

NOTICE OF INTENT

Department of Health Office of Public Health

Participant Eligibility (LAC 48:V.Subpart15)

Under the authority of R.S. 46:972, and in accordance with R.S. 49:950 *et seq.*, the Administrative Procedure Act, notice is hereby given that the secretary, acting through the Louisiana Department of Health, Office of Public Health (LDH/OPH), intends to amend parts of Chapter 41 of Title 48— (Public Health—General) and to amend those rules to comply with the requirements of the Child and Nutrition and WIC Reauthorization Act of 2010 and applicable WIC federal regulations of the United States Department of Agriculture.

This rulemaking proposes to amend §§4101 – 4103 of Chapter 41, §§4303–4309 of Chapter 43 and §§44511 of Chapter 45, all within Part V of Title 48, Public Health—General of the Louisiana Administrative Code (LAC). These amendments are necessary to ensure the State of Louisiana remains in compliance with applicable WIC federal regulations of the USDA at 7 CFR 246.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventive Health Services

Subpart 15. Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Chapter 41. General Provisions

§4101. Purpose and Scope

A. ...

B. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC), also hereinafter known as “The Louisiana WIC Program or LA WIC”, provides supplemental foods and nutrition education, including breastfeeding promotion and support, for women, infants and children. It is federally funded through the U.S. Department of Agriculture (USDA) via cash grants to state agencies which administer the program. The Louisiana Department of Health, Office of Public Health, Center for Community and Preventive Health, Bureau of Nutrition Services, shall be responsible for the administration of the program in Louisiana. Extensive regulations have been published by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) in 7 CFR Part 246. Federal regulations stipulate participation requirements, length of certifications, certification processes, certification standards, WIC participant responsibilities, WIC participant grievance rights, and retail food delivery systems. If there is a conflict with any portion of LAC 48:V.Subpart 15 and 7 CFR Part 246 and/or if there is a regulatory waiver issued by USDA to LA WIC, the provisions of 7 CFR Part 246 and/or the regulatory waiver shall supersede the provisions of LAC 48:V.Subpart 15.

C. The annual LA WIC state plan, including a comprehensive policy manual, is available for review by any interested party at both of the Bureau of Nutrition Services offices in Louisiana, as follows: 628 North Fourth Street, Baton Rouge, LA 70802 and 1450 Poydras Street, New Orleans, LA 70112.

D. As described in 7 CFR part 246, LA WIC is to provide supplemental foods and nutrition education, including breastfeeding promotion and support, to categorically eligible WIC participants who are income eligible and found to be at nutritional risk. LA WIC shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons. LA WIC is responsible for providing services to as many eligible WIC participants as funding allows.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR part 246, P. L. 95-627, and 41 USC 1786. Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:330 (February 2017); LR 49:

§4103. Definitions

A. The following words and terms are defined for the purposes of this Subpart and for all contracts, guidelines, instructions, forms and other documents related hereto.

Abbreviated Administrative Review—a procedure by which a vendor may appeal specified adverse actions by LA WIC to an independent reviewer.

Above-50-Percent (A-50) Vendors—vendors that derive more than 50 percent of their annual food sales revenue from WIC approved food items, and new vendor applicants expected to meet this criterion under guidelines approved by the Food and Nutrition Service (FNS) of USDA.

Abuse—diversion of resources away from necessary LA WIC services

Adjustment—price adjustment.

Administrative Review—Repealed.

Authorized Supplemental Foods/WIC-Approved Foods—Repealed.

Authorized WIC Vendor—a store owned by a sole proprietorship, partnership, cooperative association, corporation, limited liability company, or other business entity that is authorized by LA WIC to provide WIC-approved food items to WIC participants under a retail food delivery system. Each store must have a single, fixed location and must be authorized separately from other stores owned by the business entity.

Civil Money Penalty (CMP)—a monetary penalty imposed in lieu of disqualification as a sanction applied due to inadequate participant access.

Cash Value Benefit—Cash value voucher.

Cash Value Voucher—a fixed-dollar amount used by a participant to obtain authorized fruits and vegetables

Change of Location—Repealed.

Change of Ownership—Repealed.

Competitive Price Criteria (CPC)—the prices a vendor or vendor applicant charges for a selection of WIC approved food items as compared to the prices charged by other vendors within the same vendor peer group.

Compliance Buy—a covert, on-site investigation in which a representative of the program poses as a WIC participant, parent, or caretaker of an infant or child participant, or proxy, conducts one or more WIC transactions, and does not reveal during the visit that he or she is a program representative.

Compliance Investigation—compliance buys and/or inventory audits.

Confidential Participant Information—Confidential applicant and WIC participant information is any information about an applicant or WIC participant whether it is obtained from the applicant or WIC participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or WIC participant and/or family member(s). Applicant or WIC participant information is confidential, regardless of the original source.

Confidentiality—Repealed.

Confidentiality Vendor Information—any information about a vendor (whether it is obtained from the vendor or any other source) that individually identifies the vendor except for vendor's name, address, telephone number, web site/email address, store type, and authorization status.

Corrective Action Plan (CAP)—a plan submitted by a vendor to take remedial action(s) to correct a violation(s) of LA WIC vendor rules and regulations.

Courtesies—LA WIC requires vendors to offer WIC participants the same services that are offered to other customers, such as, but not limited to, helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting with loading the food into a vehicle.

Deficiency—inventory audit deficiency.

Disqualification—the act of ending the program participation of a WIC participant, vendor or authorized state or local agency.

Documentation—the presentation of written documents which substantiate statements made by an applicant, WIC participant, person applying on behalf of an applicant, vendor, and/or vendor applicant.

Dual Participation—simultaneous participation in LA WIC in more than one WIC clinic.

Electronic Benefit Transfer (EBT)—a method that permits electronic access to WIC using a card or other access device approved by the Secretary of USDA.

Electronic Benefit Transfer (EBT) Capable—demonstration by a vendor or vendor applicant that its cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases.

Equitable Treatment—vendors will offer WIC participants the same courtesies that are offered to other (non-WIC) customers.

Food Delivery System—the method used by state and local agencies to provide WIC-approved foods items to WIC participants.

Food Instrument (FI)—Repeal.

Food Package—WIC-eligible food items designed to meet the special nutritional needs of the WIC participant and issued in designated quantities and types.

