ARC 8537C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rulemaking related to special supplemental nutrition program for women, infants, and children and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to adopt a new Chapter 67, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 234.6(1)"f."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514; 42 U.S.C. Section 1786; and 7 CFR Part 246.

Purpose and Summary

This proposed rulemaking is in response to Executive Order 10. The rules are also being moved from agency number [641] to agency number [441] pursuant to 2023 Iowa Acts, Senate File 514. The WIC program must follow United States Department of Agriculture (USDA) regulations. States do have some flexibility in how some of the federal regulations are implemented—the Iowa Administrative Code can provide more Iowa-specific practices; however, the USDA regulations would take precedence.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 17, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: victoria.daniels@hhs.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 14, 2025 2:30 to 3:30 p.m.	Microsoft Teams Meeting ID: 225 091 018 909 Passcode: hVKapN
January 17, 2025 1:30 to 2:30 p.m.	Microsoft Teams Meeting ID: 260 724 672 894 Passcode: bWFD4e

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 441—Chapter 67:

CHAPTER 67
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS, AND CHILDREN (WIC)

441—67.1(135) Definitions. Definitions can be found in 7 CFR Part 246 (as amended to August 1, 2024) and state-specific definitions can be found in Iowa WIC policies and procedures. Iowa WIC policies and procedures describe the manner in which the department implements and operates all aspects of program administration within its jurisdiction in accordance with 7 CFR Part 246 (as amended to August 1, 2024), United States Department of Agriculture (USDA) policy memorandums, USDA guidance documents, and any other documents issued by USDA to implement the WIC program.

441—67.2(135) Administration of program. The department implements the WIC program by following guidance from 7 CFR Part 246 (as amended to August 1, 2024), USDA policy memos, USDA guidance documents, and any other documents issued by USDA to implement the WIC program.

441—67.3(135) Certification of participants. Eligibility will be determined pursuant to 7 CFR Section 246.7 (as amended to August 1, 2024), any USDA-issued documents used to implement the WIC program, and the WIC Policy and Procedure Manual (as amended to August 1, 2024).

441—67.4(135) Food delivery.

67.4(1) *Responsibilities of department—approving or denying applications.* The department will determine if applications meet mandatory specifications and may deny an application pursuant to 7 CFR Part 246 (as amended to August 1, 2024), USDA federal regulations, USDA guidance documents, or the Iowa WIC Program Vendor Guidance (as amended to August 1, 2024), Iowa WIC Program Vendor Application (as amended to August 1, 2024), and the Iowa WIC Program Vendor Handbook and Agreement (as amended to August 1, 2024).

67.4(2) *Responsibilities of WIC vendors.*

a. A potential vendor shall make application to the department's WIC program and shall accept the obligations imposed by the signing of the Iowa WIC Program Vendor Agreement and Handbook (as amended to August 1, 2024) prior to acceptance of any WIC food instrument. To qualify as a WIC vendor, the vendor shall meet all of the criteria outlined in the Iowa WIC Program Vendor Guidance (as amended to August 1, 2024), Iowa WIC Program Vendor Application (as amended to August 1, 2024), and Iowa WIC Program Vendor Agreement and Handbook (as amended to August 1, 2024).

b. The vendor must agree to adhere to all provisions of the Iowa WIC Program Vendor Application (as amended to August 1, 2024), Iowa WIC Program Vendor Agreement and Handbook (as amended to August 1, 2024), and Iowa WIC Program Vendor Guidance (as amended to August 1, 2024).

67.4(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. If a vendor offers specialty eggs for retail sale, the vendor shall maintain an inventory of conventional eggs for retail sale sufficient to meet federal and state requirements for participation in the WIC program.

c. Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost, and participant preference. The state reserves the right to limit the number of foods, infant formulas, exempt infant formulas, and WIC-eligible nutritionals for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.

d. The approved food list provides more specifics on what is allowed or not allowed for each of the WIC-approved foods.

e. In addition to the criteria specified above, the department reserves the right to make changes to the criteria or further restrict the number and types 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.

f. The department reserves the right to discontinue specific brand names and products if the cost is administratively burdensome for that particular product.

g. The department reserves the right to add or delete products pursuant to federal regulations.

441—67.5(135) Education.

67.5(1) Participants who are high risk, as defined in the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024) shall be seen by a licensed dietitian as described in the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024) with a care plan developed as described in the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024).

67.5(2) 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.

441—67.6(135) Right to appeal—participant. Fair hearings and appeals are provided pursuant to 441—Chapter 7 and 7 CFR Section 246.9 (as amended to August 1, 2024).

441—67.7(135) Right to appeal—local agencies. Fair hearings and appeals are provided pursuant to 441—Chapter 7, 7 CFR Section 246.18 (as amended to August 1, 2024), and 7 CFR Section 246.24 (as amended to August 1, 2024).

441—67.8(135) Right to appeal—vendor. Fair hearings and appeals are provided pursuant to 441—Chapter 7, 7 CFR Section 246.12 (as amended to August 1, 2024), and 7 CFR Section 246.18 (as amended to August 1, 2024).

441—67.9(135) State monitoring of contract agencies. At minimum, one of the persons from the department responsible for reviewing a contract agency shall be a licensed dietitian.

441—67.10(135) Civil rights. The Iowa WIC program shall operate in compliance with state and federal regulations and FNS Instruction 113-1 (as amended to August 1, 2024) to ensure the rights of all individuals under the WIC program.

441—67.11(135) WIC 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 WIC program or its regulations.

67.11(1) *Participant violation.* Violations may be reported by contract agency staff, vendors, the public, FNS staff, or department staff. All suspected cases of fraud will be investigated by the department. All sanctions will be administered by the department. Contract agencies will be notified of any actions taken against WIC participants by the department.

a. Whenever possible, the participant is contacted via telephone concerning the violation. Documentation is maintained according to procedures set forth in the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024).

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

	Violation	Sanction Action
1.	Intentional false statement(s) or misrepresentation of income, name, residence, family size (including receiving and using benefits for children no longer in the family), medical data, pregnancy, and/or date of birth to obtain WIC benefits.	One-year disqualification and pay full restitution
2.	Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount less than $100. Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell, or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer or sell eWIC card/benefits for unapproved food items, nonfood items, cash or favors. Claim amount less than $100.	Two-month disqualification and pay full restitution Subsequent violation of any claim amount: one-year disqualification and pay full restitution
3.	Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount greater than $100. Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer, or sell WIC foods for unapproved food items, nonfood items, cash or favors. Claim amount greater than $100.	One-year disqualification and pay full restitution
4.	Creating a public nuisance or disrupting normal activities through verbal misconduct or physical disruptions at the local WIC agency, farmers market, or vendor location.	First violation: Education/counseling Second subsequent violation: Warning letter Third subsequent violation: Two-month disqualification Fourth subsequent violation: Any subsequent violation(s) will result in a one-year disqualification.
5.	Verbal abuse or harassment of WIC staff, vendors, farmers market vendors and/or other WIC participants. This includes verbal abuse or harassment in person, on social media, or over the telephone.	Two-month disqualification Subsequent violation will result in a one-year disqualification.
6.	Physical abuse (directly or indirectly carrying out the actual harm or threatening to do harm) of WIC staff, vendors, vendor staff, farmers market vendors, farmers market vendor staff, and/or other WIC participants.	Any violation will result in a one-year disqualification.
7.	Destruction of property, theft of eWIC card(s) or theft from a local WIC agency, vendor, vendor staff, farmers market vendor, farmers market vendor staff, and/or another WIC participant.	Any violation will result in a one-year disqualification.

8.	Collusion with staff to improperly obtain benefits.	One-year disqualification and pay full restitution
9.	Dual participation resulting from intentional misrepresentation.	One-year disqualification and pay full restitution
10.	Trafficking WIC food benefits, WIC benefits, or WIC items and/or collusion with an authorized vendor.	One-year disqualification and pay full restitution
11.	Other violations of this chapter or the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024).	As appropriate per this chapter or the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024).

c. Local law enforcement may be notified in appropriate cases.

d. Fifteen days' notice must be given prior to all disqualifications. In all cases, the participant must be informed of the reason for the disqualification, of the right to appeal the decision through the fair hearing process, and of eligibility to receive WIC services at the end of the disqualification period.

e. A disqualification may apply to all members of a family who are on the WIC program.

f. Violations are cumulative. However, a participant will not have sanctions assessed for committing a second violation when the second violation occurs before the participant receives notice of the first violation and the second violation is the same as the first. A participant who commits the same violation a second time following receipt of a notice for the first violation is subject to a one-year disqualification.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement(s) or intentionally misrepresenting, concealing, or withholding facts or sells or attempts to sell benefits the participant received from the WIC program and is disqualified from the WIC program, the participant may be required to make restitution of the cash value of the improperly received or used WIC benefits. The department may establish a claim against the participant for the full value of the improperly received benefits.

The department will issue a written notice of restitution and disqualification.

If the participant chooses a repayment plan for claims, the department will assist in developing a payment schedule. If the participant has not paid the department directly within 30 days of the notice of restitution and disqualification, the department will pursue collection of the dollar amount owed and benefits will be discontinued until the claim is paid.

h. The department may decide not to impose a mandatory disqualification pursuant to 7 CFR Section 246.12(u)(2) (as amended to August 1, 2024). All decisions are at the discretion of the department.

i. When a disqualification period has ended, the individual disqualified may be reinstated if the individual's certification period is still current. If the individual's certification period is not current, the individual will need to complete a certification appointment.

j. The department will maintain a master list of all participant violation notices, disqualifications, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

67.11(2) *Vendor violations.* There are five types of sanctions that are applied to vendors for violations of WIC program regulations: nonpayment of food instruments, issuance of violation points, temporary disqualification, permanent disqualification, and civil money penalties (CMPs).

a. Nonpayment of food instruments. If the vendor has been terminated from the WIC program and submits a claim, it will be fully denied.

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the Iowa WIC Vendor Agreement and Handbook (as amended to August 1, 2024) that do not rise to the level of fraud against the WIC program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of the 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.

One or more transactions prior to notification of the vendor constitute only one violation if they contain the same error.

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. Developing and using promotional materials including stickers, tags, labels, or channel strips with the WIC service mark to identify WIC-approved foods.	5
2. Developing and using vendor-created WIC vendor identification decals to indicate vendor is an authorized vendor.	5
3. Failure to allow WIC participants to leave the vendor with WIC foods that were debited/ removed from their eWIC account during a WIC transaction.	5
4. Failure to post eWIC signs in the cash register lane that has a working WIC terminal if the vendor is not integrated.	5
5. Failure to provide vendor ECR system participant receipts to WIC participants during each WIC transaction.	5
6. Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.	10
7. Refusal to accept valid WIC food instruments from participants.	10
8. Discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification, or disallowing the use of coupons or other vendor discounts in WIC transactions that are allowed in non-WIC transactions.	10
9. Treating WIC customers differently by offering them incentive items, vendor discounts, coupons, or other promotions that are not offered to non-WIC customers.	10
10. Providing to WIC participants incentive items not prior authorized by the department.	10
11. Failure to carry out corrective action plan developed as a result of monitoring visit.	10
12. Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
13. Issuing “rain checks” or credit in exchange for WIC food instruments.	10
14. Stocking out-of-date, stale, or moldy WIC foods.	10
15. Failure to submit vendor price assessment reports as requested.	10
16. 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
17. Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.	10
18. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	10
19. Requiring to enter the PIN for the participant and/or asking for the participant’s PIN.	10
20. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
21. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
22. Providing false information on the price assessment report.	15
23. Knowingly entering false information or altering information on the eWIC receipt/ benefits.	10
24. Requiring other cash purchases to redeem WIC food instruments.	15
25. Failure to obtain infant and/or special needs formula from an approved source listed by the Iowa WIC program.	15
26. Offering incentive items with a value of more than $1.99.	15
27. Scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant.	20
28. 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
29. Failure to maintain minimum stocking requirements.	10
30. Other violations of this chapter or the Iowa WIC Program Vendor Agreement and Handbook or the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024).	As appropriate per this chapter, the Iowa WIC Program Vendor Agreement and Handout or the Iowa WIC Policy and Procedure Manual (as amended to August 1, 2024)

c. One-year disqualification. With an administrative finding of the following patterns of sanctions, the vendor will be disqualified for one year:

(1) A pattern of allowing purchase of nonapproved food items in exchange for WIC food instruments or for foods provided in excess of those listed on the WIC food instrument. (federally mandated sanction)

(2) Accumulation of 45 or more violations points within a single federal fiscal year of the agreement period. (department sanction)

(3) Failure to provide access to vendor 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. (department sanction)

(4) Loss of department of inspections, appeals, and licensing license. (department sanction)

(5) Submitting for payment a WIC food instrument redeemed by another authorized vendor. (department sanction)

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

(7) Submitting for payment WIC food instruments known by the vendor to have been lost or stolen. (department sanction)

(8) 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 instrument. (department sanction)

d. A vendor will be disqualified from being a WIC vendor for three years with an administrative finding of any violation detailed in 7 CFR Section 246.12(l)(iii) (as amended to August 1, 2024).

e. A vendor will be disqualified from being a WIC vendor for six years pursuant to 7 CFR Section 246.12(l)(1)(ii) (as amended to August 1, 2024).

f. The department will impose mandatory vendor sanctions pursuant to 7 CFR Section 246.12(l)(1)(i) (as amended to August 1, 2024).

g. The following does not have a point value, but shall result in or extend a disqualification period:

For each month in which a vendor accepts WIC food instruments during a disqualification period, the disqualification 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 Part 246 (as amended to August 1, 2024) or the Iowa Code.

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

j. A minimum of 15 days' notice is provided prior to all disqualifications, 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 disqualification letter with supporting documentation is prepared for the WIC director's signature. The disqualification letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal. Voluntary withdrawal from the Iowa WIC Program Vendor Agreement and Handbook to avoid a sanction is not allowed.

k. The department is responsible for issuing all warning and disqualification 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. Disqualification from the WIC program may result in disqualification as a retailer in SNAP pursuant to 7 CFR Section 246.12(h)(3)(xxvi) (as amended to August 1, 2024), 7 CFR Section 246.18(b)(1) (as amended to August 1, 2024), and 7 CFR Section 246.12(l)(1)(xi) (as amended to August 1, 2024).

m. The department will disqualify a vendor who has been disqualified from SNAP pursuant to 7 CFR Section 246.12(l)(1)(vii) (as amended to August 1, 2024) and 7 CFR Section 246.12(l)(1)(ix) (as amended to August 1, 2024).

n. CMPs.

(1) When the department determines that a CMP shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2)*"f"* or *"m,"* it shall use the civil money penalty formula in accordance with 7 CFR Section 246.12(k)(1)(x) (as amended to August 1, 2024) 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 CMPs or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as WIC program income.

These rules are intended to implement 42 U.S.C. Section 1786 and Iowa Code section 234.6(1).