a person takes ownership, whether by gift, purchase, or lease of an authorized vendor, the person taking ownership shall submit an application at least 15 days before change of ownership

(c) *Change of vendor location.* 1. If the location of an authorized vendor is changed, the person responsible for the change shall complete an application for authorization for the new location unless the new location is within a 5 mile radius of the vendor's previous authorized location and the previous location is being closed.

2. If the new location is more than a 5 mile radius of the vendor's previous location and the previous location is not being closed, the vendor may not accept or redeem WIC checks at the new location until the vendor has received authorization from the state WIC office for the new location.

Note: See s. HFS 149.08 (6) for procedures for reporting a change of location.

(d) *Renewal vendor authorization.* An authorized vendor who meets the eligibility requirements under s. HFS 149.05 and who wishes to renew its vendor authorization, shall submit an application for renewal to the state WIC office each 3 year contract period following initial authorization for each location as applicable.

Note: Obtain the application form for vendor authorization from the WIC Portal at <https://www.wicvendorwi.org/>, or http://dhfs.wisconsin.gov/wic/wicPro/Vendor_Auth/index.htm, or write to the State WIC Office, Vendor Management, Division of Public Health, P. O. Box 2659, Madison, WI 53701-2659, or call 608-266-6912, or submit a fax request at 608-266-1514.

(2) As part of the application process, the vendor or its designee, for each location for which authorization is requested shall participate in a training session at a time and location designated by the state WIC office or the state WIC office designee.

HFS 149.07 Action on application. (1) INITIAL AUTHORIZATION. Within 60 days after receipt by the state WIC office of a fully and accurately completed application for initial authorization, state WIC office staff shall approve or deny the application after doing all of the following:

(a) Determining whether the applicant for initial authorization meets the eligibility requirements under s. HFS 149.05.

(b) Conducting a preauthorization site visit if the applicant meets all of the application requirements and is eligible under s. 149.05 and 149.06 for authorization. During the

preauthorization visit, staff of the state WIC office or the state WIC office designee shall determine whether all of the following requirements are being met:

1. The vendor meets the minimum stock requirement on shelves or in coolers in the customer area, unless otherwise specified in the agreement.

2. The vendor marks or affixes the prices of authorized food directly on food containers, on the shelves in close proximity to the food, or in the immediate area where the foods are kept in the customer area of the store.

3. The vendor's prices are substantially the same as those listed on the stock price survey submitted with the application for authorization.

4. The vendor maintains the grocery store or pharmacy in a clean, orderly, and safe condition.

5. The vendor's foods are fresh and do not have expired dates or codes of freshness use-by date in the customer area.

(c) 1. If all of the requirements of the preauthorization site visit are not met, the state WIC office may issue a corrective action plan on which the vendor shall have the opportunity to correct the situation and submit the corrective action plan to the state WIC office describing how the situation has been corrected and request a second preauthorization site visit.

2. If the vendor passes the second preauthorization site visit, the state WIC office shall proceed with the authorization process for the vendor.

3. If the vendor fails the second preauthorization site visit, the vendor may not submit a WIC vendor application until 6 months after the date of the denial of the first failed preauthorization site visit.

4. If the vendor does not submit the corrective action plan to the state WIC office within 6 months from the date of the notification of denial, the vendor shall file a new application.

(d) If the vendor meets the preauthorization site visit requirements, the vendor or the vendor's designee shall participate in a training session at a location designated by the state WIC office or the state WIC office designee.

(e) The state WIC office shall distribute the WIC vendor agreement and vendor stamp to the vendor upon satisfactory completion of the application requirements under ss. HFS 149.05, 149.06, and 149.07 (1).

(2) RENEWAL AUTHORIZATION. Within 120 days after receipt by the state WIC office of a fully and accurately completed application for continued authorization as a vendor for a new contract period, the state WIC office shall either approve or deny the application for authorization.

(3) EXPIRATION OR TERMINATION OF AUTHORIZATION. (a) Vendor authorizations shall expire on October 31, 2010 and every 3 years thereafter on October 31, regardless of the date initial authorization was granted, unless the vendor is earlier disqualified. A new application shall be submitted for each 3-year authorization period.