Fraud—regarding any and all LA WIC matters, a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for a party or to cause a loss or inconvenience to the other

Full Administrative Review—a procedure by which a vendor may appeal specified adverse actions by LA WIC to the Division of Administrative Law of the Louisiana Department of the State Civil Service.

Full Line Grocery Store—Repeal.

Incentive Items/Incentives—an item or service provided by a vendor to attract customers or encourage customer loyalty.

Infant Formula—a food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act of 1938 (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 of 1938 (21 U.S.C. 350a), as amended, and the regulations at 21 CFR parts 106 and 107 published on April 1, 2021.

Inventory Audit—the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental food(s) to provide WIC participants with the quantity of supplemental food(s) redeemed during a given period of time.

Inventory Audit Deficiency—the monetary value of a vendor's claimed reimbursement for the sale of supplemental food(s) that exceeds the store's documented inventory of supplemental food(s) for a specific period of time.

Judicial Review—the procedure by which a vendor may appeal a decision rendered at an administrative review, or a WIC participant may appeal a decision rendered at a fair hearing.

LA WIC—the Louisiana WIC Program.

Maximum Allowable Reimbursement Level (MARL)— the highest reimbursement amount for WIC approved food items for each peer group.

Monitoring—routine monitoring.

Monitoring Review—routine monitoring.

Non-A50 Vendors—Repeal.

Participant Access—the ability of a WIC participant to adequately access WIC approved food items from vendors for which LA WIC has established participant access criteria in accordance with federal regulations at 7 CFR part 246.

Participant Violation—any intentional action of a WIC participant, caregiver or a proxy that violates federal or state statutes, regulations, policies or procedures governing the program.

Participants—pregnant women, breastfeeding women, postpartum women, infants and children who are receiving WIC approved food items or cash-value vouchers under the program, and the breastfed infants of WIC participant breastfeeding women.

Participation—the sum of the number of:

a. persons who received WIC approved food items or cash-value vouchers during the reporting period;

b. infants who did not receive WIC approved food items or cash-value vouchers but whose breastfeeding mother received WIC approved food items or cash-value vouchers during the report period; and

c. breastfeeding women who did not receive WIC approved food items or cash-value vouchers but whose infant received WIC approved food items or cash-value vouchers during the report period.

Peer Group—a group of vendors that is based on common characteristics or criteria that affect food prices. Vendors are grouped for management and cost containment purposes.

Postpartum Women—usually, women up to 6 months after termination of pregnancy.

Price Adjustment—changes made to the reimbursement amount by LA WIC, in accordance with the vendor agreement, to ensure that the payment to the vendor complies with LA WIC's price limitations.

Program— the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by section 17 of the Child Nutrition Act of 1966, as amended (unless the context in which this word is used in this Subpart clearly indicates otherwise).

Proxy—any person designated by a WIC participant, or by a parent or caretaker of an infant or child participant, to obtain and transact WIC and/or to obtain WIC approved food items on

behalf of a WIC participant. The proxy shall be designated consistent with LA WIC's procedures established pursuant to 7 CFR §246.12(r)(1). Parents or caretakers applying on behalf of a child or infant WIC participants are not proxies.

Regular Vendors (Non-A-50)—vendors that do not meet the vendor selection criterion for above-50-percent (A-50) vendors.

Reimbursement—the payment from LA WIC to a vendor for WIC transactions in accordance with the vendor agreement.

Routine Monitoring—an overt, on-site monitoring visit during which program representatives identify themselves to vendor personnel.

Sanctions—adverse actions including, but not limited to, termination of the vendor agreement, and/or disqualification or civil money penalties (CMPs), taken by LA WIC against a vendor after a vendor fails to comply with vendor rules and regulations. The sanction schedule appears in the vendor guide and policy manual.

Secretary—the Secretary of Agriculture.

Sign or Signature—a handwritten signature on paper or an electronic signature. If LA WIC chooses to use electronic signatures, LA WIC shall ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices, and applicable federal law and policy, and the confidentiality provisions at 7 CFR §246.26.

State Agency—the state of Louisiana, Louisiana Department of Health, Office of Public Health, Center for Community and Preventive Health, Bureau of Nutrition Services.

State Plan—a plan of program operation and administration that describes the manner in which LA WIC intends to implement and operate all aspects of program administration within its jurisdiction in accordance with 7 CFR §246.4.

Supplemental Foods—those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding and postpartum women, infants, and children, and foods that promote the health of the population served by LA WIC as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as prescribed by the Secretary in 7 CFR §246.10.

Supplemental Nutrition Assistance Program (SNAP)—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 stores and farmers' markets.

.

Unauthorized Food Item—allowing the purchase of any food item that is not a WIC approved food item, the purchase of any WIC approved food item that is not prescribed for a particular WIC participant, or the purchase of any WIC approved food item in excess of available WIC.

Vendor—authorized WIC vendor.

Vendor Agreement—a contract between an authorized WIC vendor and LA WIC.

Vendor Authorization—the process by which LA WIC assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be an authorized WIC vendors.

Vendor ID—vendor identification number.

Vendor Identification Number—a distinctive number assigned to each authorized WIC vendor that is confidential.

Vendor Limiting Criteria—criteria established by LA WIC to determine the maximum number and distribution of vendors it authorizes pursuant to 7 CFR §246.12(g)(2).

Vendor Number—Repeal.

Vendor Overcharge—intentionally or unintentionally charging LA WIC more for a WIC-approved food item than is permitted under the vendor agreement, such as a vendor charging more for a WIC approved food item in the WIC transaction than the shelf price of the item. WIC transactions submitted by the vendor for redemption that are adjusted by LA WIC to meet cost containment measures are not considered vendor overcharges.

Vendor Portal—Repealed.

Vendor Rules and Regulations—provisions that control vendor participation within LA WIC including, but not limited to, affirmations made in the vendor application and the vendor agreement, and federal and state rules, regulations, guidance and policy governing LA WIC as well as the vendor guide, memorandums and policy manual.

Vendor Selection Criteria—the criteria established by LA WIC to select individual vendors for WIC authorization consistent with the requirements in 7 CFR §246.12(g)(3) and (g)(4) and found in the vendor rules and regulations.

Vendor Termination—the dissolution of a vendor agreement.

Vendor Violation—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 vendor agreement or federal or state statutes, regulations, policies, or procedures governing LA WIC.

