

CHAPTER 73
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS, AND CHILDREN (WIC)

[Prior to 7/29/87, Health Department[470] Ch 73]

641—73.1(135) Program explanation. The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federal program operated pursuant to agreement with the states. The purpose of the program is to provide supplemental foods and nutrition education to eligible pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate incomes. The WIC program is administered on the federal level by the U.S. Department of Agriculture, Food and Nutrition Service (FNS). The Iowa department of public health serves as the administering agency for the state of Iowa. The Iowa department of public health enters into contracts with selected local agencies on an annual basis for the provision of WIC services to eligible participants.

641—73.2(135) Adoption by reference. Federal regulations found at 7 CFR Part 246 (effective as of February 13, 1985, as amended through January 1, 2001, and any additional amendments) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. The WIC state plan provides policy and procedural guidance in the implementation of these regulations to contract agencies administering WIC programs. The WIC state plan as approved by the United States Department of Agriculture is incorporated here by reference.

641—73.3(135) Availability of rules. Copies of the federal rules and the WIC state plan adopted by reference in 73.2(135) are available from: Chief, Bureau of Nutrition and WIC, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, (515)281-6650.

641—73.4(135) Certain rules exempted from public participation. The Iowa department of public health finds that certain rules should be exempted from notice and public participation as being in a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law and regulation governing the Iowa WIC program where the department has no option but to adopt such rules as specified and where federal funding for the WIC program is contingent upon the adoption of the rules.

641—73.5(135) Definitions.

“*Applicant*” means a person applying for the WIC program, but not yet a participant of the WIC program.

“*Breastfeeding women*” means women up to one year postpartum who are breastfeeding their infants.

“*Certification*” means the implementation of criteria and procedures to assess and document each applicant’s eligibility for the program.

“*Children*” means persons who have had their first birthday but have not yet attained their fifth birthday.

“*Competent professional authority*” or “*CPA*” means an individual on the staff of the contract agency who, using standardized WIC screening tools and eligibility criteria provided by the department, determines whether an applicant for WIC services is eligible to receive those services. A CPA shall be a member of one of the following categories:

1. A dietician licensed by the Iowa board of dietetic examiners;
2. An individual who has been issued a temporary dietetic license by the Iowa board of dietetic examiners;
3. A physician, registered nurse or licensed physician assistant.

“*Contract agency*” means a private, nonprofit or public agency that has a contract with the department to provide WIC services and receives funds from the department for that purpose.

“*Department*” means the Iowa department of public health.

“*Director*” means the director of the Iowa department of public health.

“*Division director*” means the director of the division of family and community health, Iowa department of public health.

“*Family*” means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.

“*Food instrument*” means a voucher, check, coupon, electronic benefits transfer (EBT) card or any other document used to obtain supplemental foods.

“*HAWK-I*” means healthy and well kids in Iowa and is the health insurance program in Iowa, as authorized in Title XXI of the Social Security Act.

“*Health professional*” means an individual who is licensed to provide health care or social services within the individual’s scope of practice.

“*Health services*” means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

“*Hearing officer*” means the contract agency director, health professional, community leader or impartial citizen who is designated to hear the appeal of a participant, and is not to be confused with the statutory definition of a hearing officer, which is an administrative law judge.

“*Infants*” means persons under one year of age.

“*Nutritional risk*” means: (a) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; (b) other documented nutritionally related medical conditions; (c) dietary deficiencies that impair or endanger health; or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

“*Nutrition education*” means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual’s personal, cultural, and socioeconomic preferences.

“*Participants*” means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods under the program, and the breastfed infants of participant breastfeeding women.

“*Peer group*” means a system of grouping WIC vendors according to structure, type, and number of cash registers. Peer groups are used to establish statistical norms that an individual store may be compared against and provide the numeric baselines for the process of determining what may be fraudulent behavior.

“*Postpartum women*” means women up to six months postpregnancy.

“*Pregnant women*” means women determined to have one or more embryos or fetuses in utero.

“*Program*” means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966.

“*Vendor*” means a retail outlet that provides supplemental food to WIC program participants.

641—73.6(135) Staffing of contract agencies.

73.6(1) Rescinded IAB 10/9/96, effective 11/13/96.

73.6(2) The competent professional authority shall conduct either the diet history or the health history part of the certification process and shall sign the certification form attesting to the applicant’s eligibility for services after the certification process is completed.

73.6(3) Contract agencies shall maintain on file documentation of qualifications for any individual employed or under contract as a licensed dietitian or nutrition educator.

73.6(4) All contract agencies shall employ at least one licensed dietitian to provide services for participants determined to be at high risk. Nutrition educators employed by a contract agency shall be supervised by a licensed dietitian.

73.6(5) Rescinded IAB 10/9/96, effective 11/13/96.

73.6(6) Contract agencies shall submit the license number of each dietitian hired within 30 days of employment.

73.6(7) Proposed staffing patterns within contract agencies shall be subject to approval from the department following review in accord with established statewide WIC staff patterns.

641—73.7(135) Certification of participants. The certification process to determine eligibility for WIC services, as defined in 7 CFR 246.7, shall include the following procedures and definitions:

73.7(1) Application. The WIC Certification Forms shall be completed by every family at the initial certification. The only exception is the pre-certification of Priority II infants, with referral data, whose parent/custodian is allowed a maximum of six weeks to complete the forms. Certification forms are signed and dated by the applicant or the parent/custodian.

If an individual indicates on the Health Services Application, Form 470-2927, that the individual wishes to also apply for Medicaid, child health, or maternal health services, the contract agency shall forward the appropriate copy to the indicated agency within two working days. If the individual appears to qualify for HAWK-I, the individual will be given the HAWK-I enrollment form.

73.7(2) Income.

a. The income guidelines used shall be the same as the National School Lunch Program guidelines for reduced price school lunches, which are equal to 185 percent of the current federal poverty guidelines. Definitions of income are mandated by federal regulation and are described in the WIC state plan. Revised dollar figures for the 185 percent poverty level are published annually in the Federal Register and become effective for WIC no later than July 1 following their publication. Copies of the income definitions and monetary guidelines are available from the department.

b. Applicants must provide the contract agency written declaration of their income as part of each certification process.

73.7(3) Time frame for services.

a. The date of initial visit shall be the day on which an applicant first appears in person at any of the contract agency's offices. A visit to another program office to complete a common application form does not constitute an initial visit.

b. Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum.

c. Rescinded IAB 5/30/01, effective 7/4/01.

d. Priority II infants pre-certified with referral data require a full certification within six weeks of the infant's birth.

73.7(4) Medical equipment.

a. Medical equipment used in conducting WIC clinics shall be subject to approval by the department.

b. Standards for conducting the medical and nutritional assessments on program applicants shall be as described in the Iowa WIC Policy and Procedure Manual.

c. Medical equipment shall be recalibrated in accord with procedures outlined in the Iowa WIC Policy and Procedure Manual.

73.7(5) Documentation of medical information. Medical documentation in individual participant records shall be as described in the Iowa WIC Policy and Procedure Manual.

73.7(6) Documentation of nonmedical information. Documentation of nonmedical information in individual participant and collective program records shall be as described in the Iowa WIC Policy and Procedure Manual.