(b) Vendor authorization shall terminate automatically upon a change of ownership, including when the state WIC office determines that a change of location constitutes a change of ownership.

(4) DENIAL OF AUTHORIZATION. (a) The state WIC office may deny vendor authorization for any one of the following reasons:

1. The vendor does not meet the requirements under s. 149.05, s.149.06, and s. 149.07 (1). If the state WIC office determines that denying an application for authorization would inhibit participant access to WIC services, the state WIC office may waive any requirement for vendor eligibility for authorization.

2. The vendor does not comply with requirements of the WIC program, including federal and state statutes, local ordinances, or federal and state regulations relating to WIC program operation, or other food and nutrition service programs of the USDA.

3. The application contains false information.

4. The vendor is in violation of any other applicable federal, state, or local health protection laws or ordinances.

(b) If the state WIC office denies an application, the state WIC office shall give the vendor reasons for the denial in writing and inform the vendor of the right to appeal that decision under s. HFS 149.18.

HFS 149.08 Vendor responsibilities. (1) COMPLIANCE WITH FEDERAL, STATE AND LOCAL REQUIREMENTS. An authorized vendor shall comply with all of the following:

(a) The WIC program requirements specified in this chapter, s. 253.06, Stats., and 7 CFR 246.

(b) Applicable federal, state and local health protection laws.

(c) The current WIC vendor agreement.

(2) PROHIBITED PRACTICES. A vendor may not do any of the following:

(a) Provide in exchange for a WIC check to a participant or a participant's proxy alcohol, an alcoholic beverage, a tobacco product or any other food other than the authorized food specified on the WIC check, or provide any coupon or certificate for these items contingent upon spending the WIC check or provided to a participant or a participant's proxy for a purchase made with a WIC check.

- (b) Provide cash in exchange for a WIC check to participants or the participant's proxy.
- (c) Charge sales tax on WIC food purchases.
- (d) Provide in exchange for a WIC check to a participant or a participant's proxy authorized foods in quantities that are more than the quantities specified on the WIC check.
- (3) REQUIRED PRACTICES. An authorized vendor shall do all of the following:
 - (a) Comply with WIC check processing and redemption procedures described in the agreement.
 - (b) In conjunction with a change of ownership, timely submit in the vendor's bank account all WIC checks for redemption.
 - (c) Charge the participant or the participant's proxy prices that are the same or lower than prices charged to other customers.
 - (d) Provide stock price surveys to the state WIC office upon request of the state WIC office or the state WIC office designee.
 - (e) Mark or affix the prices of authorized food directly on food containers, on the shelves in close proximity to the food, or in the immediate area where the foods are kept in the customer area of the store.
 - (f) Charge a price for an authorized food or standardized combination of foods that is the same or lower than the maximum food price established by the state WIC Office.
 - (g) Maintain prices of authorized foods at levels that would make the vendor eligible for authorization.
 - (h) Keep a copy of the WIC agreement on file.
 - (i) Display a sign, sticker or other evidence of authorization as a vendor in an area visible to participants.
 - (j) Ensure that the current list of authorized foods is readily accessible to cashiers.
 - (k) Timely provide all information requested during the application process and contract period by the state WIC office or the state WIC office designee.
 - (l) Maintain inventory and accounting records as specified by the agreement for the period of time specified in the agreement.

(m) Make available upon the request of representatives of the state WIC office, or the USDA, or the comptroller general of the United States all WIC checks in the vendor's possession and all required inventory and accounting records for inspection and audit.

(4) USE OF VENDOR STAMP. (a) Only the authorized vendor may use the vendor stamp to validate a WIC check.

(b) The authorized vendor shall keep the vendor stamp in a safe place and shall report loss of the vendor stamp to the state WIC office within 2 days of the loss.

(c) A vendor stamp may not be duplicated.

Note: Report the loss of a WIC vendor stamp to the State WIC Office, Vendor Management, at 608-266-6912.

(d) The authorized vendor shall return the vendor stamp to the state WIC office within 15 days following a change of ownership, upon closing the store, or upon disqualification of authorization under s. 149.10 and s. 149.11.

Note: Return the vendor stamp to the State WIC Office, Vendor Management, Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

(5) USE OF THE WIC ACRONYM AND LOGO. (a) A vendor may use the acronym "WIC" or the WIC logo to identify the vendor as an authorized vendor and to identify authorized foods in the store.