WIC—the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

WIC Approved Food Items—those supplemental foods authorized by LA WIC for issuance to WIC participants.

WIC Benefit—a supplemental food benefit issued to WIC participants in the form of a cash value voucher (CVV) or EBT card.

WIC Federal Regulations—the regulations contained within part 246 of title 7 of the Code of Federal Regulations (7 CFR 246) published on January 1, 2021 and titled the Special Supplemental Nutrition Program for Women, Infants and Children.

WIC Program - Repealed.

WIC Transaction—an electronic benefit transfer (EBT) of a WIC benefit.

WIC Transaction for Food Not Received—occurs when LA WIC reimburses a vendor for a WIC approved food item(s) not received by the WIC participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR12:869 (December 1988), amended by the Department of Health, Office of Public Health, LR 43:331 (February 2017); amended LR 49:

Chapter 43. Participant Eligibility

§4301. Integration with Health Services

A. Whenever possible, (LA-WIC) intake procedures shall be combined with intake procedures from other health programs and/or services administered by state and local agencies. Such merging may include verification procedures, certification interviews, and income computations.

1. A list of local counseling and treatment resources for drug and other harmful substance abuse shall be made available to all pregnant, postpartum, and breastfeeding women, and to parents and caretakers of infants and children, any of whom are applying for and participating in LA WIC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:334 (February 2017); LR 49:

§4303. Eligibility Criteria

A. To be certified as eligible for LA WIC, applicants shall:

1. — 2. ...
3. meet nutritional risk criteria as described in Subparagraph d (Priority IV) of Paragraph 4 of Subsection C of this Section and in the state plan.

B. Income Criteria and Income Eligibility Determination

1. Income criteria for the program is established annually at 185 percent-of poverty level (U.S. Department of Health and Human Services) as issued annually by the USDA's FNS. This shall have an annual effective date of no later than July 1.

2. LA WIC will determine income through the use of a clear and simple application form. Routine verification on a random selection of WIC participants to verify income is, and shall remain, at the discretion of LA WIC. Applicants are adjunctively income eligible for LA WIC when proof of enrollment in Louisiana Medicaid, Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) is provided.

C. Nutritional Risk

1. A competent professional authority shall determine if a WIC participant is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data by an applicant or WIC participant's medical provider.

2. At minimum, height (or length) and weight of the WIC participant shall be measured, and a hematological test for anemia (such as a hemoglobin, hematocrit or free erythrocyte protoporphyrin test) shall be performed. Such hematological tests are not required, but are permitted, for infants under nine months of age. All infants nine months of age and older (who

have not already had a hematological test performed or obtained between the ages of and six and nine months), shall have a hematological test performed between nine and 12 months of age or obtained from referral sources.

3. Appropriate nutritional risk codes, as specified in the current state plan and as summarized in Paragraph 4 of this Subsection, shall be documented at each certification/recertification visit.

4. In the event that statewide participation has reached the maximum level, LA WIC shall fill vacancies according to the federally mandated priority system. In the event a priority level must be partially closed, subpriorities are described in the state plan as approved by USDA. Priority levels are identified as follows;

a. Priority I—pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the need for WIC approved food items .

b. Priority II—

i. infants (except those infants who qualify for Priority I) up to 6 months of age born of women who participated in LA WIC during pregnancy; and

ii. infants (except those infants who qualify for Priority I) up to 6 months of age born of women who were not WIC participants during pregnancy but whose medical records document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrated the person's need for WIC approved food items.

c. Priority III—children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for WIC approved food items.

d. Priority IV—pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

e. Priority V—children at nutritional risk because of an inadequate dietary pattern.

f. Priority VI—postpartum women at nutritional risk.

g. Priority VII—individuals certified for LA WIC solely due to homelessness or migrancy and, at state agency option, previously certified WIC participants who might regress in nutritional status without continued provision of WIC approved food items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 12:869 (December 1988), amended by the Department of Health, Office of Public Health, LR 43:335 (February 2017); LR 49:

§4305. Timeframes for Processing Applicants

A. When LA WIC is not serving its maximum caseload, LA WIC may accept applications, and make eligibility determinations. Applicants shall be notified of the decisions made, and if enrolled, will be issued WIC benefits. These actions shall be accomplished within the timeframes set forth below.

1. The processing timeframes shall begin when an individual visits the WIC clinic during clinic office hours to make an oral or written request for WIC benefits.

2. Special nutritional risk applicants shall be notified of their eligibility or ineligibility within 10 days of the date of the first request for WIC benefits. LA WIC may provide an extension of the notification period to a maximum of 15 days for the WIC clinics which make written request, including a justification of the need for an extension. LA WIC shall establish criteria for identifying categories of persons at special nutritional risk who require expedited services. At a minimum, however, these categories shall include pregnant women eligible as Priority I WIC participants, and migrant farm workers and their family members who soon plan to leave the jurisdiction of the local agency.

3. All other applicants shall be notified of their eligibility or ineligibility within 20-days of the first date of the request for WIC benefits.

4. The WIC clinic or local agency using a retail purchase system shall issue WIC benefits to the WIC Participant at the same time as notification of certification. The WIC benefits issued should be valid for the current month and shall be redeemable immediately upon receipt by the WIC Participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:335 (February 2017); LR 49:

§4307. Certification Periods

A. WIC benefits shall be based upon certifications established in accordance with the following timeframes.

1. — 4. ...

5. Children shall be certified at intervals of approximately one year and ending with the end of the month in which a child reaches its fifth birthday. WIC clinic staff shall ensure children certified for a year shall be offered a mid-certification assessment, which includes a health and nutrition assessment (review of anthropometrics, blood work, and a brief update of the health and dietary assessment), immunizations screening, nutrition education, and referrals to other health and social services, within a certification period. Food benefits shall not be denied to parents/guardians who refuse to obtain the mid-certification assessment for their children.

B. Upon request, WIC participants shall receive verification of certification (VOC) when transferring to another WIC program out of state.

C. ...

D. WIC participants receiving program benefits may be disqualified during a certification period for the following reasons:

1. WIC participant violation including, but not limited to, intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to

obtain WIC benefits; exchanging WIC benefits for cash, credit, non-food items, or unauthorized food items, including WIC approved food items in excess of those listed on the participant's WIC benefit; threatening to harm or physically harming vendor staff; or making a written, electronic, or verbal offer to sell WIC benefits, including WIC-approved food items, and/or WIC EBT cards, or allowing someone else to do so.