73.7(7) *Transfer of participant information.* All medical and nonmedical information collected on a program participant, if transferred to other contract agencies, to the department, or retained as confidential shall be handled in accord with procedures described in the Iowa WIC Policy and Procedure Manual.

641—73.8(135) Food delivery. Food delivery refers to all aspects of the method by which WIC participants receive food benefits, i.e., printing, distribution, and processing of computerized personal food instruments redeemable through retail food markets and the statewide banking system. Food delivery shall be uniform throughout the state as provided for by these rules.

73.8(1) *Responsibilities of WIC participants.*

a. Prompt redemption of food instruments. A WIC participant has 30 days from the date of issue in which to cash any WIC food instrument through a vendor. The food instrument becomes invalid after this time.

b. Claiming food instruments. Enrolled participants are required to appear in person to claim food instruments when they have appointments to certify or have nutrition education contacts. Missed attendance may entitle contract agencies to deny that month's benefit. If a written statement is provided to the contract agency, a proxy may pick up food instruments.

c. Adherence to standards for use of the food instrument. The WIC participant in using the WIC food instrument to obtain the specified foods shall:

- (1) Sign the WIC identification card at the time of receipt in the clinic.
- (2) Present the WIC identification card to the vendor at point of purchase.
- (3) Sign each food instrument in the appropriate box in the presence of the vendor.
- (4) Write in the total amount of the purchase in the designated space.
- (5) Not accept money in exchange for unused food instruments or portions of the food allotment.
- (6) Attempt to redeem food instruments only with a WIC-contracted vendor.

73.8(2) *Responsibilities of contract agencies.*

a. Loss or theft of food instruments. The contract agency is responsible for any financial loss due to theft or other loss of food instruments from clinics. Steps for minimizing the chances of theft or loss are followed in accord with the Iowa WIC Policy and Procedure Manual.

b. Mailing of WIC food instruments. Mailing of food instruments to participants is allowed when inclement weather prevents participants from coming to a distribution site. Any mailing of WIC food instruments on a clinicwide basis must have prior approval from the state.

c. Use of manual food instruments. Manually written food instruments shall be issued only when:

- (1) Computer food instruments arrive damaged or mutilated, or are lost or stolen after being issued to participant.
- (2) Computer food instruments are not available due to error in entering participant data, delay or loss in shipping, or a need to change the food package.

d. Training/monitoring of WIC vendors. The contract agency shall communicate information regarding the Iowa WIC program to vendors, as instructed by the department. Monitoring and training of vendors and biennial securement of contracts shall be carried out in accord with department directives outlined in the WIC Policy and Procedure Manual.

e. Food instrument distribution on nonclinic days. It is the policy of the Iowa WIC program to ensure maximum accessibility to program benefits by establishing alternate procedures for distributing WIC food instruments to participants on days other than regularly scheduled clinic days when the participant notified the contract agency on or before the clinic day of the participant's inability to appear at the clinic. Each contract agency shall establish written guidelines for assessing the adequacy of reasons presented for inability to appear and shall establish written procedures for alternative means of food instrument distribution when a participant timely presents adequate reasons for inability to appear on a regularly scheduled clinic day. These written guidelines and procedures shall be subject to review and approval by the department.

73.8(3) Responsibilities of department. Provision of foods through retail grocers and special purpose vendors is an integral part of the WIC program's function. It is the responsibility of the department to ensure that there are a sufficient number of stores authorized to provide reasonable access for program participants. The department also has an obligation to ensure that both food and administrative funds are expended in the most efficient manner possible. As with all other purchases made by state government, this means that the number of vendors (retail grocers and special purpose vendors) may be limited and that all vendors must meet minimum criteria for approval. The department shall be responsible for the following:

a. Approving or denying vendor applications. The department shall determine if applications meet the mandatory specifications in 73.8(4) and meet the minimum review points in 73.8(4) for a subsequent agreement.

b. Compiling the statewide or local area composite data against which vendor applications are reviewed, determining if applications meet the selection criteria which require use of that data, providing training, and signing the initial authorization agreement if a vendor is determined to be eligible.

c. Developing procedures, forms, and standards for agencies to use in conducting on-site review of vendor applications, monitoring, compliance buys, educational buy monitoring, or compliance investigations as defined in 73.8(5).

d. Determining when compliance investigation activities are necessary to verify program violations, developing or approving standards and procedures to be used in conducting the activities, and arranging for an appropriate state or private agency to conduct the compliance buying investigation as required.

e. Providing written notice to vendors of program violations and sanctions.

73.8(4) Responsibilities of WIC vendors. A potential vendor shall make application to the Iowa department of public health WIC program and shall accept the obligations imposed by signing of a WIC Vendor Agreement prior to acceptance of any WIC food instrument. The two categories for which any potential vendor may apply are grocery vendors and special purpose vendors.

a. *Grocery vendor agreement.* To qualify for a grocery vendor agreement with the Iowa WIC program, a retail outlet shall meet all of the following criteria:

(1) The vendor must stock all of the following categories of items to be defined as a grocery vendor: refrigerated fresh produce (e.g., a minimum of five linear feet of raw fruits and vegetables), fresh or frozen meats and poultry (prepackaged luncheon meats do not qualify), canned and frozen vegetables, dairy products, cereals and breadstuffs.

(2) No more than 20 percent of the vendor's gross retail sales may be from the sale of gasoline or other automotive supplies.

(3) No more than 20 percent of the vendor's gross retail sales may be from the sale of alcoholic beverages and tobacco products.

(4) The vendor must maintain regular business hours. This shall include a minimum of two 4-hour blocks of time on each of five days per week. Daily operating hours shall be consistent from week to week, and shall be posted.

(5) The vendor must stock the following varieties and minimum quantities of WIC-approved foods:

1. A minimum of two boxes of each of six varieties of cold, ready-to-eat cereals and two boxes of one variety of hot cereal from the current WIC-approved food list.

2. A minimum of fifteen 46-ounce containers of 100 percent fruit or vegetable juice and ten 12-ounce containers of concentrated 100 percent fruit or vegetable juice from the current WIC-approved food list. This shall include an assortment of at least three approved canned or bottled (plastic only) varieties of orange, pineapple, grapefruit, apple, grape, vegetable, or tomato, and two concentrated varieties of orange, pineapple, grapefruit, grape or apple.

3. A minimum of four gallons of whole fluid milk and four gallons of either low-fat, reduced fat, or fat-free fluid milk, and two pounds each of at least two different varieties of approved cheese in packages weighing one pound or less.

4. A minimum of two 1-pound bags of edible dried beans or peas, any variety.
5. A minimum of two containers, 18-ounce size or less, of 100 percent peanut butter.
6. A minimum of five dozen large fresh eggs, white or brown.
7. A minimum of four pounds of raw full-size or baby carrots.
8. A minimum of eight containers of tuna, 6-ounce minimum size.
9. A minimum of six cans of any current rebate contract powdered formula or a minimum of twenty-four 13-ounce cans of any current rebate contract concentrated formula.
10. A minimum of 24 ounces of WIC-approved dry infant cereal.

The specific brands of products that are included on the WIC-approved food list shall be made available to the vendor at the time of application and prior to renewal of each agreement.

The variety and quantity in stock are defined as including both inventory on display and in on-premises storage, but not inventory on order from suppliers.