(b) No vendor may include the acronym "WIC" in the name under which the vendor is registered in the WIC program or in the name under which the vendor does business.

(c) No vendor may include the WIC logo, or close facsimiles of the WIC logo, in total or in part, in the name under which the vendor is registered in the WIC program or in the name under which the vendor does business.

(6) REPORTING REQUIREMENTS. At least 15 days before a change of location, name, address, management, corporate officers or majority stockholders the vendor shall report the change in writing to the state WIC office or its designee on a form provided by that office.

Note: Obtain the amendment form from the WIC Portal at <https://www.wicvendorwi.org/>, or http://dhfs.wisconsin.gov/wic/wicPro/Vendor_Auth/index.htm, or write to the State WIC Office, Vendor Management, Division of Public Health, P. O. Box 2659, Madison, WI 53701-2659, or call 608-266-6912, or submit a fax request at 608-266-1514.

(7) SERVICES TO PARTICIPANTS. The authorized vendor shall offer a participant or the participant's proxy the same courtesies offered to other customers, and treat a participant and the participant's proxy in accordance with non-discrimination requirements under 7 CFR 15, subpart A.

(8) TRAINING. The vendor or least one designee from each authorized location shall satisfactorily complete any training sessions required by the state WIC office or the state WIC office designee. The authorized vendor shall ensure that all employees who process WIC checks are trained in check processing procedures.

(9) VENDOR RESPONSIBILITY FOR OPERATIONS. An authorized vendor or vendor applicant is responsible for violations of this chapter committed by its owners, officers, managers, employees, agents, representatives or other individuals who directly or indirectly participate in the vendor's operations.

(10) REPORTING OF PARTICIPANT NONCOMPLIANCE. A vendor shall report to the state WIC office or its designee on a form provided by the office any instance in which a participant fails to comply with WIC requirements.

Note: Obtain the complaint form from the WIC Portal at <https://www.wicvendorwi.org/>, or http://dhfs.wisconsin.gov/wic/wicPro/Vendor_Auth/index.htm, or write to the State WIC Office, Vendor Management, Division of Public Health, P. O. Box 2659, Madison, WI 53701-2659, or call 608-266-6912, or submit a fax request at 608-266-1514.

SUBCHAPTER III – MONITORING, VENDOR VIOLATIONS AND SANCTIONS

HFS 149.09 Monitoring of vendors. (1) The state WIC office or the state WIC office designee may monitor a vendor at any time during a contract period including compliance buys, inventory audits, or routine on-site inspections.

(2) When during the course of a single monitoring, the state WIC office determines an authorized vendor has committed multiple violations, the state WIC office shall impose the sanction corresponding to the most serious violation under s. HFS 149.10 and s. 149.11.

HFS 149.10 Mandatory vendor disqualification. (1) MANDATORY PERMANENT DISQUALIFICATION. (a) 1. The state WIC office shall permanently disqualify a vendor from participation in the WIC program if the vendor is convicted of providing cash in exchange for a WIC check or of selling a firearm, ammunition, explosive or controlled substance in exchange for a WIC check. Disqualification of a vendor shall be effective upon the postmark date of the notice of administrative action by the state WIC office to the vendor's address of record.

2. A civil money penalty may not be imposed in lieu of a disqualification under this subsection.

(b) A vendor may not receive compensation from the WIC program for revenues lost as a result of a disqualification under par. (a).

(2) MANDATORY SIX YEAR DISQUALIFICATION. The state WIC office shall disqualify a vendor from participation in the WIC program for 6 years for any one of the following:

(a) One incident of buying or selling a WIC check for cash.

(b) One incident of selling in exchange for a WIC check a firearm, ammunition, an explosive, or a controlled substance as defined in 21 U.S.C. 802.

(3) MANDATORY THREE YEAR DISQUALIFICATION. The state WIC office shall disqualify a vendor from participation in the WIC program for 3 years for any one of the following:

(a) One incident of selling in exchange for a WIC check, alcohol, an alcoholic beverage or a tobacco product.

(b) Three or more incidents of any of the following:

1. Claiming reimbursement for the sale of a specific authorized food in an amount that exceeds the vendor's documented inventory of that food for the same period of time.