2. If LA WIC experiences funding shortages, it may be necessary to discontinue program benefits to a number of certified and participating WIC participants. LA WIC shall not enroll new participants during the period when currently participating WIC participants, those who have received WIC benefits during a current certification, are denied remaining WIC benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:336 (February 2017); LR 49:

§4309. WIC Participant Rights and Responsibilities/Notification/Fair Hearing

A. WIC Participant Rights and Responsibilities. All applicants shall read or have read to them the programs' rights and responsibilities statement, including the restriction of dual participation in the program. After reviewing the statement, all applicants shall sign attesting to have reviewed the statement.

B. Notification of Ineligibility. WIC participants found ineligible during a certification period shall be advised in writing of the ineligibility, the reasons for the ineligibility and of the right to a fair hearing.

C. Notification of Disqualification. WIC participants who are about to be disqualified from program participation during a certification period shall be advised in writing not less than 15 days before the effective date of disqualification, of the reasons for the disqualification and the right to a fair hearing.

D. Fair Hearing Procedures for WIC participants. LA WIC provides a hearing procedure through which any individual may appeal, within sixty days of the date of notification by LA WIC, an action which results in the denial of participation or the disqualification from LA WIC.

1. The hearing process is governed by the procedures set forth in the Administrative Procedure Act, R.S. 49:950 et seq., and as mandated by WIC federal regulations, 7 CFR part 246.

2. LA WIC shall not summarily deny or dismiss an appeal unless:

a. — c.

...

3. LA WIC shall continue WIC benefits for a WIC participant whose participation has been terminated during a certification period if a request for an appeal is received within the 15 days of advance notification of disqualification. WIC shall continue until the hearing officer reaches a decision or the certification period expires, whichever occurs first. Applicants who are denied WIC benefits at initial certification or because of the expiration of their certification may appeal the denial, but shall not receive WIC benefits while pending the hearing and decision of the hearing officer.

4. A WIC participant or representative may appeal the fair hearing decision through judicial review as provided for in the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:336 (February 2017), LR 48:

Chapter 45. Vendor Selection, Participation and Sanctions

§4503. Vendor Selection Criteria

A. As outlined in 7 CFR part 246, LA WIC has the responsibility to maximize the use of available funds by providing WIC-approved food items to WIC participants at the most reasonable prices and to have an agreement with enough vendors to ensure adequate participant access. LA WIC reserves the right to implement limiting criteria on vendors statewide in order to meet this responsibility. If LA WIC elects to implement such limiting criteria, the criteria shall be made available and applied consistently.

B. WIC federal regulations at 7 CFR §246.12 mandate that state WIC agencies must develop and implement selection criteria to select only qualified vendors to provide WIC-approved food items to WIC participants. Specific vendor selection criteria must be addressed while allowing WIC state agencies to identify additional vendor selection criteria to further enhance services to WIC participants.

C. LA WIC has established vendor selection criteria in conjunction with and with approval from the USDA. The vendor selection criteria are published within this Subpart and in the vendor rules and regulations.

D. In order to be eligible to participate in LA WIC, the vendor applicant, including any of the vendor applicant's current owners, officers, or managers and/or vendors shall:

1. stock and maintain sufficient quantities and varieties of all WIC approved food items in accordance with LA WIC's minimum stock requirements (MSR). See 7 CFR §246.12(g)(3)(i);

2. not have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity during the last six years. Activities indicating a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice [see 7 CFR §246.12(g)(3)(ii)];

3. not be currently disqualified from SNAP or have been assessed a SNAP Civil Money Penalty (CMP) for hardship and the disqualification period that would have otherwise been imposed has not expired: [see 7 CFR §246.12(g)(3)(iii)];

4. have prices that are competitive with other vendors in LA WIC's designated peer group, as determined by the LA WIC's competitive price criteria (CPC). All vendors are subject to CPC at all times to ensure cost containment. Applying vendors, whose prices are higher than the CPC applicable to their peer groups, shall be informed and given one opportunity to lower their prices to meet the CPC: [see 7 CFR §246.12(g)(4)];

5. purchase infant formula only from vendors included on LA WIC's list of infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula, and licensed infant formula wholesalers,

distributors, and retailers. This list can be found on the LA WIC website at ldh.la.gov/wicvendor;

6. not derive or expect to derive more than 50 percent of annual food sales revenue from WIC transactions; [see 7 CFR §246.12(g)(4)(i)-];

7. agree to be placed in a vendor peer group with other above-50-percent (A-50) vendors when deriving or expecting to derive more than 50 percent of their annual food sales revenue from WIC transactions. Vendors within this peer group shall maintain WIC approved food item prices at a level such that the average payments for A-50 vendors does not exceed average payments to regular vendors; [see 7 CFR §246.12(g)(4)(i)(A)-];

8. agree to neither provide nor advertise nor indicate an intent to provide customers with any incentive items, when deriving or expecting to derive more than 50 percent of their annual food sales revenue from WIC transactions. LA WIC shall make a determination on what constitutes a violation of the meaning of the previous sentence; however, incentive items definitively prohibited include, but are not necessary limited to:

a. goods and services which result in a conflict of interest or the appearance of such conflict for the A-50 vendor, such as assistance with applying for WIC;

b. lottery tickets at no charge or below face value;

c. cash gifts in any amount for any reason;

d. anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

e. an allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or WIC benefits involved, unless the incentive items have been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit would not be exceed the less-than-\$2 nominal limit;

f. food, merchandise or services of greater than less-than-\$2 nominal value provided to the customer;

g. food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

h. any kind of incentive item which incurs a liability for the WIC program; and

i. any kind of prohibited incentive item which violates any federal, state, or local law or regulations.

9. have EBT capability; and

10. in addition to the above, shall adhere to any and all vendor selection criteria within the vendor rules and regulations and any changes thereto; [see 7 CFR §246.12(g)(3)].

E. WIC federal regulations at 7 CFR §246.12(g)(3) mandate that LA WIC shall not authorize a vendor applicant if LA WIC determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction.

F. After WIC authorization, all vendors shall continue to meet the criteria of this Section and vendor rules and regulations, and any changes thereto, at all times. A vendor found to be out of compliance with vendor rules and regulations any time during the authorization period is

subject to termination of WIC authorization and the vendor agreement and possible disqualification.

G. WIC federal regulations at 7 CFR §246.12(g)(8) allow LA WIC to establish timeframes for accepting and processing the vendor application, outside of which LA WIC may deny authorization. Such timeframes are stated in the vendor guide and policy manual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:337 (February 2017);-LR 49:

§4505. Agreement

A. LA WIC must enter into written agreements with all vendors. The agreements must be for a period not to exceed three years. By signing the agreement, a vendor understands and agrees to the conditions enumerated and/or referenced in the vendor rules and regulations.

B. A vendor shall allow authorized personnel to monitor the vendor through announced and unannounced monitoring and/or compliance investigations to determine compliance with LA WIC and WIC vendor rules and regulations. A vendor shall provide access to any items, documentation, and records requested by authorized personnel, including but not limited to, inventory and invoices for purchase of WIC approved food items.

C. Recordkeeping. The vendor must maintain inventory records used for federal tax reporting purposes and other records LA WIC may require for the period of time specified by LA WIC in the vendor agreement. Upon request, the vendor must make available to representatives of LA WIC, the USDA, and the comptroller general of the United States, at any reasonable time and place for inspection and audit, all program-related records. Vendors are required to keep confidential the customer's eligibility for and receipt of WIC benefits.

D. LA WIC may make adjustments to a vendor's submission for reimbursement for WIC approved food item(s) to ensure that the payments do not exceed the maximum allowable reimbursement level (MARL) for the vendor's assigned peer group and pay vendors' claims for reimbursement for WIC transactions accordingly. No claim for reimbursement for WIC approved food items submitted by the vendor shall be paid by LA WIC unless the claim is in accordance with the terms of the vendor rules and regulations. LA WIC shall recoup any and all payments for WIC transactions made to the vendor in error.

E. The termination of a vendor agreement will be effective fifteen days after the date of the notice of adverse action, with the exception of LAC §48:V.4505.G.2, G.3, H.3, and H.4.

F. LA WIC will recoup payments for any and all WIC transactions conducted after the termination of the vendor agreement.

G. LA WIC must terminate a vendor agreement based on any of the following:

1. When LA WIC disqualifies a vendor.
2. When LA WIC permanently disqualifies a vendor. The termination of the vendor agreement for permanent disqualification is effective on the date of receipt of the notice of adverse action.

3. When LA WIC determines that the vendor has provided false information in connection with its application for WIC authorization. The termination of the vendor agreement for providing false information is effective on the date of receipt of the notice of adverse action.

H. LA WIC may also terminate a vendor agreement based on any of the following:

1. When a vendor is non-compliant with its terms and vendor rules and regulations.

2. When a vendor fails to meet vendor selection criteria at any time. The length of termination due to failure to meet vendor selection criteria will be effective for the time period provided in the vendor guide and policy manual.

3. When a vendor experiences a change of ownership, the vendor agreement shall automatically become null and void and terminates immediately as of the date the change of ownership occurred. Neither the previous owner nor the new owner will be authorized to conduct WIC transactions. Any WIC transactions conducted after the vendor agreement becomes null and void will be subject to recoupment by LA WIC. LA WIC shall hold the previous owner and new owner solidarily liable for any monies owed.

4. When a vendor experiences a change in availability or location. A vendor must provide advance written notice of a period of no less than 15-days of a change in availability or location. The vendor agreement shall automatically become null and void and shall immediately terminate as of the date the change in availability or location occurred.

5. When a conflict of interest between a vendor and LA WIC exists.

6. When either LA WIC or a vendor elects not to renew the vendor agreement. The vendor agreement may be terminated after 15 days written notice by either party or by the mutual agreement of both parties to terminate.

7. When a vendor is no longer authorized by SNAP, except for adverse actions by SNAP.

I. LA WIC will not permit a voluntary withdrawal of a vendor and/or a non-renewal of the vendor agreement as an alternative to an LA WIC termination or disqualification.

J. Participation as a vendor in LA WIC is a privilege. WIC authorization does not constitute a license or property interest. {[See 7 CFR §246.12(h)(3)(xxi)]}. A vendor cannot claim and is not entitled to money for loss of WIC sales during the pendency of an appeal of an adverse action. If the vendor is reinstated following a successful administrative review of an adverse action taken by LA WIC, the vendor cannot claim and is not entitled to retroactive payments and/or compensation for revenues lost for the period of time the vendor was not in the program.

K. A vendor that has been disqualified and/or had its vendor agreement terminated by LA WIC and who seeks Authorization shall reapply and meet all current requirements for WIC Authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:338 (February 2017); LR 49:

§4507. WIC Transaction Processing and Reimbursement and Claims by LA WIC

A. Only authorized WIC vendors may transact WIC benefits.

B. LA WIC will establish a vendor peer group system, place vendors into peer groups, and set allowable reimbursement levels for each peer group for the purpose of cost containment. If an above-50-percent (A-50) vendor is needed for participant access, LA WIC will place the A-50 vendor into a peer group for vendors designated as A-50.

C. A vendor shall process WIC transactions as outlined in the vendor guide and policy manual. LA WIC shall reimburse a vendor in accordance with its peer group, making adjustments as required by WIC federal regulations.

D. A vendor shall maintain and operate its WIC EBT system in compliance with the USDA/FNS's WIC operating rules for EBT, the technical implementation guide, the vendor rules and regulations and any changes thereto.

E. If a vendor submitted a claim for reimbursement that was rejected or the payment amount for the claim for reimbursement was adjusted by the LA WIC-contracted EBT processor or bank with which the vendor disagrees, the vendor may submit its dispute of the rejection of (or adjustment to) the reimbursement according to the process outlined in the vendor guide and policy manual. Any dispute submitted untimely shall be denied. Disputes that exceed the federal monetary threshold are subject to USDA approval. Vendors shall be notified of adverse reimbursement decisions.