(6) A vendor shall charge a price to WIC participants that is equal to or less than the price charged to all other customers. The prices charged to WIC participants for the average of all WIC items, as reported on the application, at the time of on-site review, and throughout the agreement period, shall not exceed 105 percent of the average prices of all other WIC vendors in the same peer group. The vendor's average price for any category of WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 115 percent of the average for the same category by all other WIC vendors in the same peer group. Categories refer to the groupings of items identified in subparagraph (5), "1" to "10," above. For purposes of making the price comparisons, the average price for all other WIC vendors in the peer group shall be computed from the most recent Price Assessment Reports on file from those vendors. If a vendor intends to comply with this provision by charging WIC participants a lower price than the price charged to other customers, the WIC price for each approved item must be identified on the package or shelf front.

(7) There must be a minimum of five current WIC participants residing in the same ZIP code area as the vendor.

(8) The vendor must not have had a food stamp program disqualification or civil monetary penalty imposed within the 12 months preceding the date of the application or reauthorization.

(9) The vendor must not have had a WIC program suspension imposed or a WIC application denied within the six-month period preceding the date of the application.

(10) The vendor must not have had a conviction or civil judgment for any activity that indicates a lack of business integrity against any of the officers or owners during the previous six years.

(11) The vendor must accept training on WIC program regulations prior to signing an agreement and must agree to provide training to all employees who will handle WIC food instruments prior to accepting any food instruments.

(12) The vendor must agree to adhere to all provisions of the WIC Vendor Instructions and Agreement Booklet.

b. Special purpose vendor. To qualify as a special purpose vendor, a retail outlet shall meet all of the following criteria:

(1) The vendor may be primarily a retailer of any type of merchandise but shall be authorized to provide only specified infant formula in exchange for WIC food instruments.

(2) The vendor must be able to provide the specified formula within 48 hours; 72 hours if a weekend or holiday is involved.

(3) The prices charged WIC participants must be equal to or less than the prices charged all other customers. The average price of each brand of infant formula sold to WIC participants as reported must not exceed the average price of the same brands of infant formula charged by all authorized WIC grocery vendors in the same peer group.

(4) The vendor shall meet the criteria in paragraph "a," subparagraphs (2) to (4) and (6) to (11), for grocery vendors.

(5) The vendor must agree to adhere to applicable provisions of the WIC Vendor Instructions and Agreement Booklet.

The department shall review each vendor application within five working days of receipt and determine if the information provided indicates that the retail outlet meets the selection criteria. If the application shows that the vendor does not meet one or more of the criteria, the department shall deny the application. If the vendor's application indicates that the vendor would qualify, the department or contract agency shall make an on-site visit to verify that the information provided in the application is correct, to provide training, and sign the agreement. If the department or contract agency finds that the vendor has two or more types of out-of-date, stale, or moldy WIC foods in stock during the on-site visit, the vendor's application may be denied. If the contract agency or department determines during the on-site visit that the vendor does not qualify, the contract agency or department shall not sign the agreement. Within five working days of disapproving an application or agreement, the department will advise the vendor in writing of the reasons for denial of the application and the procedure for appeal. During the on-site visit, the contract agency representative is acting as an agent of the department and has the authority to approve or deny an application.

A vendor that is denied an agreement, either at the application review level or at the on-site review, is required to wait six months prior to submitting a new application. The department may, at its discretion, request a vendor to resubmit an application prior to completing its review if the application has not been completed to the extent that a determination of eligibility can be made.

c. Reauthorization. If ownership of an authorized vendor changes during the agreement period, the agreement becomes void. The new owner must file an application and be approved prior to accepting WIC food instruments. Vendor agreements are valid only for the period of time specified, and a vendor may not continue accepting food instruments past the expiration date unless a new agreement is signed. When a currently authorized vendor makes application for a subsequent agreement, an agreement shall be signed only if the vendor has been assessed less than 60 violation points under paragraph 73.19(2) "b" within the previous 24 months.

Vendors must complete a new application and sign a new WIC agreement every two years to continue accepting WIC food instruments.

The department shall send the vendor written notice at least 30 days prior to the expiration of the agreement that it does not intend to offer the vendor a new agreement if the vendor has been assessed 60 or more violation points under paragraph 73.19(2) "b" within the last 24 months, or if any of the following conditions are in effect:

(1) The vendor has failed to submit any of the preceding year's Price Assessment Reports by the specified dates.

(2) The vendor has not cashed any WIC food instruments for at least two consecutive months at any time during the contract period, or has not cashed five or more WIC food instruments for any 120-day period during the contract period. A vendor will not be excluded under this provision if it is the only grocery or special purpose vendor in that ZIP code area.

(3) Any of the selection criteria listed in 73.8(4) "a" and "b" above are no longer met.

Expiration of a WIC agreement is not subject to appeal. A vendor who is not offered a new agreement by the department has the right to file a new application. If that application is denied, the vendor has the right to appeal.

d. Training. Vendors shall accept training in program policies and procedures at the on-site review prior to becoming an authorized vendor and shall be responsible for training all employees who will be handling WIC food instruments. The manager and person responsible for staff training must allow time at this visit for training; the agreement will not be signed until training is completed. Vendors shall be responsible for all actions of their employees in conducting WIC transactions.

If violations of program policies and procedures are documented, either through on-site monitoring or other indirect means, the vendor shall implement a corrective action training plan developed jointly by the vendor and the department or contract agency.

e. Validity of food instruments. The WIC vendor shall be responsible for ensuring that:

- (1) The participant signature required on the food instrument is completed in the vendor's presence;
- (2) The participant presents a WIC identification card prior to redeeming food instruments. A signature on the WIC identification card must match the food instrument signature;
- (3) The type and quantity of food to be purchased is as indicated on the food instrument;
- (4) The amount of money written onto the food instrument for repayment does not exceed the maximum amount as designated by the department and printed on the food instrument;
- (5) The expiration date is present on the food instrument and is equal to or no later than the date of usage;
- (6) WIC food instruments are never exchanged for cash or credit;
- (7) Substitutions of foods different from those listed on the food instrument in type or amount are not made;
- (8) Food instruments are presented to the state's agent (bank) for payment within 15 days of the date of receipt;
- (9) The costs of foods purchased by WIC participants do not exceed charges to other customers for the same foods;
- (10) The vendor's authorizing number is stamped with the state-issued vendor stamp on the face of the food instrument prior to its being presented for payment.

f. Cooperation during monitorings. Contracted WIC vendors shall cooperate with department and contract agency staff who are present on site to monitor the store's WIC activities.

g. Reimbursement to the program. Vendors determined by the department to have collected more moneys than the true value of food items received shall make reimbursement to the department.

73.8(5) Vendor monitoring. To maintain program integrity and accountability for federal or state program funds, the department and contract agencies shall conduct ongoing monitoring of authorized vendors, both through on-site visits and through indirect means. A sample of 10 percent of currently authorized vendors receives on-site monitoring every year. Vendors that change ownership during the year, or apply during the contract period, receive an on-site visit prior to signing an agreement. The types of on-site monitoring are defined as follows:

a. Routine or representative monitoring is used for vendors for which there is no record of violations or complaints or other indication of problems. It may include any or all of the following: use of a food instrument or observation of a participant, educational buys, review of inventory levels, examination of redeemed WIC food instruments on hand, review of store policies on return items, and review of employee training procedures. The results of the monitoring are reviewed with the owner or manager on duty, and a follow-up letter confirming the findings is sent from the department. Routine monitoring may be performed by the department or by contract agency staff under the direction of the department. Depending on the nature and severity of violations noted, the department may schedule additional visits, initiate a compliance investigation, or apply sanctions.