2. Intentionally or unintentionally charging a participant or the participant's proxy more for authorized food than non-participants are charged for authorized food.

3. Charging a participant or the participant's proxy more than the current shelf price for an authorized food.

4. Receiving or redeeming a WIC check outside of authorized channels, including receiving or redeeming a WIC check for a vendor that is not an authorized vendor; redeeming a WIC check for food purchased at an address other than the store address that appears on the authorized vendor's application; or depositing a WIC check into a bank account other than the authorized vendor's bank account.

5. Charging for authorized food not received by a WIC participant or the participant's proxy.

6. Providing in exchange for a WIC check, credit or non-food items other than alcohol, an alcoholic beverage, a tobacco product, cash, a firearm, ammunition, explosive, or controlled substance as defined in 21 U.S.C. 802.

(4) MANDATORY ONE YEAR DISQUALIFICATION. The state WIC office shall disqualify a vendor from participation in the WIC program for one year for any one of the following:

(a) Three or more incidents of providing unauthorized food in exchange for a WIC check.

(b) Three or more incidents of charging for authorized food provided in excess of the amount of food listed on the WIC check.

(5) SECOND MANDATORY DISQUALIFICATION. When a vendor who previously has received a mandatory disqualification receives a second subsequent mandatory disqualification, the state WIC office shall impose a double period of disqualification.

(6) THIRD OR SUBSEQUENT MANDATORY DISQUALIFICATION. When a vendor who has received 2 or more mandatory disqualifications receives another subsequent mandatory

disqualification, the state WIC office shall double the third period of disqualification and all subsequent periods of disqualification.

(7) **PRIOR NOTIFICATION.** For violations listed in subs. (3) (b) and (4), the state WIC office shall notify the authorized vendor of the initial violation prior to documenting another violation, unless the state WIC office determines that notifying the authorized vendor would compromise an investigation.

HFS 149.11 Discretionary vendor sanctions. (1) **UP TO ONE YEAR DISQUALIFICATION.** The state WIC office may send a warning letter to the vendor, require training for designated vendor personnel, require implementation of a corrective action plan, require payment of a forfeiture, require recoupment, disqualify the vendor for no more than one year, or impose any combination of sanctions for any one of the following violations:

- (a) Providing cash for returned authorized food.
- (b) Failing to implement a corrective action plan imposed by the state WIC office.
- (c) Failing to meet the minimum requirements for authorization listed in s. HFS 149.05 (3) to (15).
- (d) Providing false information to the state WIC office.
- (e) One or 2 incidents of violations stated in s. HFS 149.10 (3) and (4).

(2) **UP TO 6 MONTH DISQUALIFICATION.** The state WIC office may send a warning letter to the vendor, require training for designated vendor personnel, require implementation of a corrective action plan, require payment of a forfeiture, require recoupment, disqualify the vendor for no more than 6 months, or impose any combination of sanctions for any one of the following violations:

- (a) Failing to comply with WIC check processing and redemption procedures described in the agreement.
- (b) Failing to mark or affix the prices of authorized food directly on food containers, on the shelves in close proximity to the food, or in the immediate area where the foods are kept in the customer area of the store.
- (c) Stocking or selling foods that are not fresh and have expired dates or codes of freshness use-by date in the customer area.
- (d) Failing to complete training as required by the state WIC office or the state WIC office designee.
- (e) Failing to maintain the grocery store or pharmacy in a clean, orderly and safe condition.

(f) Failing to timely provide all information requested during the contract period by the state WIC office or the state WIC office designee.

(g) Duplicating or using a duplicate vendor stamp.

(h) Failing to provide to a WIC participant or the participant's proxy the same courtesies as offered to other customers.

149.12 Civil money penalty in lieu of disqualification. (1) Except where prohibited by s. 149.10 (1) and federal regulation, if the state WIC office determines in its sole discretion that disqualification of the authorized vendor would result in inadequate participant access, the state WIC office shall impose a civil money penalty in lieu of disqualification.