F. LA WIC shall establish a claim against the vendor for any amounts owed to the program (*e.g.*, overcharges, unauthorized items, excess WIC approved food items, excess payments, deficiencies identified during an inventory audit, and adjustment to the vendor's claim for reimbursement). Disqualification and/or termination of the vendor agreement or payment of a civil money penalty (CMP) does not relieve the vendor of the obligation to repay any monies claimed by and owed to LA WIC. LA WIC may refer debts to the Louisiana Department of Revenue, Office of Debt Recovery and/or commence action in the 19th Judicial District Court to recover the outstanding claim amount and/or pursue any other remedies allowed to LA WIC by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972 and R.S. 47:1676.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:338 (February 2017); LR 49:

§4509. Vendor Sanctions for Violations

A. Pattern of Incidences.

1. WIC federal regulations at 7 CFR §246.12(I)(2)(i) mandate that state agency sanction(s) must be based on a pattern of violative incidences.

2. Federal guidance from the USDA WIC Vendor Management & Food Delivery Handbook (Sept. 2017, section 9.1.2., pg. 35) mandates that LA WIC must develop a definition of a pattern of violations. Some federal mandatory vendor

sanctions and all state agency vendor sanctions must be based on a pattern of violations (See 7 CFR §246.12(l)(1) and 7 CFR §246.12(l)(2)(i)). The definition of a pattern of violations may be different for different types of violations (*e.g.*, to account for severity). The definition of a pattern of violations is stated in the vendor rules and regulations.

3. WIC federal regulations at 7 CFR §246.12(h)(3)(xix) mandate that LA WIC must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless LA WIC determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation. Notification shall not be provided for a pattern of claiming reimbursement for the sale of an amount of a WIC approved food item at the category level that exceeds documented inventory. See 7 CFR §246.12(l)(3).

4. Unaddressed violations will carry from one agreement period to the next.

B. Federal Mandatory Vendor Sanctions. LA WIC shall impose sanctions for federal mandatory vendor sanction violations. The federal mandatory sanction violations are found in the vendor guide and policy manual. Federal mandatory vendor sanctions shall include disqualification and/or civil money penalties (CMP) assessed in lieu of disqualification. WIC federal regulations mandate that when, during the course of a single investigation, LA WIC determines a vendor has committed multiple violations (which may include violations subject to state agency sanctions), LA WIC must disqualify the vendor for the period corresponding to the most serious (*i.e.*, longest) federal mandatory sanction violation. LA WIC must include all violations in the notice of adverse action and enter all such violations into the vendor record. LA WIC shall impose any sanctions that are not overturned in an (abbreviated or full) administrative review. The federal mandatory vendor sanction violations are as follows:

1. LA WIC shall permanently disqualify a vendor convicted of trafficking in WIC or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act of 1970 (21 U.S.C. 802), as amended) in exchange for WIC .

2. LA WIC shall disqualify a vendor for six years for:

a. one incidence of buying or selling WIC benefits for cash (trafficking);
b. one incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended, in exchange for WIC benefits.

3. LA WIC shall disqualify a vendor for three years for:

a. one incidence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for WIC benefits;
b. a pattern of claiming reimbursement for the sale of an amount of a specific WIC approved food item that exceeds the store's documented inventory of that WIC approved food item at the WIC approved food category level for a specific period of time;
c. a pattern of vendor overcharges;
d. a pattern of receiving, transacting and/or redeeming WIC outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;
e. a pattern of charging for WIC approved food items not received by the WIC participant (WIC transaction for food not received);

f. a pattern of providing credit or non-food items (not including alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended) in exchange for WIC benefits.

4. LA WIC shall disqualify a vendor for one year for:

a. a pattern of providing unauthorized food items in exchange for WIC benefits, including charging for WIC approved food items provided in excess of those issued to a WIC EBT card;

b. a pattern of an above-50-percent (A-50) vendor providing prohibited incentive items to customers as set forth in WIC federal regulations at 7 CFR 246.12 (I)(1)(iv)(B).

C. Second Federal Mandatory Vendor Sanction - CMP. When a vendor that has previously been assessed a CMP for any of the federal mandatory vendor sanctions receives a second CMP for any of the federal mandatory vendor sanctions, LA WIC shall double the second CMP. The total amount assessed in CMPs for a second sanction may not exceed the maximum limits allowed under WIC federal regulations.

D. Third or Subsequent Federal Mandatory Vendor Sanction - CMP. When a vendor who previously has been assessed two or more CMPs as a result of any of the federal mandatory vendor sanctions receives another CMP as a result of any of the federal mandatory vendor sanctions, LA WIC shall double the third CMP and all subsequent sanctions. LA WIC may not impose a CMP in lieu of disqualification for third or subsequent sanctions for federal mandatory vendor sanctions.

E. State Agency Vendor Sanction Violations. WIC federal regulations allow LA WIC to impose sanctions for non-federally mandated (State) vendor violations based on a pattern of violative incidences as long as such vendor violations and sanctions are included in the federally-required state agency sanction schedule. The LA WIC sanction schedule appears in the vendor guide and policy manual. State agency vendor sanctions will include disqualification and/or CMP assessed in lieu of disqualification. LA WIC will disqualify a vendor for the period of time specified in the LA WIC sanction schedule or issue a CMP for a pattern of any of the following state agency sanction violations:

1. failing to comply with WIC transaction procedures outlined in the vendor guide and policy manual;

2. failing to maintain or provide LA WIC or authorized parties with requested records and/or information by the due date identified;

3. failing to provide WIC participants or proxies the same courtesies as offered to other customers;

4. any other violation of the vendor rules and regulations except for the federal mandatory vendor sanctions, for which a longer disqualification period is required.

F. Selection Criteria. LA WIC shall develop and implement vendor selection criteria for WIC authorization, which must include, at a minimum, the federally-required categories and requirements, and may include criteria developed by LA WIC. The vendor selection criteria are found in the vendor guide and policy manual. LA WIC may reassess any vendor at any time during the agreement period for compliance with vendor selection criteria. A pattern is not required to establish a vendor's failure to meet selection criteria. One incidence of a failure to

meet vendor selection criteria may warrant termination of the vendor agreement. A vendor that fails to meet vendor selection criteria may be terminated from LA WIC for up to one year.

G. Corrective Action Plan (CAP). At any time, LA WIC may require that a vendor implement a CAP.

H. Participant Access Determination(s). LA WIC shall develop participant access criteria and consider the availability of other authorized vendors and any geographic barriers to using such vendors when making participant access determinations. Participant access is determined at the sole discretion of LA WIC and the validity or appropriateness of LA WIC's participant access criteria and determinations are not subject to administrative review. Prior to disqualifying a vendor for certain federal mandatory vendor sanctions and/or state agency vendor sanctions, LA WIC may conduct a participant access determination. If LA WIC determines in its sole discretion that disqualification of a vendor would result in inadequate participant access, LA WIC shall impose a civil money penalty in lieu of disqualification. All vendors, including vendors determined necessary for participant access, are subject to reassessment at all times throughout the authorization period.