Educational buy monitoring is a specialized type of routine monitoring. Department or contract agency staff attempt to use a WIC food instrument to purchase unauthorized types or brands of foods to test the level of training of store employees. At the conclusion of the transaction, the results of the buy are discussed with the store owner or manager on duty. The transaction is then voided, and the merchandise returned to the shelves. Educational buys are used on authorized vendors selected by the department. If unauthorized items are allowed to be purchased, the vendor shall agree to a corrective action training plan. A follow-up educational buy is scheduled within 30 to 90 days. A letter is sent from the department documenting the violation. By signing a WIC agreement, a vendor gives consent for educational buys by the department or contract agency. Vendors are not notified in advance that an educational buy is scheduled. The protocol for educational buys, including procedures, appropriate items to purchase, and forms to be used, is specified in the Iowa WIC Policy and Procedure Manual.

b. Electronic monitoring is examination of indicators tracked in the vendor computer database. It allows the analysis of data collected via computer from the contract agencies and the state's bank, from which patterns indicating compliance with or deviation from established patterns for Iowa WIC vendors emerge. Data is collected daily and reviewed on an ongoing basis. Trends identified can necessitate another type of monitoring, depending on the nature of each exception.

c. Compliance investigations may be used for any vendors. Compliance investigations will be conducted annually in a minimum percentage of vendors as mandated in federal regulations. A compliance investigation includes a sufficient number of compliance buys to provide evidence of program noncompliance, two compliance buys in which no program violations are found, or when an inventory audit has been completed. A compliance buy means a covert, on-site investigation in which a representative of the program poses as a participant, parent or caretaker, or proxy, transacts one or more food instruments and does not reveal during the visit that he or she is a WIC representative. Compliance buys may be performed by the department or another state agency or private company under contract with the department. The department is responsible for identifying the vendors to be investigated and for approving the protocol to be used during the investigation. Upon completion of a compliance buy documenting program violations, the department shall issue the vendor a notice of violation points assessed or suspension.

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, is confidential as provided for in Iowa Code section 22.7(6). This business information could provide an advantage to competitors and would serve no public purpose if made available.

641—73.9(135) Food package. The authorized supplemental foods shall be prescribed for participants by a licensed dietitian in the contract agency from food packages outlined in 7 CFR 246.10 and in accord with the following rules.

73.9(1) Prescription of foods. Food packages shall maintain a balance between cost and nutrition integrity. There are two components to this balance: (1) administrative adjustments by the department; and (2) nutrition tailoring by both the department and the licensed dietitians in the contract agencies.

a. Administrative adjustments include restrictions in the packaging methods, brands, sizes, types, and forms (but not quantities) of the federally allowable foods in order to establish the approved food list for the state. Administrative adjustments include decisions to eliminate more expensive brands or prohibit more convenient and costly food items allowed by regulations. Criteria for considering foods for inclusion in the approved food list are found in 73.9(3).

b. Nutrition tailoring includes changes or substitutions to food types, forms, and quantities in order to prescribe food packages that better meet the nutritional needs of participants. Tailoring is done to reduce quantities of foods based on nutritional needs, to accommodate participant preferences, to accommodate household conditions such as lack of refrigeration or other special needs and problems of homeless or transient participants, and to recommend or prescribe specific forms of the allowable WIC foods based upon a participant's nutritional needs or goals.

c. Additional contract agency tailoring policies shall be submitted to the department for approval before being implemented. Tailoring policies based on reasons such as age or category of participant will not be approved.

73.9(2) Tailoring to meet individual nutrition needs. Food packages are individually tailored to meet the needs of specific participants. The following administrative adjustments by the department and nutrition tailoring guidelines for contract agencies are followed in tailoring food packages.

a. Infants, 0-12 months:

(1) Administrative adjustments. Ready-to-feed formula is provided only when the caretaker is unable to prepare formula of the proper dilution from powder or concentrate, or in other special situations as determined by the licensed dietitian. In circumstances of contaminated water supply, ready-to-feed formula can be issued on a month-to-month basis until an alternative source of water is found. The provision of ready-to-feed formula requires documentation of the special situation in the nutrition care plan in the participant's file. Due to cost, only regular juice is provided as part of the infant food package.

(2) Nutrition tailoring. Infants are defined as breastfed, supplemented, or formula-fed. A breastfed infant does not receive any formula from WIC. A supplemented infant may receive up to seven pounds of powdered formula per month. A formula-fed infant receives eight pounds of powdered or 403 ounces of concentrate formula per month. A breastfeeding mother of an infant who does not receive any formula from WIC is eligible to receive an enhanced food package containing additional quantities and types of WIC authorized foods. The mother of a supplemented infant may remain eligible because she is still breastfeeding. Food packages for the mother and infant are tailored appropriately to their feeding patterns.

Federal regulations require the issuance of 20 Kcal per ounce, iron-fortified infant formula (formula containing at least 10 milligrams of iron per liter) to infants under 12 months of age. The provision of cow's milk in lieu of formula is not allowed. Formulas concentrated above 20 Kcal/ounce or specially formulated in other ways can be provided when a physician determines that an infant has a medical condition which contraindicates the use of a formula as described above. The department reserves the right to add or decline to add formulas to the state's approved list.

Infant formula that is not fortified with iron to this level (low iron) may be provided without prior approval by the department for documented cases of hemolytic anemia or hemochromatosis. Other requests for low-iron formula will be evaluated by a licensed dietitian at the contract agency on a case-by-case basis.

Juice and infant cereal are provided to infants beginning the month the infant becomes six months of age.

b. Special children and women:

(1) Administrative adjustments—none

(2) Nutrition tailoring—none

c. Children (1-5 years) and pregnant, breast-feeding, or postpartum women:

(1) Administrative adjustments. The packaging and form of cheese provided may be restricted due to cost and possible confusion with imitation or processed cheese products. Approved single-strength juice shall be packaged in a 46-ounce container. Approved concentrated juice shall be packaged in 11.5- or 12-ounce containers.

The food package is adjusted to accommodate the special needs of homeless and transient participants. Nonrefrigerated WIC-approved juice in small serving containers may be provided. The reason for providing single-serving containers must be documented in the nutrition care plan. No tuna in containers containing less than six ounces is allowed due to cost. No frozen or canned carrots will be allowed in the enhanced food package for breast-feeding women. Fresh carrots will be provided due to their widespread availability and acceptability.

(2) Nutrition tailoring. No American cheese is allowed due to its high sodium and fat content. Cheese may be substituted for milk up to a normal maximum of two pounds per month. If a participant cannot or will not drink milk, up to four pounds of cheese may be substituted for milk. If more than two pounds is provided, the reason for providing the additional cheese must be documented in the nutrition care plan for the participant.

Food quantities are not tailored for children who participate in Head Start or other child feeding programs. A limit may not be established on the number of participants per household who can receive peanut butter in lieu of dried beans.

73.9(3) Criteria for approving products for inclusion in the WIC food package.

- a. A product shall meet the federal regulations governing the WIC food package.
- b. Variety in the food package is encouraged to increase the likelihood of products being used as well as to allow participants to exercise responsibility in shopping.
- c. Changes to the approved food list are made biennially, taking effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire to be guaranteed consideration.
- d. Cereals shall meet federal guidelines for sugar and iron content and shall also meet the following conditions:
 - (1) They shall be carried by current Iowa WIC vendors.
 - (2) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.
 - (3) If a group of cereals from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.
 - (4) Ready-to-eat cold cereals are ranked by the six major distributors to Iowa WIC vendors based on volume of total sales. Hot cereals are ranked in the same way. Multiple varieties of a single brand of cereal shall be considered as one brand for the purposes of constructing this ranking. The state office compiles data from all distributors to develop an overall ranking or ranked list. The top 16 name-brand cold cereals, the top 3 varieties of private-label (store) brand cold cereals and the top 2 hot cereals that qualify are selected.
 - (5) Product shall have been available in retail stores in Iowa for one year prior to the effective date of inclusion in the approved food list.
- e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:
 - (1) Juices shall be 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.
 - (2) Single-strength juice shall be packaged in a 46-ounce container. Concentrated juice shall be marketed in 11.5- or 12-ounce containers.
 - (3) The brand shall be carried by current Iowa WIC vendors. Juices are ranked by the six major distributors to Iowa WIC vendors based on volume of total sales. The top two name brands of each flavor of juice (e.g., tomato, orange, grapefruit, grape, apple, or blended) and form of juice (single-strength or concentrated) that meet the selection criteria will be approved. Any private-label (store) brands that meet the selection criteria will also be approved.
 - (4) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.
 - (5) If a group of juices from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Single-strength and concentrated varieties of juice with the same brand name will be evaluated separately.
 - (6) Calcium-fortified juices shall not be approved.
 - (7) Product shall have been available in retail stores in Iowa for one year prior to the effective date of inclusion in the approved food list.
 - (8) Concentrated juices must be single flavors of juice.
- f. The following conditions apply to dairy products:
 - (1) To qualify, brands of whole, low fat, reduced fat, or fat-free milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands that significantly exceed the average price of other brands or which are marketed as providing additional health benefits.

(2) Fluid milk with added bacterial cultures or enzymes, including but not limited to sweet acidophilus or lactose-reduced milk, may qualify. Brands are approved by the department on a case-by-case basis.

(3) All brands of natural cheese designated in the USDA WIC regulations qualify. The cheese shall have no added flavors (e.g., smoke flavoring, peppers, wine).

g. All brands of dried beans or peas are approved whether packaged or purchased in bulk, however, no mixes are allowed.

h. Any brand of peanut butter qualifies as long as it does not contain other ingredients such as jelly. Brands may be either refrigerated or nonrefrigerated. No peanut butter spreads are permitted.

i. Eggs shall be fresh, Grade A large or smaller chicken eggs. Specialty eggs, including those with health or nutrition claims or significantly higher prices, shall not be approved.

j. Any brand of tuna qualifies if it is either water- or oil-packed, chunked, solid, or flaked, and is in six-ounce minimum-size containers. Tuna packaged with other items such as crackers or relish may not be purchased.

k. Carrots must be raw and fresh, not canned or frozen; may be either peeled or unpeeled; and may be either full-size or baby carrots.

l. Commercial infant formula shall meet the following conditions:

(1) It shall have registered with the Food and Drug Administration as complying with the legal definition of infant formula.

(2) It shall comply with the calorie and iron content prescribed by the federal WIC regulations, except as provided for in subrule 73.9(2).

(3) It has been approved by the USDA for use in the WIC program.

(4) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.

(5) All of the formula marketed under that label shall meet all standards. If a similar, nonqualifying formula is marketed along with a qualifying formula, participants may be easily confused. Therefore, the qualifying formula shall not be approved.

(6) "Special formulas," as described in the regulations, must be approved by the USDA.

(7) Rescinded IAB 12/1/99, effective 11/12/99.

m. In addition to the criteria specified above, the department reserves the right to further restrict the number of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

641—73.10(135) Education.

73.10(1) Nutrition education for WIC participants.

a. Nutrition education is provided as a benefit to all women and to parents of all children enrolled in the program.

b. A minimum of two nutrition education contacts shall be offered to each woman participant or the parent/guardian of children participating in WIC during each certification period.

c. Nutrition education shall be based on information obtained through the diet and health histories and shall be tailored to the specific nutrition need of the participant.

d. All pregnant women enrolled in WIC shall receive education on the benefits of breastfeeding.

e. Education in normal nutrition, i.e., education in nutrition for life-cycle stages, shall be provided by licensed dietitians or nutrition educators who are on the staff of or under contract to the contract agency.

f. Participants who are at high risk, as defined in the Iowa WIC Policy and Procedure Manual, shall receive counseling and a nutrition plan of care developed by a licensed dietitian. The plan of care shall be documented in the participant record and shall include scheduling a minimum of one individual education contact by a licensed dietitian.

g. The department shall make nutrition education materials and resources available at no cost to contract agencies. The department reserves the right to review and approve or disapprove any printed materials or lesson plans developed by contract agencies.

h. To the extent that time and resources are available, nutrition education may be provided to applicants who are not eligible to receive other WIC services.

73.10(2) Education of contract agency personnel. Agencies accepting WIC funds shall be responsible for ensuring that all agency staff or contractors are adequately trained for their responsibilities. At a minimum, training shall include the components described in the Iowa WIC Policy and Procedure Manual.

Continuing education is an allowable WIC administrative expense for contract agency staff and contractors who provide nutrition education, subject to approval through the annual grant application process.

641—73.11(135) Health services. The WIC program shall serve in the arrangement of ongoing health services for its participants. Health services are defined to include ongoing, routine pediatric and obstetrical care, and referral for diagnosis and treatment of any other condition. Contract agencies not able to provide such health services directly shall enter into written agreements with other public health agency(ies) or private physician to ensure availability of health services.

73.11(1) Written agreements.

a. Contract for services. Contract agencies shall maintain an annual written, contractual agreement with any health agency performing WIC health assessments, whether for fee or exchange of service.

b. Memorandum of understanding. Contract agencies shall maintain a current memorandum of understanding with any health agency designated to provide ongoing health services to WIC participants.

73.11(2) Referral procedures. The contract agency shall be responsible for referral of WIC participants to appropriate health care providers, as determined by the WIC health professional's assessment of their condition.

a. *Authorization for release of information.* Except as indicated below, before releasing medical or other personal information, including name, to an outside agency, the contract agency shall secure the participant's or parent/legal guardian's written authorization to release such information. A statement shall be signed for each specific provider to which information is being sent. The information contained in individual participant records shall be confidential pursuant to 7 CFR 246.26.

Referrals to the department of human services' child protective services for investigation of potential child abuse or to a law enforcement agency conducting an active criminal investigation may be made without obtaining a written release of information. Procedures for responding to a subpoena are made in accordance with the Iowa WIC Policy and Procedure Manual.

b. *The referral form.* A standard referral form, as provided by the department, shall be completed and sent to the referral agency. Documentation and follow-up are made in accord with the Iowa WIC Policy and Procedure Manual.

641—73.12(135) Appeals and fair hearings—local agencies and vendors.

73.12(1) Right of appeal. The right to appeal shall be granted when a local agency's or a vendor's application to participate is denied. The right to appeal shall also be granted when, during the course of the contract or agreement period, a local agency or vendor is disqualified or any other action which affects participation is taken. For participating vendors, a minimum of 30 days' advance notice will be given before the effective date of the action. For participating contract agencies, a minimum of 60 days' advance notice will be given before the effective date of the action. The right to appeal shall not be granted in the following circumstances:

- a. When a vendor's contract expires.
- b. When the department makes a determination regarding participant access.
- c. When a vendor is disqualified from the WIC program as a result of a food stamp program disqualification.

73.12(2) Request for hearing. An appeal is brought by filing a written request for a hearing with the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 within ten days of receipt of notification of the adverse action. The written request for hearing shall state the adverse action being appealed.

73.12(3) Contested cases. Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

73.12(4) Notice of hearing. The administrative law judge (ALJ) shall schedule the time, place and date of the hearing as expeditiously as possible. Hearings shall be conducted by telephone or in person in Des Moines at the Lucas State Office Building or other suitable location. If necessary, parties will be provided at least two opportunities to have the hearing rescheduled.

73.12(5) Conduct of hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246.24. Copies of these regulations are available from the department of inspections and appeals upon request.

73.12(6) Decision. A written decision of the ALJ shall be issued, where possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time.

73.12(7) Decision of ALJ. When the ALJ makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 73.12(8).

73.12(8) Appeal to director. Any appeal to the director for review of the proposed decision and order of the ALJ shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the ALJ's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

73.12(9) Record of hearing. Upon receipt of an appeal request, the ALJ shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the hearing officer.

73.12(10) Decision of director. The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

73.12(11) Exhausting administrative remedies. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review pursuant to Iowa Code chapter 17A.

73.12(12) Petition for judicial review. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—73.13(135) Right to appeal—participant.

73.13(1) *Right of appeal.* A WIC participant shall have the right to appeal whenever a decision or action of the department or contract agency results in the individual's denial of participation, suspension, or termination from the WIC program. All hearings shall be conducted in accordance with these rules.

73.13(2) *Notification of appeal rights and right to hearing.* Each program participant shall be notified in writing of the participant's right to appeal and the procedures for requesting a hearing at the time of application (on Certification Form) and at the time of denial of eligibility or termination from the program (on Denial or Termination of Eligibility Form). Appeal and hearing notices shall also be written, posted, and immediately available at contract agencies to explain the method by which a hearing is requested, and that the participant may present arguments at the hearing either personally or through a representative such as a relative, friend, legal counsel, or other spokesperson.

73.13(3) *Request for hearing.* A request for hearing by an individual or the individual's parent, guardian, or other representative must be made in writing. The request for hearing shall be made to the contract agency within 90 days from the date the individual receives notice of the decision or action that is the subject of appeal.

73.13(4) *Receipt of benefits during appeal.* Participants who are involuntarily terminated from the WIC program prior to the end of the standard certification period shall continue to receive program benefits while the decision to terminate is under administrative appeal, provided that subsequent certifications are completed as required. Participants who are terminated because of categorical ineligibility (e.g., a child over five years of age) shall not continue to receive benefits during the administrative appeal period. Participants who are terminated at the end of a certification period for failure to reapply, following notice of expiration of certification, shall not continue to receive benefits during the administrative appeal period. Applicants who are denied program benefits at the initial certification or at subsequent recertifications, due to a finding of ineligibility, shall not receive benefits during the administrative appeal period.

73.13(5) *Hearing officer.* The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. If the party filing the appeal objects prior to a scheduled hearing to a contract agency director serving as a hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the state WIC office in the appointment of a hearing officer.

73.13(6) *Notice of hearing.* The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be scheduled within three weeks from the date the contract agency received the request for a hearing, or as soon as possible thereafter, unless a later date is agreed upon by the parties.

73.13(7) *Conduct of hearing.* The hearing shall be conducted in accordance with federal regulations found at 7 CFR Section 246.23. Copies of these regulations are available from the contract agency and the department. At a minimum, the party requesting the hearing or the party's representative shall have the opportunity to:

- a. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
- b. Be assisted or represented by an attorney or other person at the party's own expense;
- c. Bring witnesses;
- d. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;
- e. Submit evidence to establish all pertinent facts and circumstances in the case;
- f. Advance arguments without undue interference.

73.13(8) Decision. Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 45 days of the receipt of the request for a hearing, unless a longer period is agreed upon by the parties.

73.13(9) Appeal of decision to the department. If either party to a hearing receives an unfavorable decision, that decision may be appealed to the department. Such appeals must be made within 15 days of the mailing date of the decision. Appeals shall be sent to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

73.13(10) Contested case. Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the Iowa department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the Iowa department of inspections and appeals.

73.13(11) Hearing. Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the Iowa department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

73.13(12) Decision of administrative law judge. The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 73.13(13).

73.13(13) Appeal to director. Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

73.13(14) Record of hearing. Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

73.13(15) Decision of director. An appeal to the director shall be based on the record of the hearing before the administrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

73.13(16) Exhausting administrative remedies. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

73.13(17) *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

73.13(18) *Benefits after decision.* If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the contract agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for benefits.

641—73.14(135) *State monitoring of contract agencies.* The department shall review contract agency operations through use of reports and documents submitted, state-generated data processing reports, and on-site visits for evaluation and technical assistance.

73.14(1) *On-site visits.* Department staff shall visit contract agencies whenever necessary, to review operations and ensure compliance with state and federal regulations.

73.14(2) *Request for written reports.* The department may request written progress reports from contract agencies within specified times.

73.14(3) *Qualifications of department reviewers.* At minimum, one of the persons from the department responsible for reviewing a contract agency shall be a licensed dietitian.

641—73.15(135) *Migrant services.* To meet the WIC needs of migrant workers within the state, a contract or work agreement shall be maintained with at least one contract migrant service agency within the state to provide or assist in the provision of service to this population.

641—73.16(135) *Civil rights.* The Iowa WIC program shall operate in compliance with the Equal Employment Opportunity Act of 1973, the Civil Rights Act of 1964, amended 1972, the State of Iowa Civil Rights Act of 1965, the Age Discrimination Act of 1967, Section 504 of Rehabilitation Act of 1973, Iowa Executive Order #15 of 1973, Executive Order #11246 of 1965 as amended by Executive Order #11375 of 1967, and the Americans With Disabilities Act of 1991 to ensure the rights of all individuals under this program.

641—73.17(135) *Audits.* Each contract agency shall ensure an audit of the WIC program within the agency at least every two years, to be conducted by a private certified public accountant or in accord with applicable Office of Management and Budget Circulars: A-128, Audits of State and Local Governments, and A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions. Each audit shall cover all unaudited periods through the end of the previous grant year. The department's audit guide shall be followed to ensure an audit that meets federal and state requirements.

641—73.18(135) *Reporting.* Completion of grant applications, budgets, expenditure reports and written responses to the department's monitoring for the WIC program shall be conducted by contract agencies in compliance with the formats and procedures outlined by the department in the Iowa WIC Policy and Procedure Manual, as specified in the contract entered into by the department and the contract agency.

641—73.19(135) *Program violation.* Participants or vendors are subject to the sanctions outlined below if determined by contract agency or department staff to be guilty of abusing the program or its regulations.

73.19(1) Participant violation. Violations may be detected by contract agency staff, by vendors, or by department staff. Information obtained by the department is forwarded to the contract agency for appropriate action.

a. Whenever possible, the participant is counseled in person concerning the violation. Documentation is maintained through the use of the Notice of Program Violation. The original is given to the participant and the carbon is maintained on file. The violation number and the point value from the schedule must be entered in the blanks of the form. The blank lines are used to write an explanation of the violation. The bottom section of the form is used only if the participant is to be suspended from the program. To avoid confusion, this part should be crossed out when not applicable. The form must be signed by the contract agency coordinator or other designated staff person. If presented to the participant at a clinic, the participant is asked to sign to acknowledge receipt of the notice. If the participant refuses or the form is mailed, notation to that effect is made on the form.

b. Participants who violate program regulations are subject to sanction in accordance with the schedule below:

Violation	Points Per Event
1. Attempting to purchase unauthorized brands/types of foods (i.e., incorrect brands of cereal, juices, etc.).	3
2. Attempting to cash food instrument for more than the possible value of the foods listed.	3
3. Not signing the food instrument at the time of purchase.	3
4. Attempting to cash food instruments after the last valid date.	4
5. Redeeming WIC food instruments at an unauthorized vendor.	4
6. Reserved.	
7. Attempting to cash food instruments that were signed prior to redemption at the vendor.	5
8. Redeeming WIC food instruments that were reported as lost or stolen.	5
9. Attempting to purchase more than the quantity of foods specified on the food instrument.	5
10. Verbal abuse or harassment of WIC or vendor employees.	5
11. Threat of physical abuse of WIC or vendor employees.	10
12. Attempting to sell, return, or exchange foods for cash or credit.	10
13. Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc.	10
14. Attempting to purchase items that are not food.	10
15. Sale or exchange of WIC food instruments for cash or credit.	10
16. Altering a food instrument (e.g., changing last valid date, food item or quantity).	10
17. Attempting to redeem food instrument issued to another participant.	10
18. Receiving more than one set of benefits for the same time period.	10
19. Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility).	10
20. Attempting to steal WIC food instruments from a contract agency or participant.	10
21. Physical abuse of WIC contract agency or vendor employees.	10
22. Attempting to pick up food instruments for a child that is not currently in their care.	10

c. The accumulation of 10 violation points within a 12-month period will result in a 2-month suspension. The accumulation of 10 additional violation points within a 12-month period following the suspension will result in a 3-month suspension. The participant must then reapply for the program and be scheduled for a certification.

d. Fifteen days' notice must be given prior to all suspensions. If notice is mailed, it should be received prior to the start of the cycle in which the participant would receive the next set of food instruments in order to comply with the 15-day provision. In all cases, the participant must be informed of the reason for the suspension and of the right to appeal the decision through the fair hearing process.

e. A suspension generally applies to all members of a family who are on the program. The competent professional authority may waive the suspension for one or more members of the family if it is determined that a serious health risk may result from program suspension. The reason for this waiver must be documented in the participant's file.

f. One or more food instruments cashed at the same time constitutes a single violation. Participants will not be charged with a second violation for minor violations worth 5 or fewer points for subsequent food instruments cashed between the first instance and the receipt of the violation notice if the violation is the same. If a major violation greater than 5 points occurs during this period, the participant will be suspended. Violations are cumulative.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement, or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food instruments. Collection of overpayment is not required when the department determines it is not cost-effective to do so.

The contract agency shall issue a Statement of Restitution along with the suspension notice. The statement lists the serial numbers and dollar value of the food instruments for which payment is required. The participant is required to surrender any unspent food instruments and send payment to the department in check or money order for those food instruments that have been cashed.

h. Each contract agency shall maintain a master list of all participant violation notices, suspensions, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

73.19(2) Vendor violations. There are three types of sanctions that are applied to vendors for violations of program regulations: nonpayment of food instruments, issuance of violation points, and suspensions.

a. Nonpayment of food instruments.

(1) As a result of prepayment reviews conducted by the state's bank, improperly completed food items are refused payment and returned to the vendor. Items screened during prepayment are authorized vendor stamp not present or legible in the "Pay to the Order of:" box on face of food instrument, missing signature, price exceeds maximum printed on face of food instrument.

(2) If the violation can be corrected by applying the authorized stamp, obtaining the proper signature, or reducing the price, the item may be resubmitted for payment. Federal banking regulations prohibit a financial instrument from being sent through the federal reserve system more than twice. If an improperly completed WIC food instrument is received by the state's bank a second time, it is voided and may not be redeposited.

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement that do not rise to the level of fraud against the program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of a WIC vendor agreement. It is in the department's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

Vendors are assessed violation points, which are applied as demerits against the vendor's score in the subsequent procurement for WIC vendor agreements in the vendor's area.

In addition, the accumulation of 45 violation points within the first year or 90 violation points within a single agreement period is a major violation subject to a one-year suspension of the WIC agreement for that vendor.

The assignment of violation points does not limit the department's right to effect stronger penalties and sanctions in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation	Points Per Event
1. Accepting five food instruments over 30 days old within the agreement period.	5
2. Redeeming five food instruments more than 15 days after receipt within the agreement period.	5
3. Accepting five food instruments with no date stamp within the agreement period.	5
4. Refusal to accept valid WIC food instruments from participants.	10
5. Abusive or discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification.	10
6. Insufficient number of brands or types in a single food group.	5
7. Insufficient quantity of a single food group.	5
8. No stock in a single food group.	5
9. Insufficient number of brands or types in two food groups.	10
10. Insufficient quantity in two food groups.	10
11. No stock in two or more food groups.	10
12. Insufficient number of brands or types in three or more food groups.	10
13. Insufficient quantity in three or more food groups.	15
14. No stock in three or more food groups. (For 6 to 14, food groups are as defined in 73.8(4) "a"(3).)	15
15. Failure to carry out corrective action plan developed as a result of monitoring visit.	10
16. Allowing the purchase of similar but not approved foods.	10
17. Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.	5
18. Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
19. Using a WIC vendor stamp other than the one issued by the Iowa WIC program.	5
20. Providing a brand of formula other than the one specified on the food instrument.	10
21. Issuing "rain checks" or credit in exchange for WIC food instruments.	10
22. Stocking out-of-date, stale, or moldy WIC foods, per type.	10
23. Failure to submit vendor price assessment reports as requested.	10
24. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
25. Failure to complete food instrument properly, including filling in correct amount and date of purchase, and verifying matching signatures.	15
26. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15

27. Charging prices to WIC participants that are more than 105 percent of the average prices of all other WIC vendors in the same peer group.	15
28. Providing false information on the price assessment report.	15
29. Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet.	10
30. Requiring WIC participants to purchase a particular brand when other WIC approved brands are available.	10
31. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	10
32. Requiring other cash purchases to redeem WIC food instruments.	15
33. Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.	20

c. Suspensions. With an administrative finding of the following violations, the vendor will be suspended for one year.

1. Accumulation of 45 or more violation points within the first year or 90 or more violation points within a single agreement period.

2. Allowing purchase of nonapproved and nonsimilar food items in exchange for WIC food instruments.

3. Failure to provide access to store premises or in any manner to hinder, impede or misinform authorized WIC personnel in the act of conducting an on-site education, monitoring or investigation visit.

4. Loss of Iowa department of inspections and appeals license.

5. Submitting for payment a WIC food instrument redeemed by another authorized vendor.

6. Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions.

d. With an administrative finding of the following violations, the vendor will be suspended for three years.

1. A pattern of charging WIC participants more than non-WIC customers or charging WIC participants more than the current shelf price.

2. A pattern of charging for items not received by the WIC participant or for foods provided in excess of those listed on the WIC food instrument.

3. A pattern of providing credit or nonfood items, except for alcohol, alcoholic beverages, or tobacco products, in exchange for WIC food instruments.

4. One incidence of allowing the purchase of alcohol, alcoholic beverages, or tobacco products with a WIC food instrument.

5. A pattern of receiving, transacting, or redeeming WIC food instruments outside authorized channels, including through unauthorized vendors or persons.

6. A pattern of claiming reimbursement for the sale of a quantity of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time.

7. Submission for payment of WIC food instruments known by the vendor to have been lost or stolen.

e. With an administrative finding of the following violations, the vendor will be suspended for six years.

1. One incidence of buying or selling food instruments for cash (trafficking).

2. Participating with other individuals including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instruments.

3. One incidence of selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for WIC food instruments.

f. With a conviction in a criminal court of law for trafficking in WIC food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for WIC food instruments, the vendor will be permanently disqualified from the Iowa WIC program. The department may impose a civil money penalty (CMP) in lieu of a disqualification when it determines, in its sole discretion, that:

1. Disqualification of the vendor would result in inadequate participant access; or

2. The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

g. The following items do not have a point value, but shall result in or extend a suspension period:

1. Failure to return WIC vendor stamp(s) to the WIC program within ten days of effective date of suspension, or expiration of agreement following denial of subsequent application, shall result in a 30-day extension of a suspension period.

2. For each month in which a vendor accepts WIC food instruments during a suspension period, the suspension period shall be extended by 30 days.

h. The above sanctions notwithstanding, the state of Iowa reserves the right to seek civil and criminal prosecution of WIC vendors for any and all instances of dealing in stolen or lost food instruments, trading cash and other inappropriate commodities for food instruments, or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, or other practices meeting the definition of fraud as defined in 7 CFR 246 or the Iowa Code.

i. A vendor shall not be entitled to receive any compensation for revenues lost as a result of any suspension or permanent disqualification.

j. A minimum of 15 days' notice is provided prior to all suspensions, except for permanent disqualifications assessed under paragraph 73.19(2) "*f.*" which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a suspension letter with supporting documentation is prepared for the WIC director's signature. The suspension letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal.

k. The department is responsible for issuing all warning and suspension letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

l. Federal food stamp regulations require automatic disqualification from the food stamp program for vendors suspended by the WIC program for certain types of violations. When a vendor is suspended from the WIC program, the suspension letter to the vendor will include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the food stamp program. Such disqualification may not be subject to administrative or judicial review under the food stamp program." For all vendor disqualifications from the WIC program, notice will be sent to the United States Department of Agriculture for appropriate action.

m. The department shall disqualify a vendor who has been disqualified from the food stamp program. The disqualification shall be for the same length of time as the food stamp program disqualification, may begin at a later date than the food stamp program disqualification, and shall not be subject to administrative or judicial review under the WIC program. If the department determines that disqualification of a vendor would result in inadequate participant access, it will impose a civil money penalty (CMP) in lieu of disqualification.

n. Civil money penalties.

(1) When the department determines that a civil money penalty (CMP) shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2) “*f*” or 73.19(2) “*m*,” it shall use the civil money penalty formula in accordance with Title 7 CFR Subpart 246.12(k)(1)(x) to determine the CMP.

(2) If a vendor does not pay, only partially pays, or fails to timely pay a CMP, the department will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. “Failure to timely pay a CMP” includes the failure to pay a CMP in accordance with an installment plan approved by the department.

(3) Money received by the state WIC agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as program income.

641—73.20(135) Data processing. All contract agencies shall comply with the instructions outlined in the Iowa WIC Policy and Procedure Manual for use of the automated data processing system in provision of WIC food instruments and monitoring of WIC services. No contract agency is exempted from adherence to any portion of these instructions.

641—73.21(135) Outreach. Outreach efforts within the Iowa WIC program shall be directed toward extension of services to the neediest Iowans of high priority by reason of their WIC status (see 7 CFR 246.1(d)3). The department and contract agencies shall share responsibility for the conduct of outreach efforts.

73.21(1) Contract agency responsibilities. Contract agencies shall conduct any or all of the following outreach activities annually:

- a.* Employ outreach worker(s).
- b.* Submit for publication a minimum of two newspaper articles on WIC in the local community.
- c.* Distribute WIC brochures to numerous community organizations and offices.
- d.* Hold informational meetings for county social service departments, including food stamp program staff, drug/alcohol abuse counseling services, family investment program staff, and child abuse staff; and for public health nurse offices, physician offices, maternal and child health programs, Head Start programs, dental programs, family planning programs, nutrition professional groups, nursing professional groups, extension services, parent-teacher and other community organizations.

73.21(2) Reserved.

641—73.22(135) Caseload management. The statewide caseload (number of participants) shall be managed by the department in accord with funding limitations and federal regulations or directives. The federally established priority categories of participant shall be followed when limitation of services is necessary in accord with 7 CFR 246.7(d)3. In addition the following rules shall apply:

73.22(1) A contract agency shall maintain a waiting list only when the department determines that sufficient funds are not available to meet demand.

73.22(2) When a waiting list has been authorized, contract agencies shall certify applicants of potential highest priority first (e.g., women and infants) and potential lower priority second (children). Within these priority groups, applicants shall be offered certification appointments in the order of placement on the list.

73.22(3) When insufficient funds are available to serve all priority categories, the department shall provide instructions to contract agencies regarding which priority categories may continue to be certified.

73.22(4) When necessitated by federal funding restrictions, the department reserves the right to terminate or temporarily suspend benefits for categories of participants prior to the end of their certification period. Each participant shall be advised in writing 15 days before the effective date of the reasons for the action and of the right to a fair hearing.

641—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services shall file a letter of intent to make application to the department no later than April 1 of the competitive year. Applications shall be to administer WIC services for a specified project period, as defined in the request for proposal, with an annual continuation application. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. The department will consider only applications from private nonprofit or public agencies. In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review. Copies of review criteria are available from: Chief, Bureau of Nutrition and WIC, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, (515)281-4913.

641—73.24(135) Participant rights. The special supplemental nutrition program for women, infants and children shall be open to all eligible persons regardless of race, color, sex, creed, age, mental/physical handicap or national origin. An applicant or participant may appeal any decision made by the contract agency or department regarding the applicant's or participant's eligibility for the program.

These rules are intended to implement federal law 42 U.S.C. Section 1786, and Iowa Code sections 10A.202(1) "h" and 135.11(1).

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*See IAB, Inspections and Appeals Department.

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