(2) The state WIC office shall use the formula under 7 CFR s. 246.12 to calculate a civil money penalty imposed in lieu of disqualification for violations in s. HFS149.10 (2) to (4). The civil money penalty may not exceed \$10,000 for each violation. When during the course of a single investigation the state WIC office determines a vendor has committed multiple violations, the state WIC office shall impose a civil money penalty for each of the violations, not to exceed \$40,000 for a single investigation.

(3) If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty, the state WIC office shall disqualify the vendor for the length of the disqualification corresponding to the most serious violation for which the civil money penalty was assessed.

(4) The state WIC office may use installment plans for the collection of civil money penalties.

(5) The state WIC office may double civil money penalties up to the limits allowed under sub. (2).

(6) The state WIC office may not impose a civil money penalty in lieu of disqualification for third or subsequent violations that mandate disqualification.

HFS 149.13 Recoupment. The state WIC office may recoup excess payments made to the vendor resulting from the vendor's violation of this chapter. If a recoupment is imposed, the state WIC office shall also impose an enforcement assessment of 50 percent of the amount of the recoupment imposed.

HFS 149.14 Reciprocal food stamp program actions. (1) The state WIC office shall disqualify from the WIC program a vendor who is disqualified from the food stamp program.

(2) The state WIC office shall impose a civil money penalty in lieu of a disqualification for a food stamp disqualification if the state WIC office determines that WIC disqualification would result in inadequate participant access.

(3) The state WIC office may disqualify a vendor who has had a civil money penalty imposed by the food stamp program in lieu of disqualification.

HFS 149.15 Written notice. The state WIC office shall begin an adverse action, including disqualification, denial, or imposition of a civil money penalty, forfeiture, recoupment or enforcement assessment by serving upon the vendor a written notice of the action. With the exception of s. HFS 149.10 (1), the service shall be made by certified mail or personal delivery at least 15 days in advance of the effective date of the action described in the notice.

HFS 149.16 Voluntary withdrawal or non-renewal of agreement. Except as provided in the discretionary sanctions listed in s. HFS 149.11, the state WIC office may not accept an authorized vendor's voluntary withdrawal from the WIC program, or use non-renewal of the vendor contract as an alternative to disqualification.

HFS 149.17 Summary suspension. If the department finds that public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of WIC authorization may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

HFS 149.18 Vendor and food distribution centers appeals. (1) (a) A vendor or food distribution center may appeal an adverse action by requesting a hearing or an expedited review. Vendor appeals are governed by this section and 7 CFR 246.18, ch. 227 Subch. III, Stats., and s. 253.06 (6), Stats., and HA 1.

(b) Requests appealing an adverse action shall be in writing and shall be filed within 15 days after service of notice of the adverse action. A request shall be considered filed on the date of actual receipt by the agency, or the date of the postmark, whichever is earlier. A request filed by facsimile is complete upon transmission. If the request is filed by facsimile transmission and such transmission is complete between 5 p.m. and midnight, one day shall be added to the prescribed period.

(2) REQUESTS FOR HEARING. Requests for an administrative hearing shall be filed with the department of administration's division of hearings and appeals.

Note: Requests for an administrative hearing should be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707-7875 or faxed to 608-264-9885. Requests may be delivered in person to that office at 5005 University Avenue, Room 201, Madison, Wisconsin.

(3) ACTIONS NOT APPEALABLE. The following actions are not subject to appeal:

1. Expiration of a vendor's authorization.
2. The validity or appropriateness of the state WIC office's selection criteria.
3. The validity or appropriateness of the state WIC office's vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors.

4. The validity or appropriateness of the state WIC office's participant access criteria and the state WIC office's determination regarding participant access to WIC services.

5. The state WIC office's determination of whether a vendor had an effective policy and program in effect to prevent trafficking and whether the vendor owner was involved in the conduct of the violation.

6. Denial of authorization if the state WIC office vendor authorization is subject to procurement procedures applicable to the state agency.

7. Disputes regarding WIC check payments and vendor claims, other than the opportunity as permitted by 7 CFR 246.12(k)(3) to justify or correct a vendor overcharge or other error.

8. Disqualification of an authorized vendor as a result of disqualification from the food stamp program.

(4) ABBREVIATED REVIEW. (a) As an alternative to an administrative hearing, a vendor may request from the department an abbreviated review for any of the following actions taken by the state WIC office:

1. Denial of authorization based on a food stamp program disqualification or civil money penalty in lieu of disqualification from the food stamp program.