I. Civil Money Penalty (CMP). Except where prohibited by federal regulation or in those cases of permanent vendor disqualification, if LA WIC determines, in its sole discretion, that disqualification of the vendor would result in inadequate participant access, LA WIC shall impose a CMP in lieu of disqualification. Such CMP will be calculated in accordance with regulations for federal mandatory sanction violation(s) and/or in accordance with LA WIC vendor rules and regulations for state agency vendor sanction violation(s). If a vendor does not pay the CMP, only partially pays the CMP, or fails to make timely payment of the CMP, LA WIC shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. Disqualification and/or termination of the vendor agreement or payment of a CMP does not relieve the vendor of the obligation to repay any monies claimed by and owed to LA WIC.

J. Notifications to FNS. LA WIC must notify FNS that it has either disqualified or imposed a CMP in lieu of disqualification for any of the federal mandatory sanction violations listed in LAC 48:V.4509.B. Disqualification from WIC may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP) and such SNAP disqualification is not subject to administrative or judicial review under the SNAP.

K. Actions by SNAP.

1. SNAP Disqualification. LA WIC shall disqualify from the WIC program a vendor who is disqualified from SNAP. The disqualification shall be for the same length of time as SNAP disqualification, may begin at a later date than SNAP disqualification, and is not subject to administrative or judicial review under LA WIC. However, if LA WIC determines that disqualification of the vendor would result in inadequate participant access, LA WIC must impose a CMP in lieu of disqualification.

2. SNAP CMP. LA WIC shall disqualify a vendor who receives a CMP for hardship by SNAP. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in SNAP. However, if LA WIC determines that disqualification of the vendor would result in inadequate participant access, LA WIC may not disqualify the vendor or impose a CMP in lieu of disqualification.

L. Mandatory Sanction by another WIC State Agency. LA WIC shall disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a federal mandatory vendor sanction under the provisions of §4509 of this Subpart.

1. Disqualification by another WIC State agency. The length of the disqualification from LA WIC shall be for the same length of time as the disqualification by the other WIC state agency. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency. If LA WIC determines that the vendor is needed for participant access, LA WIC will issue a CMP in lieu of disqualification.

2. CMP by another WIC State agency. If the other WIC state agency has assessed a CMP in lieu of disqualification, the length of the disqualification from LA WIC shall be for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency. If LA WIC determines the vendor is needed for participant access, LA WIC will not disqualify or issue a CMP to the vendor.

M. Legal Remedies Not Precluded by Sanction. A vendor that commits fraud and/or abuse of LA WIC is liable to prosecution under applicable federal, state or local laws. LA WIC shall, where appropriate, refer a vendor that LA WIC suspects has committed fraud and/or abuse to federal, state and/or local authorities and/or another WIC state agency for prosecution. Disqualification and/or termination from LA WIC does not preclude criminal and/or civil legal actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:338 (February 2017); LR 49:

§4511. Administrative Review of Adverse Actions

A. Some adverse actions taken by LA WIC that affect vendors or vendor applicants may be subject to administrative review, if appealed.

B. LA WIC shall provide written notification of the adverse action, the procedures to follow to request an administrative review (full or abbreviated), if applicable, and the cause(s) for and the effective date of the action. If the vendor is disqualified due in whole or in part to federal mandatory vendor sanction violations of §4509 of this Subpart, such notification shall include the following statement: "This disqualification from WIC may result in disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP."

C. If the vendor or vendor applicant wishes to appeal the decision, and the adverse action is appealable, the vendor or vendor applicant shall submit a request for appeal stating the permissible reason(s) for appeal. The request shall be submitted to LA WIC within 15 days after the date of the notice of the adverse action.

D. Effective Date of Adverse Actions Against Vendors. Denials of WIC authorization and permanent disqualifications imposed under §4509 of this Subpart are effective on the date of

receipt of the notice of adverse action. All other adverse actions are effective 15 days after the date of the notice of the adverse action.

E. Adverse Actions Subject to Full Administrative Review:

1. The following adverse actions are subject to full administrative review:
 - a. denial of WIC authorization based on the application of the vendor selection criteria of failure to stock and maintain sufficient quantities and varieties of all WIC approved food items in accordance with LA WIC's minimum stock requirements;
 - b. denial of WIC authorization based on a determination that the vendor is attempting to circumvent a sanction;
 - c. termination of an agreement for cause, which does not include termination of an agreement because of a change in ownership or location, or cessation of operations, or expiration of an agreement;
 - d. disqualification; or
 - e. imposition of a fine or a civil money penalty (CMP) in lieu of disqualification.
2. Full Administrative Review Procedures. A vendor or vendor applicant who files a timely and proper appeal request for those actions subject to full administrative review shall be provided:
 - a. adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review;
 - b. the opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request. LA WIC may set standards on how many review dates can be scheduled, provided that a minimum of two review dates is allowed;
 - c. the opportunity to cross examine adverse witnesses. When necessary to protect the identity of WIC program investigators, such examination may be conducted behind a protective screen or other device;
 - d. the opportunity to be represented by counsel;
 - e. the opportunity to examine prior to the review the evidence upon which LA WIC's action is based;
 - f. an impartial decision-maker, whose determination is based solely on whether LA WIC has correctly applied Federal and State statutes, regulations, policies, and procedures governing LA WIC, according to the evidence presented at the review. LA WIC may appoint a reviewing official, such as chief hearing officer or judicial officer, to review appeal decisions to ensure that they conform to approved policies and procedures; and
 - g. written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of the request for an administrative review from a vendor. This timeframe is only an administrative requirement for LA WIC and does not provide a basis for overturning LA WIC's adverse action if a decision is not made within the specified timeframe.

F. Adverse Actions Subject to Abbreviated Administrative Review.

1. The following adverse actions are subject to abbreviated administrative review

- a. denial of WIC authorization based on:
 - i. LA WIC's vendor limiting criteria;
 - ii. vendor submitting its vendor application outside the timeframes during which applications are being accepted and processed as stated in the vendor guide and policy manual;
 - iii. a current sanction (termination) for a non-federally mandated (State) selection criteria; or
 - iv. failure to meet the following vendor selection criteria:
 - (a). business integrity;
 - (b). current SNAP authorization; or
 - (c). competitive pricing.
- b. termination of an agreement because of change in ownership or location or cessation of operations;
- c. disqualification based on the following:
 - 1. a trafficking conviction;
 - 2. the imposition of a SNAP CMP for hardship; or
 - 3. a mandatory sanction imposed by another WIC state agency.
- d. A CMP imposed in lieu of disqualification based on the following:
 - 1. a mandatory sanction imposed by another WIC state agency; or
 - 2. SNAP disqualification.
- e. LA WIC'S application of vendor peer group criteria; or
- f. LA WIC's application of the criteria used to identify vendors that are above-50-percent (A-50) vendors.

2. Abbreviated Administrative Review Procedures. A vendor or vendor applicant who files a timely and proper appeal request for those actions subject to abbreviated administrative review shall be provided:

- a. a decision-maker who is someone other than the person who rendered the initial decision on the action and whose determination is based solely on whether LA WIC has correctly applied federal and state statutes, regulations, policies, and procedures governing LA WIC, according to the information provided to the vendor, concerning the cause(s) for the adverse action and the response from the vendor; and

- b. written notification of the review decision, including the basis for the decision within 90 days from the date of receipt of the request for an administrative review from a vendor. This timeframe is only an administrative requirement for LA WIC and does not provide a basis for overturning LA WIC's adverse action if a decision is not made within the specified timeframe.

G. Actions Not Subject to Administrative Review. Adverse actions not described in this Subpart are not subject to administrative review. Adverse actions that are not subject to administrative review include, but are not limited to, the following:

- 1. the validity or appropriateness of the following:
 - a. LA WIC's vendor limiting criteria;
 - b. LA WIC's participant access criteria and LA WIC's participant access determinations;

c. LA WIC's prohibition of incentive items and LA WIC's denial of an A-50 vendor's request to provide an incentive item to customers;

d. vendor selection criteria for the following:

- i. minimum variety and quantity of WIC approved food items ;
- ii. business integrity;
- iii. current SNAP disqualifications or CMP for hardship; or
- iv. competitive price including, but not limited to, vendor peer group

criteria and the criteria used to identify vendors that are A-50 vendors or comparable to A-50 vendors.

2. LA WIC's determination:

a. to include or exclude an infant formula supplier (manufacturer, wholesaler, distributor, or retailer) from the LA WIC infant formula supplier list; or

b. to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction.

3. denial of WIC authorization if LA WIC's vendor authorization is subject to the procurement procedures applicable to LA WIC;

4. The expiration of a vendor's agreement;

5. disputes regarding:

a. payments by LA WIC to vendors for WIC transactions;

b. vendor claims for reimbursement; or

c. claims and/or recoupment made by LA WIC against vendors (other than the opportunity to justify or correct a vendor overcharge or other error).

6. disqualification of a vendor as a result of disqualification from SNAP; or

7. any other circumstance, situation, or action not described in this Subpart.

H. A vendor who has been issued a CMP and is permitted to continue program operations while its appeal is in process must also continue to abide by all LA WIC vendor rules and regulations.

I. Participation as a vendor in LA WIC is a privilege. WIC authorization does not constitute a license or property interest. A vendor cannot claim and is not entitled to money for loss of WIC sales during the pendency of an appeal of an adverse action. If the vendor is reinstated following a successful administrative review of an adverse action taken by LA WIC, the vendor cannot claim and is not entitled to retroactive payments and/or compensation for revenues lost for the period of time the vendor was not on the program.

J. Unless otherwise noted, full and abbreviated administrative review decisions are the final action of LA WIC. LA WIC reserves the right to file additional motions for reconsideration as well as motions for re-appeal. LA WIC is under no obligation to immediately reinstate the vendor during ongoing proceedings.

1. If the administrative review yields a decision in favor of LA WIC, the vendor may pursue judicial review of the decision.

2. If the administrative review yields a decision in favor of the vendor, the vendor will be reinstated provided all appeal rights have been exhausted and the vendor agreement has not expired during ongoing proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:340 (February 2017); LR 49:

Family Impact Statement

The proposed Rule should not have a foreseen impact on family formation, stability, and autonomy. In particular, the proposed Rule should have a positive impact on the following by providing families with access to the LA WIC Program:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule should not have a foreseen impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be a positive effect on the following:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits; or
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule should have no adverse impact on small businesses as defined in the Small Business Protection Act.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments on the proposed rule. Such comments must be received no later than Thursday, June 8, 2023 at COB, 4:30 p.m., and should be addressed to Susan Bailey, Director of the Bureau of Emergency Medical Services, 7273 Florida Blvd., Baton Rouge, LA 70806.

Public Hearing

Interested persons may submit a written request to conduct a public hearing either by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on Thursday, June 8, 2023. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 2:00 p.m. on Monday, June 26, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after Thursday, June 8, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

Person

Preparing

Statement: Natalie Istre

Dept.: Louisiana Department of Health

Phone: 225-819-6639

Office: Office of Public Health

Return

Address: 628 North 4th Street, Bin #4
Baton Rouge, LA 70802

Rule Title: Special Supplemental Nutrition
Program for Women, Infants, and
Children (WIC)

Date Rule Takes Effect: Upon Promulgation

SUMMARY

In accordance with Section 961 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS

The proposed rule change is anticipated to increase LDH expenditures by approximately \$1,278 SGF in FY 23 associated with publication costs.

In compliance with 7 CFR Part 246, the LDH proposes to amend LAC 48:V Chapters 41, 43, and 45 regarding the Woman, Infants, & Children (WC) Program. Specifically, the rule provides definitions and makes general updates.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS

There is no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NON-GOVERNMENTAL GROUPS (Summary)

There are no anticipated costs or economic benefits to directly affected persons, small businesses, or non governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT

There is no anticipated effect on competition and employment.

Signature of Agency Head or Designee

Doris Brown
Assistant Secretary, Office of Public Health

Typed Name & Title of Agency Head or Designee

Date of Signature

Legislative Fiscal Officer or Designee

Date of Signature