

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 in 7 CFR Part 246 found at www.gpo.gov/fdsys/pkg/CFR-2018-title7-vol4/pdf/CFR-2018-title7-vol4-part246.pdf (effective as of February 13, 1985, as amended through January 1, 2018, and any additional amendments), WIC EBT operating rules found at www.fns.usda.gov/sites/default/files/wic/WIC-EBT-Operating-Rules-September-2014.pdf (effective as of November 2009, as amended through September 2014, and any additional amendments), the WIC EBT technical implementation guide found at www.fns.usda.gov/sites/default/files/WICEBT-TechnicalImplementationGuide.pdf (as amended through September 30, 2012, and any additional amendments), FNS Handbook 901 v2 found at fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf (as amended through January 2017, and any additional amendments), and FNS Instruction 113-1 found at www.fns.usda.gov/sites/default/files/113-1.pdf (effective as of November 8, 2005, and any additional amendments) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. The Iowa WIC Policy and Procedure Manual, which provides procedural guidance in the implementation of these regulations to contract agencies administering the WIC programs and which contains policies and procedures as approved by the United States Department of Agriculture, is incorporated herein by reference.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.3(135) Availability of rules and policy and procedure manual. Copies of the federal rules and the Iowa WIC Policy and Procedure Manual adopted by reference in 641—73.2(135) are available from: Chief, Bureau of Nutrition and Physical Activity, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; (515)281-7095 or 1-800-532-1579.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.4(135) Definitions.

“Above-50-percent vendor” means a vendor that derives more than 50 percent of the vendor’s annual food sales revenue from WIC food instruments, and a new vendor applicant expected to meet this criterion under guidelines approved by FNS.

“Applicant” means a pregnant woman, breastfeeding woman, postpartum woman, an infant or a child who is applying to receive WIC benefits and the breastfed infant(s) of an applicant breastfeeding woman. “Applicant” includes an individual who is currently participating in the program and who is reapplying because the individual’s certification period is about to expire.

“Authorized supplemental food” means supplemental food authorized by the state or local agency for issuance to a participant.

“Breastfeeding” means the practice of feeding a mother’s breast milk to her infant(s) on the average of at least once a day.

“*Breastfeeding woman*” means a woman up to one year postpartum who is breastfeeding her infant(s).

“*Cash-value benefit*” means a fixed-dollar amount food instrument which is used by a participant to obtain authorized fruits and vegetables.

“*Categorical eligibility*” means a person who meets the definition of a pregnant woman, breastfeeding woman, postpartum woman, or infant or child.

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

“*Chief state health officer*” or “*director*” means the director of the Iowa department of public health.

“*Child*” means a person who has had his or her first birthday but has not yet attained his or her fifth birthday.

“*Clinic*” means a facility where applicants are certified.

“*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 dietitian licensed by the Iowa board of dietetics;
2. A nutrition educator as defined in the Iowa WIC Policy and Procedure Manual;
3. A physician, registered nurse or licensed physician assistant.

“*Compliance buy*” means a covert, on-site investigation in which a representative of the WIC program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts one or more food instruments or cash-value benefits, and does not reveal during the visit that he or she is a program representative.

“*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.

“*Conventional eggs*” means eggs other than specialty eggs.

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

“*Disqualification*” means the act of ending the WIC program participation of a participant, authorized food vendor, or authorized state or local agency, whether as a punitive sanction or for administrative reasons.

“*Division director*” means the director of the division of health promotion and chronic disease prevention, Iowa department of public health.

“*Dual participation*” means simultaneous participation in the WIC program in one or more than one WIC clinic, or participation in the WIC program and in the commodity supplemental food program (CSFP) during the same period of time.

“*ECR*” means electronic cash register.

“*Eggs*” means shell eggs that are graded as “AA,” “A,” or “B” pursuant to 7 CFR Part 56, Subpart A, and that are sold at retail in commercial markets.

“*eWIC*” means functions related to the electronic benefits transfer (EBT) card.

“*Exempt infant formula*” means an infant formula that meets the requirements for an exempt infant formula under Section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR Parts 106 and 107.

“*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.

“*Fiscal year*” means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

“*FNS*” means the Food and Nutrition Service of the U.S. Department of Agriculture.

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

“*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.

“Homeless facility” means the following types of facilities which provide meal service: a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or normally used as, a regular sleeping accommodation for human beings.

“Homeless participant” means a woman, infant or child:

1. Who lacks a fixed and regular nighttime residence; or
 2. Whose primary nighttime residence is:
 - A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodations;
 - An institution that provides a temporary residence for individuals intended to be institutionalized;
 - A temporary accommodation of not more than 365 days in the residence of another individual;
- or
- A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

“Infant” means a person under one year of age.

“Infant formula” means a food that meets the definition of an infant formula in Section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under Section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR Parts 106 and 107.

“Iowa WIC Policy and Procedure Manual” means all of the state WIC policies and procedures that 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.

“Nutritional risk” means:

1. Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements;
2. Other documented nutritionally related medical conditions;
3. Dietary deficiencies that impair or endanger health;
4. Conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or
5. Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

“Nutrition education” means an individual or group education session and the provision of materials designed to improve health status, achieve positive change in dietary and physical activity habits, and emphasize relationships between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.

“Participant” means a pregnant woman, breastfeeding woman, postpartum woman, infant or child who is receiving supplemental foods under the program, and the breastfed infant(s) of a participant breastfeeding woman.

“Participant violation” means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts to obtain benefits; selling or offering to sell WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange WIC

benefits, including cash value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, nonfood items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

"Peer group" means a system of grouping WIC vendors according to structure; type; number of cash registers; square footage; and sales. Peer groups are used to establish statistical norms that an individual vendor may be compared against and provide the numeric baselines for the process of determining what may be fraudulent behavior.

"PIN" means personal identification number.

"Postpartum woman" means a woman up to six months after termination of pregnancy.

"Pregnant woman" means a woman determined to have one or more embryos or fetuses in utero.

"Proxy" means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact food instruments or cash-value vouchers or to obtain supplemental foods on behalf of a participant.

"Rebate" means the amount of money refunded under cost containment procedures to the department from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in the department's WIC program. Such rebates shall be payments made subsequent to the exchange of a food instrument for food.

"Routine monitoring" means overt, on-site monitoring during which WIC program representatives identify themselves to vendor personnel.

"SNAP" or *"Supplemental Nutrition Assistance Program,"* formerly known as the Food Stamp Program, means the program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011, et seq.), in which eligible households receive benefits that can be used to purchase food items from authorized retail vendors and farmers' markets.

"Specialty eggs" means eggs produced by domesticated chickens, and sold at retail in commercial markets, if the chickens producing such eggs are advertised as being housed in any of the following environments:

1. Cage-free.
2. Free-range.
3. Enriched colony cage.

"USDA" means the United States Department of Agriculture.

"Vendor" means a retail outlet that provides supplemental food to WIC program participants.

"Vendor authorization" means the process by which the department assesses, selects, and enters into agreements with vendors that apply or subsequently reapply to be authorized as vendors.

"Vendor overcharge" means intentionally charging the department more for authorized supplemental foods than is permitted under the WIC vendor agreement. It is not a vendor overcharge when a vendor submits a food instrument for redemption and the department makes a price adjustment to the food instrument.

"Vendor violation" means any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the WIC vendor agreement or federal or state statutes, regulations, policies, or procedures governing the WIC program.

"WIC-eligible nutritionals" means certain enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible nutritionals must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme. WIC-eligible nutritionals include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

"WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

“*WIC vendor agreement*” means the WIC Vendor Agreement and Handbook.

“*WIC Vendor Instructions and Agreement Booklet*” means the grocery vendor application, grocery vendor application guidance, special purpose vendor application, special purpose vendor application guidance, and WIC Vendor Agreement and Handbook.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.5(135) Staffing of contract agencies.

73.5(1) The competent professional authority (CPA) shall conduct the nutrition interview and shall attest to the applicant’s eligibility for services after the certification process is completed.

73.5(2) Contract agencies shall maintain on file documentation of qualifications for any individual employed or under contract as a CPA.

73.5(3) 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.

73.5(4) Proposed staffing patterns within contract agencies shall be subject to approval from the department following review in accord with established statewide WIC staff patterns.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.6(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:

73.6(1) *Application.* Information on identity, address, family incomes, and nutritional risk must be collected in accordance with the Iowa WIC Policy and Procedure Manual.

73.6(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 Iowa WIC Policy and Procedure Manual. 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 proof of their income as part of each certification process, pursuant to the Iowa WIC Policy and Procedure Manual.

73.6(3) *Time frame for services.*

a. The date of initial visit shall be the day on which an applicant first requests services from a contract agency. A visit to another WIC 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. Pregnant women precertified with referral data require a full certification within 30 days.

73.6(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 WIC 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.

73.6(5) *Documentation of health and nutrition information.* Documentation of health and nutrition information in individual participant records shall be as described in the Iowa WIC Policy and Procedure Manual.

73.6(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.

73.6(7) *Transfer of participant information.* Requirements for use and disclosure of confidential applicant and participant information for non-WIC purposes were revised in the Federal Register

September 27, 2006, Department of Agriculture, Food and Nutrition Service, 7 CFR Part 246, Miscellaneous Provisions; Final Rule 246.25(a)(4).

a. Designation by chief state health officer. The chief state health officer must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

b. Notice to applicants and participants. The applicant or participant will be notified at the time of application (in accordance with 7 CFR 246.7(i)(11)) or through a subsequent notice that the chief state health officer may authorize the use and disclosure of information about an applicant's or participant's participation in the WIC program for non-WIC purposes. This statement will also indicate that such information will be used by state and local WIC agencies and public organizations only in the administration of programs that serve persons eligible for the WIC program.

c. Written agreement and policy and procedure manual. The state or local agency disclosing the information will enter into a written agreement with the other public organization or, in the case of a non-WIC use by a state or local WIC agency, the unit of the state or local agency that will be using the information. The department will also include in the Iowa WIC Policy and Procedure Manual, as specified in 7 CFR 246.4(a)(24), a list of all organizations (including units of the department or local agencies) with which the department or its local agencies have executed or intend to execute a written agreement. The written agreement must:

(1) Specify that the receiving organization may use the confidential applicant and participant information only for:

1. Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;
2. Conducting outreach to WIC applicants and participants for such programs;
3. Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by state law;
4. Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC program; or
5. Assessing and evaluating the responsiveness of a state's health system to participants' health care needs and health care outcomes; and

(2) Contain the receiving organization's assurance that the organization will not use the information for any other purpose or disclose the information to a third party.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.7(135) Food delivery. Food delivery refers to all aspects of the method by which WIC participants receive food benefits, including but not limited to the issuing, distribution, and processing of 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.

73.7(1) Responsibilities of WIC participants.

a. Prompt redemption of food instruments. A WIC participant must redeem WIC benefits within the validated date of use.

b. Claiming food instruments and benefits. Enrolled participants are required to appear in person to claim food instruments and benefits when they have appointments to certify or have face-to-face, scheduled nutrition education contacts. Enrolled participants who complete their nutrition education contacts via a state-approved Internet nutrition education platform are not required to appear in person to claim food instruments and benefits. A proxy may pick up food instruments as described in the Iowa WIC Policy and Procedure Manual.

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) At the time of receipt of food benefits in the clinic, electronically sign that food benefits were received.
- (2) Swipe the eWIC card at the vendor's ECR and enter the participant's PIN at point of purchase.

- (3) Not accept money in exchange for unused food benefits or portions of the food allotment.
- (4) Attempt to redeem food benefits only with a WIC-contracted vendor.

73.7(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 only in specific situations as described in the Iowa WIC Policy and Procedure Manual. Any mailing of WIC food instruments must have prior approval from the state.

c. 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 securement of contracts shall be carried out in accordance with department directives outlined in the Iowa WIC Policy and Procedure Manual.

d. Food instrument/benefits distribution on non-clinic 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/benefits 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.

73.7(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 vendors authorized to provide reasonable access for WIC 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 all vendors must meet minimum criteria for approval. The Iowa WIC program does not limit the number of vendors that may participate in the agency service area. A retailer that intends to derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments will not be allowed. 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 73.7(4) and meet the minimum review points in 73.7(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 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 73.7(5).

d. Determining when compliance investigation activities are necessary to verify WIC 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 to vendors written notice of WIC program violations and sanctions.

f. Ensuring that activities related to eWIC follow information provided by FNS's WIC EBT operating rules, WIC EBT Technical Implementation Guide and FNS Handbook 901.

73.7(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 the 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 retailer that intends to derive more than 50 percent of annual revenue of the sale of food items, for grocery vendors, or

of infant and special medical formula, for special purpose vendors, from the redemption of WIC food instruments will not be approved.

a. WIC vendor agreement. To qualify for a WIC 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: a minimum of 5 linear feet of raw fruits and vegetables; a minimum of 12 linear feet of unbreaded fresh or frozen meats and poultry (prepackaged luncheon meats do not qualify); canned and frozen vegetables; dairy products; cereals; and breads.

(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 minimum variety and quantity of WIC-approved foods as defined in the latest revised version of the Iowa WIC vendor application.

1. 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.

2. 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) The vendor must purchase formula only from state-licensed wholesalers, distributors, retailers, and infant formula manufacturers registered with the Food and Drug Administration (FDA) through a list maintained by the WIC program.

(7) A vendor shall charge a price to WIC participants that is equal to or less than the price charged to all other customers. 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 price charged for the same category by all other WIC vendors in the same peer group. Categories refer to the broad groupings of items rather than specific brands. 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.

(8) Vendors will also be selected based on access to WIC participants. If at all possible, at least one vendor contract will be maintained in rural counties where a WIC clinic is located. The Iowa WIC program does not limit the number of vendors that may participate in the agency service area.

(9) The vendor must have a current state of Iowa food establishment license.

(10) The vendor must consistently identify WIC products by using shelf labels that meet specific criteria and price points as described in the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

(11) The vendor must not have had a Supplemental Nutrition Assistance Program (SNAP) disqualification or civil monetary penalty imposed within the 12 months preceding the date of the application or reauthorization.

(12) 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.

(13) 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.

(14) 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.

(15) The vendor must agree to adhere to all provisions of the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

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 to WIC participants must be equal to or less than the prices charged to 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 73.7(4) "a," subparagraphs (2) through (4), (6) through (8), and (10) through (15), for grocery vendors.

(5) The vendor must agree to adhere to applicable provisions of the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

c. Application review. 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. Prior to completing its review, the department may, at its discretion, request a vendor to resubmit an application if the application has not been completed to the extent that a determination of eligibility can be made.

d. 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. The WIC vendor agreement is 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" during a contract period.

Vendors must complete a new application and sign a new WIC vendor agreement at least every three 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" during a contract period 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) Any of the selection criteria listed in 73.7(4) "a" and "b" above are no longer met.

Expiration of a WIC vendor 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.

e. Training. Vendors shall accept training in WIC 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 WIC 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.

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

g. Reimbursement to the WIC 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.

73.7(5) Vendor monitoring. To maintain WIC 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 that 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, review of vendor 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 vendor employees. At the conclusion of the transaction, the results of the buy are discussed with the vendor owner or manager on duty. After an educational buy is conducted, the purchased food may be donated. 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 vendor 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 WIC program noncompliance, two compliance buys in which no WIC 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 WIC 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 WIC program violations, the department shall issue the vendor a notice of violation points assessed unless such notification would hinder an investigation.

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.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.8(135) Food package. The authorized supplemental foods shall be prescribed for participants by a CPA in the contract agency from food packages outlined in 7 CFR 246.10 and in accordance with the following:

73.8(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 CPA 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 costly food items allowed by regulations. Criteria for considering foods for inclusion in the approved food list are found in 73.8(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.

73.8(2) Tailoring to meet individual nutritional needs. Food packages are individually tailored to meet the needs of specific participants according to USDA regulations and the Iowa WIC Policy and Procedure Manual.

73.8(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 and to allow participants to exercise responsibility in shopping.

c. Inquiries from food companies about new and continuing products can be submitted at any time. Food items that are required to be listed by brand on the approved food list will be reviewed and approved on a quarterly basis. Food items that are not required to be listed by brand on the approved food list will be reviewed and approved as they are received. The state reserves the right to change the food list more frequently if necessary.

d. Cereals shall meet federal guidelines for content and shall also meet the following conditions:

(1) The brand is carried by current Iowa WIC-approved vendors.

(2) The department reserves the right to limit the number of approved cereals for administrative efficiency.

e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:

(1) Juices are 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.

(2) The brand is carried by current Iowa WIC-approved vendors.

f. The following conditions apply to dairy products:

(1) To qualify, brands of whole, 1%, or fat-free skim 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 which have a retail value of 115 percent or higher than the state average for this product.

(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).

(4) Yogurt shall meet federal guidelines for content and shall also meet the following conditions:

1. The brand or any private-label (store) brand is carried by current Iowa WIC-approved vendors.

2. Nonfat, lowfat, and whole yogurts cannot contain artificial sweeteners. No frozen yogurt, yogurt tubes, or drinkable yogurts are allowed.

g. All brands of packaged dried beans or peas are approved; however, no soup mixes and no dried beans or peas with added vegetables, fruits, meat, sugars, fats, or oils are allowed.

h. Peanut butter must meet federal guidelines. Brands may be either refrigerated or nonrefrigerated.

i. Eggs shall be fresh, Grade A large chicken eggs. Eggs which have a retail value of 115 percent or higher than the state average for this product may not be approved.

j. 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.

k. Any brand of tuna or salmon qualifies if it is either water- or oil-packed, in cans or pouches, chunked, solid, or flaked. Fish packaged with other items such as crackers, relish or other flavorings may not be purchased. Albacore tuna is not allowed.

l. Commercial infant formula shall meet the following conditions:

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

(2) It complies with the calorie and iron content prescribed by the USDA.

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

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

m. At least two whole grain options that meet federal guidelines will be provided.

n. Infant food fruits, vegetables and meats must meet the federal guidelines.

o. Fresh and frozen vegetables and fruits that meet federal guidelines will be available for purchase with cash-value benefits specifically for fruits and vegetables.

p. Soy beverages shall meet federal guidelines.

q. Tofu shall meet federal guidelines.

r. 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.

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

t. In addition to the criteria specified above, the department reserves the right to 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.

u. The department reserves the right to discontinue specific brand names and products if the cost is 115 percent or more higher than the state average for that particular product.

v. If a group of food products within a food category from one manufacturer have similar names and package designs and some of the food products 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.

w. The department reserves the right to make changes to the criteria for approving products for inclusion in the WIC food package.

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

[ARC 7984B, IAB 7/29/09, effective 9/2/09; ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.9(135) Education.**73.9(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 WIC program.

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

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

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

e. Education in normal nutrition, i.e., education in nutrition for life-cycle stages, shall be provided in accordance with the Iowa WIC Policy and Procedure Manual.

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.

73.9(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.

[ARC 7984B, IAB 7/29/09, effective 9/2/09; ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.10(135) Health services. The WIC program shall serve in the arrangement of ongoing health services for its participants. 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.

73.10(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 and with any agency providing referral data.

73.10(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 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.

[ARC 2839C, IAB 12/7/16, effective 1/11/17]

641—73.11(135) Appeals and fair hearings—local agencies.

73.11(1) Right of appeal.

a. Applicant. An applicant may appeal the denial or rejection of a timely submitted application.

b. Contract agencies. The right to appeal shall be granted when, during the course of the contract or agreement period, a local agency is disqualified or any other action which affects participation is taken.

73.11(2) Request for hearing. The appeal shall be submitted in writing within ten business days of receipt of notification of the adverse decision. The appeal shall be addressed to the contract administrator cited in the competitive selection application guidance, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

a. Applicant. In the event of an appeal, the department will continue working with the applicant awarded funding pending the outcome of the appeal.

b. Contract agencies. For participating contract agencies, a minimum of 60 days' advance notice will be given before the effective date of the action.

73.11(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 (DIA) pursuant to the administrative rules adopted by DIA 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 DIA.

73.11(4) Notice of hearing. Parties shall receive notice of the hearing in advance. The administrative law judge (ALJ) shall schedule the time, place, and date of the hearing so that the hearing is held as expeditiously as possible.

73.11(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.

73.11(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.

73.11(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 filed by either of the parties as provided in 641—subrule 176.8(5) or the director serves notice on the parties of the director's intent to review the decision.

73.11(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.

73.11(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 ALJ.

73.11(10) *Decision of director.* Upon receipt of a properly filed appeal, the director shall establish a briefing schedule and, at the discretion of the director, an opportunity for oral argument. An appeal to the director shall be based on the record made at the hearing. The director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law the director finds to be in error. The decision and order of the director shall be delivered by certified mail, return receipt requested, or by personal service, and becomes the department's final decision upon receipt by the aggrieved party.

73.11(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.

73.11(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 Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The party who appeals a final agency action to district court shall pay the costs of the preparation of a transcript of the contested case hearing for the district court.

[ARC 2839C, IAB 12/7/16, effective 1/11/17]

641—73.12(135) Right to appeal—participant.

73.12(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, disqualification, or termination from the WIC program. All hearings shall be conducted in accordance with these rules.

73.12(2) *Notification of appeal rights and right to hearing.* Each WIC program participant shall be notified in writing of the participant's right to appeal at the time of application and at the time of denial of eligibility or termination from the WIC program and at the time a participant receives a notice of a claim being established for repayment of improperly issued benefits. 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.

73.12(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 or verbally. The request for hearing shall be made to the contract agency within 60 days from the date the individual receives notice of the decision or action that is the subject of appeal.

73.12(4) *Denial or dismissal of request.* The request for hearing shall not be denied or dismissed unless:

- a. The request is not received within the required time frame;
- b. The request is withdrawn in writing by the appellant or a representative of the appellant; or
- c. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to WIC program eligibility have changed in such a way as to justify a hearing.

73.12(5) *Receipt of benefits during appeal.* Participants who appeal the termination of benefits within the 15-day advance adverse action notice period must continue to receive WIC program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first, 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

WIC 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.

73.12(6) *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.

73.12(7) *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.

73.12(8) *Conduct of hearing.* The hearing shall be conducted in accordance with federal regulations found at 7 CFR 246.23. Copies of these regulations are available from the contract agency and the department.

a. At a minimum, the party requesting the hearing or the party's representative shall have the opportunity to:

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

b. If a participant fails to attend the hearing, the agency will reschedule the hearing and give the participant 20 days' notice. The participant may have another person as the participant's designee. If neither the participant nor the designee attends the second hearing, the appeal will be closed.

73.12(9) *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.

73.12(10) *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 Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

73.12(11) *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.

73.12(12) *Receipt of benefits during appeal to the department.* If the decision being appealed concerns disqualification from the WIC program, the appellant shall not continue to receive benefits while an appeal to the department of a decision rendered on appeal at the local level is pending.

73.12(13) *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.

73.12(14) *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 73.12(15).

73.12(15) *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.

73.12(16) *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.

73.12(17) *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.

73.12(18) *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.

73.12(19) *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 Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

73.12(20) *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.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

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

73.13(1) *Right of appeal.* The right of appeal shall be granted when 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 vendor is disqualified or any other action which affects participation is taken. For participating vendors, a minimum of 15 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 Supplemental Nutrition Assistance Program (SNAP) disqualification.

d. When there are disputes regarding food instrument or cash-value benefit payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR 246.12(k)(3)).

e. The denial of authorization, if the department vendor authorization is subject to the procurement procedures applicable to the department.

f. When a vendor does not agree with the validity or appropriateness of the department's vendor selection and limiting criteria, the department's peer group criteria, the department's above-50-percent vendor criteria, and the department's prohibition of incentive items and the department's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to 7 CFR 246.12(h)(8).

g. Determination of the following by the department:

(1) Whether or not a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation,

(2) To include or exclude an infant formula, manufacturer, wholesaler, distributor, or retailer from the approved-formula list required pursuant to 7 CFR 246.12(g)(11),

(3) Whether to notify a vendor in writing when an investigation reveals an initial violation to impose a sanction, pursuant to 7 CFR 246.12(l)(3).

73.13(2) Request for hearing. An appeal is brought by filing a written request for a hearing with the Division Director, Division of Health Promotion and Chronic Disease Prevention, 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.

73.13(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.

73.13(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, Iowa, at the Lucas State Office Building or other suitable location.

73.13(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 246.18. Copies of these regulations are available from the department of inspections and appeals upon request.

73.13(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.

73.13(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 73.13(8).

73.13(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.

73.13(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.

73.13(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.

73.13(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.

73.13(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 petition for judicial review shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

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 state and federal regulations to ensure the rights of all individuals under the WIC program.

[ARC 2839C, IAB 12/7/16, effective 1/11/17]

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) 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.

73.19(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.

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 benefits. |
| 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 appropriate per this chapter or the Iowa WIC Policy and Procedure Manual |

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 shall 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 if a family makes full restitution for a monetary claim, establishes a repayment schedule within 30 days of receipt of the letter demanding repayment, makes full restitution or agrees to a repayment schedule or, in the case of a participant who is an infant, a child, or under the age of 18, the state or local agency approves the designation of a proxy. The department may permit the participant to receive WIC services before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, a child, or under the age of 18, the department or local agency approves the designation of a proxy. 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 shall 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.

73.19(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.

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 WIC vendor agreement 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 |

| Violation | Points Per Event |
|---|--|
| 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. Other violations of this chapter or the WIC vendor agreement or the Iowa WIC Policy and Procedure Manual. | As appropriate per this chapter, the WIC Vendor Agreement and Handout, or the Iowa WIC Policy and Procedure Manual |

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 Iowa department of inspections and appeals 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. With an administrative finding of the following federally mandated sanctions, the vendor will be disqualified from being a WIC vendor 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 vendor's documented inventory of that food item for a specified period of time.

e. With an administrative finding of the following federally mandated sanctions, the vendor will be disqualified for six years.

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

(2) 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 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 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 WIC vendor agreement 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. Federal Supplemental Nutrition Assistance Program (SNAP) regulations require automatic disqualification from SNAP for vendors disqualified by the WIC program for certain types of violations. When a vendor is disqualified from the WIC program, the disqualification letter to the vendor will

include the following statement: “This disqualification from WIC may result in disqualification as a retailer in the Supplemental Nutrition Assistance Program (SNAP). Such disqualification may not be subject to administrative or judicial review under SNAP.” 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 SNAP. The disqualification shall be for the same length of time as the SNAP disqualification, may begin at a later date than the SNAP 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 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 WIC program income.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

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. Distribute WIC brochures to numerous community organizations and offices.

b. Complete outreach activities as specified in the local agency contract.

73.21(2) Reserved.

[ARC 2839C, IAB 12/7/16, effective 1/11/17]

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.

[ARC 2839C, IAB 12/7/16, effective 1/11/17]

641—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services may be required to 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. Copies of review criteria are available from: Chief, Bureau of Nutrition and Physical Activity, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; (515)281-7095 or 1-800-532-1579. [ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.24(135) Participant rights. The WIC program shall be open to all eligible persons regardless of race, color, sex, creed, age, mental/physical handicap or national origin. The USDA Nondiscrimination Statement can be found on the following USDA website: www.fns.usda.gov/sites/default/files/cr/Nondiscrimination-Statement.pdf.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]

641—73.25(135) Confidentiality. The department and local agencies shall protect the confidentiality of participant, applicant, and vendor information in accordance with 7 CFR Part 246.

[ARC 2839C, IAB 12/7/16, effective 1/11/17]

641—73.26(135) WIC online ordering project. Notwithstanding any conflicting provision of law to the contrary, a participant, vendor, or contract agency may participate in the WIC online ordering project, provided that such participation conforms to the terms and conditions of the Iowa WIC Policy and Procedure Manual as modified to incorporate the WIC online ordering project.

[ARC 6437C, IAB 8/10/22, effective 9/14/22]

These rules are intended to implement federal law 42 U.S.C. Section 1786, and Iowa Code section 135.11(12).

[Filed emergency 11/17/82—published 12/8/82, effective 12/8/82]

[Filed emergency 5/16/83—published 6/8/83, effective 5/31/83]

[Filed 11/18/83, Notice 8/17/83—published 12/7/83, effective 1/13/84]

[Filed emergency 7/27/84—published 8/15/84, effective 7/27/84]

[Filed emergency 1/10/85 after Notice 8/15/84—published 1/30/85, effective 1/10/85]

[Filed 5/17/85, Notice 2/13/85—published 6/5/85, effective 7/11/85]

[Filed emergency 5/30/85—published 6/19/85, effective 5/30/85]

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]¹

[Filed emergency 9/19/86—published 10/8/86, effective 9/19/86]

[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]

[Filed 2/4/88, Notice 11/18/87—published 2/24/88, effective 3/30/88]²

[Filed emergency 5/13/88—published 6/1/88, effective 6/1/88]

[Filed 9/15/89, Notice 7/12/89—published 10/4/89, effective 11/8/89]

[Filed 5/11/90, Notice 2/7/90—published 5/30/90, effective 7/4/90]

[Filed 11/9/90, Notice 8/22/90—published 11/28/90, effective 1/2/91]

[Filed 3/13/92, Notice 1/22/92—published 4/1/92, effective 5/6/92]

[Filed 3/13/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]

[Filed 1/14/94, Notice 12/8/93—published 2/2/94, effective 3/9/94]

[Filed 1/11/96, Notice 11/8/95—published 1/31/96, effective 3/6/96]
[Filed 9/16/96, Notice 7/31/96—published 10/9/96, effective 11/13/96]
[Filed 1/9/97, Notice 12/4/96—published 1/29/97, effective 3/5/97]
[Filed emergency 11/12/99 after Notice 6/16/99—published 12/1/99, effective 11/12/99]
[Filed 4/13/00, Notice 1/26/00—published 5/3/00, effective 6/7/00]
[Filed 5/10/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 7/16/04, Notice 5/26/04—published 8/4/04, effective 9/8/04]
[Filed 7/13/05, Notice 6/8/05—published 8/3/05, effective 9/7/05]
[Filed 1/10/08, Notice 11/21/07—published 1/30/08, effective 3/5/08]
[Filed ARC 7984B (Notice ARC 7669B, IAB 4/8/09; Amended Notice ARC 7798B, IAB 5/20/09),
IAB 7/29/09, effective 9/2/09]
[Filed ARC 2839C (Notice ARC 2735C, IAB 9/28/16), IAB 12/7/16, effective 1/11/17]
[Filed ARC 4487C (Notice ARC 4361C, IAB 3/27/19), IAB 6/5/19, effective 7/10/19]
[Filed ARC 6437C (Notice ARC 6326C, IAB 5/18/22), IAB 8/10/22, effective 9/14/22]

¹ See IAB, Inspections and Appeals Department.

² Effective date delayed 70 days by the Administrative Rules Review Committee at its March 8, 1988, meeting.