2. Denial of authorization based on vendor selection criteria if the basis of the denial is a WIC vendor sanction or a food stamp program withdrawal of authorization or disqualification.

3. Termination of the agreement because of a change in ownership or location or cessation of operations.

(b) Requests for abbreviated review shall be filed with the state WIC office.

Note: Requests for an abbreviated review should be addressed to the Wisconsin WIC Program Director, P.O. Box 2659, Madison, Wisconsin, 53701-2659, or faxed to 608-266-3125. Requests may be delivered in person to that office at 1 W. Wilson Street, Room 243, Madison, Wisconsin.

(c) 1. A vendor request for an abbreviated review shall be in writing and include all of the following:

a. The vendor's name and address.

b. A description of the adverse action for which the vendor requests an abbreviated review.

c. A specific description of the mistake in fact or law which the vendor contends constitutes reasonable grounds for reversing decision of the state WIC office to deny an authorization or terminate an agreement. If the vendor asserts that a mistake in fact was made, the

request shall include a concise statement of the essential facts which the vendor intends to establish at the review. If the vendor asserts a mistake in law was made, the request shall include a statement of the law upon which the vendor relies.

2. The agency review shall be conducted by a decision-maker who is someone other than the person who rendered the initial decision on the action.

3. The decision-maker's determination shall be based solely on whether the state WIC office correctly applied federal and state statutes, regulations, policies, and procedures governing the program, according to the information provided to the vendor in the notice of denial of authorization or termination of agreement and the vendor's response.

4. If the designated decision-maker determines that a conference with the parties would assist in the completion of his or her review, the decision-maker may issue a notice of conference, prepared on forms prescribed by the department and including a description of conference procedures. A conference shall not be held without the consent of the vendor.

5. The decision-maker shall issue written notification of the abbreviated review decision.

6. The decision-maker's review decision shall constitute the agency's final decision. Review decisions shall include notice of a vendor's right to appeal the determination to circuit court.

SUBCHAPTER IV - PARTICIPANTS AND PROXIES

HFS 149.19 Conditions of eligibility. In order to be certified or remain certified to receive WIC benefits, an individual shall meet all of the following requirements:

(1) Is an infant, a child under age 5, pregnant, breastfeeding or a postpartum woman who is within 6 months of delivery.

(2) Live in Wisconsin.

(3) Have a household gross income that is less than or equal to 185% of the federal poverty level, based on family size. A participant is also income eligible if the participant is currently certified eligible to receive FoodShare, Medicaid, or other such programs.

(4) Have a health or diet need, as determined by WIC staff.

HFS 149.20 Notification of participant responsibilities. (1) CERTIFICATION APPOINTMENTS. During each certification appointment the local project shall do all of the following:

(a) Inform each applicant, participant, parent, guardian or proxy that it is a violation of state and federal law to participate in more than one local project or local project clinic at the same time. The local project shall provide each applicant, participant or their representatives with a written

copy of the participant rights and responsibilities and offer the opportunity to have these rights and responsibilities read to them upon request.

(b) Offer each participant, parent, guardian or proxy an explanation of how to use WIC checks, a copy of instructions for using WIC checks, an explanation on how to select authorized WIC food, and a list of authorized vendors.

(2) Before the local project loans a participant a WIC-purchased electric breast pump, the local project shall notify each participant who is loaned a pump that the pump must be returned to the local project at the end of the agreed period.

HFS 149.21 Denial or disqualification. (1) If the local project determines that an applicant does not meet all of the eligibility requirements for the WIC program, the local project shall notify the applicant or his or her parent or guardian in writing of the ineligibility, the reasons for the ineligibility, and the right to a fair hearing on the determination of ineligibility within 15 days of the determination of ineligibility.

(2) If the local project determines, at any time during the certification period, that a participant is disqualified from program participation, the local project shall notify the participant, parent or guardian in writing at least 15 days before the disqualification. The notice shall specify the reason for the disqualification and advise the participant, parent or guardian of the right to a fair hearing on the determination of the disqualification.

(3) A local project may serve notice of denial or disqualification by certified mail to the participant's address of record or by personal delivery. If service is by certified mail, notice shall be considered filed on the date of mailing.

HFS 149.22 Repayments. (1) If the local project determines that a participant has received or disposed of WIC benefits fraudulently, the local project shall provide written notice to the participant, parent or guardian of the intent to recover the funds. Such notification shall include an explanation of the reasons for the repayment and of the participant's right to a hearing. The local project shall allow 30 days for the participant to repay the funds or to set up a repayment schedule between the local project and the participant before taking additional collection actions.

(2) A local project may serve determination of repayment by certified mail to the participant's address of record or by personal delivery. If service is by certified mail, notice shall be considered filed on the date of mailing.

HFS 149.23 Terminating or suspending WIC benefits due to shortage of funds. If the state WIC office determines that due to a shortage of funds for the WIC program, a participant's WIC program benefits will be terminated or suspended, the local project shall issue a notice to the participant or the participant's parent or guardian at least 15 days before the termination or suspension.

HFS 149.24 Mandatory participant or proxy disqualification. (1) MANDATORY ONE YEAR DISQUALIFICATION. (a) Except as provided in par. (b), the local WIC project shall disqualify a participant and the participant's proxy and other family members from the WIC program

for one year if the local project determines that the participant or proxy has committed any one of the following violations:

1. Intentionally participating in and spending WIC checks from more than one WIC project or WIC project clinic during the same time period.
2. Intentionally participating in the WIC program and in the commodity supplemental food program at the same time.
3. Committing any violation that results in fraudulent receipt or disposal of \$100 or more in WIC benefits.
4. Being assessed by the local project a second or subsequent repayment.

(b) *Exceptions to mandatory one year disqualification.* The local project may decide not to impose the mandatory one year disqualification if within 30 days of the date of mailing a repayment letter, the participant makes full repayment or agrees to a repayment schedule acceptable to the local WIC project.

(c) *Mandatory repayment.* 1. Except as provided in subd. 3., if an individual fraudulently receives or disposes of WIC program benefits, the local project shall require repayment of the full amount fraudulently received or disposed.

2. If the participant does not make full repayment within 30 days or if a repayment schedule is not agreed upon within 30 days, the local project shall provide a second written request for repayment. The state WIC office may take additional collection actions for total repayments exceeding \$250.

3. For repayment of infant formula benefits, the state WIC office may allow the participant to repay an amount that is lower than the full price of the infant formula.

(2) **MANDATORY SIX MONTH DISQUALIFICATION.** The local project shall disqualify a participant and the participant's proxy and other family members from the WIC program for 6 months if the local project determines that the participant or proxy has committed any one of the following violations:

(a) Intentionally falsely reported the loss or theft of WIC participant identification or one or more WIC checks, and spent one or more WIC check from both the first set and the replacement set of checks.

(b) Intentionally provided a false statement, concealed or misrepresented a fact, gave information that misrepresents true circumstances, or failed to give information about changes in true circumstances resulting in fraudulent enrollment in the WIC program and receipt of WIC benefits.

(c) Attempted to or actually stole a WIC check from a local project

(d) Physically abused or threatened physical abuse of a state or local project staff member, a WIC vendor staff member, or other WIC participants at a local project or related function.

(3) **MANDATORY THREE MONTH DISQUALIFICATION.** After providing a warning letter for the first offense, the local project shall disqualify a participant and the participant's proxy and other family members from the WIC program for 3 months if the local project determines that the participant or proxy has committed any one of the following violations:

(a) Obtained or used a WIC check or WIC participant identification without the permission of the participant, or an authorized proxy if the participant is an infant or child.

(b) Verbally abused a state or local WIC project staff member, a WIC vendor staff member, or other WIC participant at a local project or related function.

(c) Sold or attempted to sell, exchange or return a WIC program benefit to others for cash, credit, non-authorized WIC food or another item.

(d) Aided or abetted fraud or abuse of the WIC program.

(e) Attempted to use or actually used an altered WIC check.

(4) **MANDATORY ONE MONTH DISQUALIFICATION.** After providing a warning letter for the first offense, the local project shall disqualify a participant and the participant's proxy and other family members from the WIC program for one month if the local project determines that the participant or proxy has committed any one of the following violations:

(a) Accepted a free non-WIC food item, cash or credit, as a gift or incentive to use a WIC check at a WIC vendor.

(b) Made or attempted to make two or more separate purchases with a single WIC check.

(c) Exchanged or attempted to exchange a WIC check at a vendor for food that is not an authorized food.

(d) Purchased or attempted to purchase an authorized food in excess of the quantity stated on a WIC check.

(e) Used a WIC check at a grocery store or pharmacy that is not a WIC vendor.

(f) Signed a WIC check before the purchase price has been entered on the WIC check.

(g) Failed to cooperate in a WIC program vendor audit, monitoring procedure, or investigation.

(h) Attempted to use or actually used a WIC check before or after the dates printed on the WIC check.

(5) **PERSONS DISQUALIFIED.** Disqualification from WIC program participation applies to all members of a family who are participants on the WIC program. The local project director may waive the disqualification for one or more members of the family if it is determined that a serious health risk may result from program disqualification, or if the participant is a foster child and is transferring to a new family.

(6) **REINSTATEMENT OF PARTICIPANTS.** (a) Upon expiration of the disqualification period, the participant and the participant's family members may reapply for and be certified for WIC program benefits, whether or not full repayment has been made.

(b) The participant and the participant's family members may reapply for WIC program benefits prior to the end of the disqualification period if repayment has been fully made or a repayment schedule is agreed upon and maintained.

HFS 149.25 Participant appeals. (1) **ACTIONS APPEALABLE.** An applicant or participant may appeal any of the following actions by the local project:

- (a) Denial of an application for participation in the WIC program.
- (b) Disqualification from the WIC program.
- (c) Request for repayment to the WIC program.

(2) **REQUEST FOR HEARING.** (a) An applicant, participant, parent, guardian, or other representative of the applicant or participant desiring to contest an action under sub. (1) may request a hearing.

(b) The local project shall honor any clear expression of a desire for an opportunity to present the matter to a higher authority for review. A request may be made orally or in writing.

(c) An applicant, participant, parent, guardian, or other representative of the applicant or participant shall address his or her request to the local project serving the participant.

(d) A request for hearing must be received by the local project within 60 days after service of the written notice of local agency action.

(3) **CONTINUATION OF BENEFITS.** (a) The local project shall continue to issue WIC program benefits to participants who timely appeal a termination of benefits. Benefits shall continue until the hearing official reaches a decision or the certification period expires, whichever occurs first.

(b) Applicants who are denied benefits at initial certification, or participants who become categorically ineligible during a certification period or whose certification period expires, are not eligible to receive benefits while awaiting a hearing.

(3) HEARING PROCEDURES. (a) Upon receipt of a timely and appropriate hearing request, the local project shall appoint a person as hearing official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing officer shall do all of the following:

1. Provide a written notice of the time and place for hearing to the participant or proxy and the local project at least 10 days before the date of the hearing.

2. Conduct the hearing within 21 days of receipt by the local project of the request for hearing.

3. Within 45 days of the request for hearing, issue to the parties written notification of the decision and notification of the participant's or proxy's rights to appeal.

(b) Hearings shall be conducted in accordance with the requirements of 7 CFR 246.9 (h), (i) and (j).

(4) STATE WIC OFFICE REVIEW. (a) An applicant, participant, parent, guardian or other representative of the applicant or participant desiring to contest a local hearing decision shall submit a request in writing to the state WIC office within 15 working days of the date of written notification of a decision by a local project.

(b) The state WIC office shall appoint a person to review the local hearing decision who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested.

(c) The state WIC office review shall be confined to the record, and the reviewer's determination shall be based solely on whether the local hearing decision correctly applied federal and state statutes, regulations, policies, and procedures governing the program, according to the information provided in support of the notice of action and the participant's response.

(d) The state WIC office decision shall include notice to the applicant or participant of his or her right to petition pursuant to subch. III of ch. 227, Stats., for rehearing or judicial review of an adverse decision. The notice shall include the time allowed for filing each petition.

(5) DISCONTINUATION OF BENEFITS PENDING APPEAL. A participant may not continue to receive benefits while an appeal to the state WIC office is pending.

EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22, (2) , Stats.

Wisconsin Department of Health and Family Services

Dated:

Kevin R. Hayden, Department Secretary

Seal: