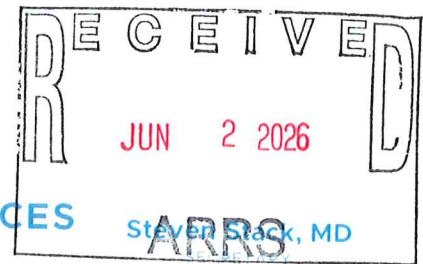




Andy Beshear
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June 2, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell, Administrative Regulations Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: **902 KAR 18:011**, 902 KAR 18:021, and 902 KAR 18:031

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:011, 902 KAR 18:021, and 902 KAR 18:031, the Cabinet for Health and Family Services proposes the attached amendments to these three administrative regulations.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

Attachments

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health

902 KAR 18:011. Definitions for 902 KAR Chapter 18.

RELATES TO: KRS 194A.050, 194A.505, 241.010[~~194A.990~~], 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802
STATUTORY AUTHORITY: KRS 194A.050, 211.180[~~241.090(3)~~], 7 C.F.R. Part 246, 42 U.S.C. 1786
NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246
authorize[~~provide~~] [~~for~~] grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) requires[~~authorizes~~] the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 18.

Section 1. Definitions.

- (1) "Above-50-percent vendor" is defined by 7 C.F.R. 246.2[~~means a vendor that receives or is expected to receive more than fifty (50) percent of its annual food sales revenue from WIC benefits~~].
- (2) "Alcohol" is defined by KRS 241.010(1).
- (3) "Alcoholic beverage" is defined by KRS 241.010(2).
- (4) "Approved product listing" or "APL" means an electronic list or file identifying the food items approved by the state WIC agency pursuant to 902 KAR Chapter 18 for purchase with WIC food instruments by food category and subcategory.
- (5) "Authorized supplemental food" is defined by 7 C.F.R. 246.2[~~means a supplemental food authorized by the state or a local agency for issuance to a particular participant~~].
- (6) "Cash-value[~~Cash value~~] voucher" is defined by 7 C.F.R. 246.2.
- (7) "Competent[~~Certifying~~] professional authority" means a person authorized to determine eligibility and certify persons for the WIC program.
- (8) "Class" means food sale classification.
- (9) "Compliance buy" is defined by 7 C.F.R. 246.2[~~means a covert, on-site investigation~~].
- (10) "Contract price" means the price for a WIC food item negotiated between the state WIC agency and the vendor.
- (11) "Dual participation" is defined by 7 C.F.R. 246.2.
- (12) Electronic Benefit Transfer" (EBT) is defined by 7 C.F.R. 246.2[~~means simultaneous participation in the WIC Program and in:~~
 - [(a)] [~~One (1) or more WIC clinics; or~~
 - [(b)] [~~The Commodity Supplemental Food Program~~].
- (13)[~~(12)~~] "Electronic WIC benefits" or "eWIC" means a [~~Web-based~~] technology that allows WIC participants to obtain food benefits by using a method that permits electronic access[~~plastic debit-type card with a personal identification number (PIN)~~] at authorized participating WIC vendors[~~retailers~~].
- (14)[~~(13)~~] "Exempt infant formula" is defined by 7 C.F.R. 246.2.
- (15)[~~(14)~~] "FNS" means Food and Nutrition Services.
- (16)[~~(15)~~] "Food instrument" is defined by 7 C.F.R. 246.2.
- (17)[~~(16)~~] "Good letter with exceptions" means a written notification letter that:
 - (a) An investigation[~~A compliance buy~~] has been conducted [~~in the store~~];
 - (b) A violation occurred; and
 - (c) No sanction was applied due to lack of pattern of incidence.

~~(18)~~~~(17)~~ "High risk vendor" means a vendor ~~having a high probability of noncompliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.~~

~~(19)~~~~(18)~~ "Integrated" means a commercial system that fully incorporates eWIC functionality into an existing electronic cash register (ECR) system.

~~(20)~~~~(19)~~ "Inventory audit" is defined by 7 C.F.R. 246.2~~[means an examination of food invoices or other proof of purchase to determine if a vendor has purchased sufficient quantities of authorized supplemental food to provide to participants the quantities of food items redeemed by the vendor during a given period of time].~~

~~(21)~~~~(20)~~ "Investigation" means a method used by the state WIC agency to detect a WIC program violation.

~~(22)~~~~(21)~~ "Local agency" is defined by 7 C.F.R. 246.2~~[means an applying or participating WIC agency].~~

~~(23)~~~~(22)~~ "Low variance" means the redemption of the same type of food item at the same price or within a narrow price range.

~~(23)~~ ["Medical foods" means 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.]

(24) "Not to exceed" or "NTE" means:

(a) FNS-approved cost containment methodology with~~[whereby]~~ WIC authorized vendors ~~[are]~~ subject to price limitations; and

(b) The maximum amount that Kentucky will pay for a specific food item identified by its UPC code.

(25) "Participant" is defined by 7 C.F.R. 246.2~~[means:]~~

~~(a)~~ [A pregnant, breastfeeding, or postpartum woman or an infant or child who is receiving supplemental food or food instruments;]

~~(b)~~ [The breastfed infant of a breastfeeding woman who is receiving WIC program benefits;]

~~(c)~~ [The parent or caretaker of an infant or child receiving a WIC benefit; and]

~~(d)~~ [The proxy for a person identified in paragraphs (a), (b), or (c) of this subsection].

(26) "Participant violation" means an intentional, knowing act of a participant that violates KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

~~(27)~~ ["Peer Groups" means categories into which vendors are assigned based upon sales volume and region.]

~~(28)~~ "PIN" means a unique four (4) digit personal identification number designated by the WIC participant.

~~(28)~~~~(29)~~ "Point of sale" or "POS" means the combination of hardware and software that enables a vendor to accept payment for~~[the system supporting] WIC~~~~[eWIC]~~ food transactions~~[in a store checkout lane].~~

~~(29)~~~~(30)~~ "POS device" means a ~~[physical electronic cash register or]~~ dedicated point of sale ~~[hardware or]~~ terminal that is used for eWIC food transactions~~[WIC processing].~~

~~(30)~~~~(31)~~ "Positive buy" means a compliance buy, onsite review, or online~~[on-site review, or on-line]~~ WIC transaction review that provides evidence that a violation of the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 has occurred.

~~(31)~~~~(32)~~ "Price look up" or "PLU" means a four (4) or five (5) digit identifier used to identify individual and bulk produce.

~~(32)~~~~(33)~~ "Proxy" is defined by 7 C.F.R. 246.2~~[means a person designated by a female participant or by a parent or caretaker of an infant or child participant to obtain and transact a food instrument or cash value voucher to obtain a supplemental food or foods on behalf of a participant].~~

~~(33)~~~~(34)~~ "Routine monitoring" is defined by 7 C.F.R. 246.2~~[means overt, on-site monitoring during which representatives of the WIC program identify themselves to vendor personnel].~~

~~(34)~~~~(35)~~ "Rural" means any area not defined as urban.

~~(35)~~~~(36)~~ "Shelf price" means the price displayed on the food item, shelf, or display case where the food item is available for purchase~~[stored].~~

~~(36)~~~~(37)~~ "SNAP" means the Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program.

~~(37)~~~~(38)~~ ["Standard bar code" means a printed series of lines of varying width on a container or product that can be read by an optical scanner to determine product classification and price.]

~~(39)~~ "Staple food items" means meat, poultry, fish, bread, breadstuff, cereals, vegetables, fruit, vegetable and fruit juices, and dairy products, excluding items, such as coffee, tea, cocoa, carbonated and uncarbonated beverages, condiments, and spices.

~~(38)~~~~(40)~~ "State WIC agency" means the Cabinet for Health and Family Services or its designated representative.

~~(39)~~~~(41)~~ "Systematic review" means a review of electronic WIC transactions by the state WIC agency or its representatives to monitor systematic violations of the program.

~~(40)~~~~(42)~~ "Trafficking" means the redemption or exchange of WIC food instruments for cash, firearms, ammunition, explosives, or controlled substances as defined by 21 U.S.C. 802(6)~~[a firearm, ammunition, an explosive, or a controlled substance as defined in 21 U.S.C. 802].~~

~~(41)~~~~(43)~~ "Unauthorized food" means foods not authorized by the state or local agency for issuance to a particular participant.

~~(42)~~~~(44)~~ "Unique customer" means the number of unduplicated WIC households~~[individuals]~~ that have one (1) or more transactions at a specific authorized WIC~~[the sanctioned]~~ vendor during a~~[the]~~ specified time period.

~~(43)~~~~(45)~~ "UPC" or "Universal product code" means a unique barcode consisting of numerical~~[twelve]~~ ~~(12)~~ digits used for tracking inventory~~[trade items]~~ in retail stores.

~~(44)~~~~(46)~~ "Urban" means a metropolitan area as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 23-01 available at <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf>~~[43-04].~~

~~(45)~~~~(47)~~ "Vendor" is defined by 7 C.F.R. 246.2~~[means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one (1) or more stores by providing authorized supplemental foods to participants under a retail food delivery system].~~

~~(46)~~~~(48)~~ "Vendor authorization" is defined by 7 C.F.R. 246.2~~[means the process by which the state WIC agency assesses, selects, and enters into an agreement or contract with a store that applies or subsequently reapplies to be authorized as a vendor].~~

~~(47)~~~~(49)~~ "Vendor overcharge" is defined by 7 C.F.R. 246.2.

~~(48)~~ "Vendor peer group system" is defined by 7 C.F.R. 246.2.

~~(49)~~~~(50)~~ "Vendor violation" is defined by 7 C.F.R. 246.2~~[means an intentional or unintentional act of a vendor's current owner, officers, agent, or employee, with or without the]~~~~[knowledge of management, that violates the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18].~~

~~(50)~~~~(51)~~ "WIC agency" means a local health department or agency contracted with the state to deliver WIC services.

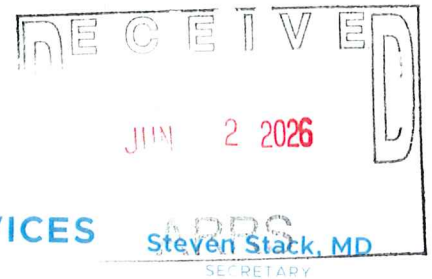
~~(51)~~~~(52)~~ "WIC benefits" means a voucher, check, Electronic Benefits Transfer card (EBT), coupon, or document that is used by a participant to obtain supplemental foods.

~~(52)~~ "WIC-eligible nutritionals" is defined by 7 C.F.R. 246.2.

~~(53)~~ "WIC program" or "WIC" means 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, and administered pursuant to 42 U.S.C. 1786 and 7 C.F.R. Part 246.

~~(54)~~ "Written communication" means a letter or email correspondence that can be retrieved and tracked for timeline compliance.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



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June 2, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell, Administrative Regulations Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
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Re: 902 KAR 18:011, 902 KAR 18:021, and 902 KAR 18:031

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:011, 902 KAR 18:021, and 902 KAR 18:031, the Cabinet for Health and Family Services proposes the attached amendments to these three administrative regulations.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

Attachments

Final, 5-26-2026

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health

902 KAR 18:021. Eligibility, certification periods, and time frames for processing applicants.

RELATES TO: KRS 194A.050, [~~194A.505, 194A.990,~~] 7 C.F.R. Part 246, 278.6[, 21 U.S.C. 802]
STATUTORY AUTHORITY: KRS 194A.050, 211.180[~~211.090(3)~~], 7 C.F.R. Part 246, 42 U.S.C. 1786
NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246
authorize[~~provide~~] [~~for~~] grants for state operation of the Special Supplemental Nutrition Program for Women, Infants[,] and Children (WIC). KRS 194A.050(1) requires[~~authorizes~~] the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the application and participation process for participants of the Kentucky Special Supplemental Nutrition Program for Women, Infants[,] and Children (WIC).

Section 1. Eligibility. To be certified as eligible to participate in the WIC program, a person shall:

(1) Be categorically eligible as [~~follows~~]:

- (a) A pregnant woman;
- (b) A postpartum woman, up to six (6) months after termination of pregnancy;
- (c) A breastfeeding woman, up to the infant's first birthday;
- (d) An infant, birth to one (1) year of age; or
- (e) A child, one (1) to five (5) years of age;

(2) Provide proof of residence in the Commonwealth of Kentucky, such as a utility bill, driver's license, or Supplemental Nutrition Assistance Program (SNAP) identification card;

(3) Provide proof of identity as defined by 7 C.F.R. 246.7(c), such as a driver's license, medical card, birth certificate, or photo identification;

(4) Provide proof of household income, such as the most recent paystub, tax form (W-2), or medical card, and meet the following income criteria:

- (a) Receive Kentucky Transitional Assistance Program (KTAP), SNAP, or Medicaid;
- (b) A pregnant woman or infant in the household receives Medicaid;
- (c) A member of the household receives Medicaid; or
- (d) The household income is at or below 185 percent of the federal poverty level;

(5) Meet the required nutritional risk data at certification:

- (a) Height or length and weight measurements shall be performed and documented, or referral data performed by a health care provider collected within sixty (60) days of the date of certification; and[-];
- (b) Hematological tests shall be performed and documented, or referral data performed by a health care provider collected within ninety (90) days of the date of certification; and

(6) Meet one (1) of the following nutritional risk criteria:

- (a) A detrimental or abnormal nutritional condition detectable by biochemical or anthropometric measurements, such as:
 1. Anemia;
 2. Underweight;
 3. Overweight;
 4. Abnormal pattern of weight gain in a pregnant woman;
 5. Low birth weight [~~gain~~] in an infant; or
 6. Stunting in an infant or child; or

- (b) A documented nutritionally related medical condition, such as:
1. Clinical signs of nutritional deficiency;
 2. Metabolic disorder;
 3. Pre-eclampsia in a pregnant woman;
 4. Failure to thrive in an infant;
 5. Chronic infection;
 6. Alcohol or drug abuse or mental retardation in a woman;
 7. Lead poisoning;
 8. History in a pregnant woman of a high risk pregnancy or an associated factor, such as:
 - a. Smoking;
 - b. Conception before sixteen (16) months postpartum;
 - c. History of low birth weight, premature birth, or neonatal loss;
 - d. Adolescent pregnancy; or
 - e. Current multiple pregnancy;~~or~~
 9. Congenital malformation in an infant or child;
 10. ~~or~~ An infant born to a woman with:
 - a. A history of alcohol abuse;
 - b. A history of drug abuse; or
 - c. Mental retardation;
 11. ~~d.~~ A dietary deficiency that impairs or endangers health, such as an inadequate dietary pattern as assessed by:
 - a. ~~(i)~~ A twenty-four (24) hour dietary recall;
 - b. ~~(ii)~~ Dietary history; or
 - c. ~~(iii)~~ Food frequency checklist; or
 12. ~~e.~~ A condition that predisposes a person to an inadequate nutritional pattern or nutritionally related medical condition, such as homelessness or migrancy.

Section 2. Certification Periods. WIC program benefits shall be based upon certifications established in accordance with the time frames established in this section.

- (1) A pregnant woman shall be certified for the duration of her pregnancy and for up to six (6) weeks postpartum.
- (2) A postpartum woman shall be certified for up to six (6) months postpartum.
- (3) A breastfeeding woman shall be certified up to the infant's first birthday or when the woman ceases breastfeeding, whichever occurs first~~[at intervals of approximately six (6) months, ending with the breastfed infant's first birthday].~~
- (4) An infant shall be certified up to the infant's first birthday. ~~[or when the woman ceases breastfeeding, whichever occurs first].~~ The local WIC agency shall ensure that the infant receives the required health and nutrition assessments pursuant to 7 C.F.R. 246.11(e)(3)~~[at intervals of approximately six (6) months, except an infant under six (6)]~~months of age shall be certified for a period extending up to the first birthday if the quality and accessibility of health care services is not diminished.
- (5) A child shall be certified at intervals of approximately twelve (12)~~[six (6)]~~ months, up until the~~[ending with the end of the issuance month in which a]~~ child reaches their~~[the]~~ fifth birthday. The local WIC agency shall ensure that the child receives the required health and nutrition assessments in accordance with 7 C.F.R. 246.11(e)(3).

Section 3. Priority System. Vacancies in the WIC program shall be filled as they occur unless maximum participation has been reached. If maximum participation has been reached, vacancies shall be filled by a priority system based upon the nutritional risk of the patient.

Section 4. Time Frames for Processing Applicants.

- (1) Pregnant~~[and breastfeeding]~~ women, infants, and migrant farmworkers and their families~~[migrants]~~ shall be screened and notified of WIC program eligibility or ineligibility within ten (10) days of application.

(2) All other applicants shall be screened and notified of WIC program eligibility or ineligibility within twenty (20) days of application. WIC benefits shall be provided when participants are notified of certification.

(3) In accordance with 7 C.F.R. 246.7(f)(2)(iii)(A), the state agency may provide an extension of the notification period to a maximum of fifteen (15) days for those local agencies that make a written request, including a justification of the need for an extension.

Section 5. Nutrition Education.

(1) Nutrition education shall be made available to the participant or the participant's parent or guardian and shall relate to the participant's nutritional needs, household situation, and cultural preferences.

(2) Tobacco, drug, and other substance abuse information shall be provided to each participant or the participant's parent or guardian.

(3) Breastfeeding information, including the benefits of breastfeeding, shall be provided to each pregnant participant, unless contraindicated.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



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Re: 902 KAR 18:011, 902 KAR 18:021, and 902 KAR 18:031

Dear Co-Chairs West and Lewis:

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Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

Attachments

Final, 5-26-2026

SUGGESTED SUBSTITUTE

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health**

902 KAR 18:031. Participant violations~~[abuse]~~.

RELATES TO: KRS 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, **278.6, 21 U.S.C. 802**~~[278.6, 21 U.S.C. 802.]~~

STATUTORY AUTHORITY: KRS 194A.050, 211.180~~[241.090(3)]~~, 7 C.F.R. Part 246, 42 U.S.C. 1786
NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246
authorize~~[provide]~~ ~~[for]~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants~~[,]~~ and Children (WIC). KRS 194A.050(1) requires~~[authorizes]~~ the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the sanction schedule for participants who violate the participation requirements~~[participant abuse]~~ of the Kentucky Special Supplemental Nutrition Program for Women, Infants~~[,]~~ and Children (WIC).

Section 1. Participant Violation~~[Abuse]~~ of the Program.

(1) The state WIC agency or a local agency shall issue a written warning for the following suspected acts for which a complaint is received concerning a participant:

- (a) Purchasing unauthorized foods;
- (b) Redeeming WIC benefits at an unauthorized store;
- (c) Making a verbal offer to sell or exchange supplemental food or WIC food instruments with another individual, group, or vendor;~~[or]~~
- (d) Returning supplemental foods to a vendor for cash;
- (e) Posting WIC foods, benefits, or eWIC cards for sale in print or online, or allowing someone else to do so; or
- (f) Posting a WIC-issued breast pump for sale in print or online, or allowing someone else to do so.

(2) The state WIC agency or a local agency shall take the following specified actions~~[action]~~ for an intentional act of violation~~[abuse]~~ by a participant:

- (a) Redeeming a food instrument before the first day to use or after the last date of use:
 1. First offense: written warning;
 2. Second offense: monthly pickup of food instruments; and~~[or]~~
 3. Third or subsequent offense:
 - a. One (1) month suspension; and
 - b. Reinstatement of two (2) or three (3) month issuance shall be at the discretion of the competent~~[certifying]~~ professional authority;
- (b) Redeeming a food instrument that has previously been reported to the local agency as being lost or stolen and ~~[which]~~ has been replaced:
 1. First offense: written warning; and~~[or]~~
 2. Second and subsequent offenses: claim issued to recoup the WIC benefits that have been redeemed;
- (c) Purchasing unauthorized food:
 1. First offense: written warning; and~~[or]~~
 2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
- (d) Redeeming WIC benefits at an unauthorized store:
 1. First offense: written warning; and~~[or]~~

2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
- (e) Verbal abuse or threatening physical abuse of clinic or vendor staff:
 1. First offense: written warning; ~~and~~
 2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
- (f) Physical abuse of clinic or vendor staff, first and all subsequent offenses; three (3) month suspension from the WIC program;
- (g) Exchanging or selling supplemental food or a WIC food instrument with another individual, group, or vendor, first and all subsequent offenses; three (3) month suspension from the WIC program;
- (h) Exchanging supplemental food or a WIC food instrument for credit, nonfood items, or supplemental food in excess of WIC benefits prescribed, first and all subsequent offenses: three (3) month suspension from the WIC program;
- (i) Posting possible ~~WIC-issued~~~~WIC-issued~~ foods, benefits, or food instruments for sale in print, online, or allowing another person to do so:
 1. First offense: written warning; ~~and~~
 2. Second offense: Three (3) month suspension;
- (j) Dual participation in more than one (1) WIC program or participation in both the WIC program and the Commodities Supplemental Food Program:
 1. First offense: written warning and immediate termination from one (1) of the WIC programs. The continuing WIC agency shall be chosen based upon the participant's residence or services; ~~and~~
 2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim to recoup WIC benefits previously redeemed;
- (k) Knowingly and deliberately making a false or misleading statement or misrepresenting, concealing, or withholding a fact in order to obtain program benefits:
 1. First offense: three (3) month disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed; ~~and~~
 2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed; or
- (l) ~~Exchanging or selling supplemental foods [in print or online by posting WIC foods], WIC benefits, or food instruments [for sale] or allowing another person to do so:~~
 1. First offense: three (3) month suspension from the WIC program; and~~[written warning; or]~~
 2. Second and all subsequent offenses: One (1) year disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed~~[Three (3) month suspension from the WIC program].~~
- (3) Mandatory disqualification. Except as provided in subsections (4) and (5) of this section, a participant shall be disqualified from the WIC program for one (1) year if the state WIC or local WIC agency assesses:
 - (a) A claim of \$~~200~~~~400~~ or more; or
 - (b) A second or subsequent claim of any dollar amount.
- (4) A mandatory disqualification shall not be imposed if, within thirty (30) days of receipt of the claim letter demanding repayment:
 - (a) Full restitution is made;
 - (b) A repayment schedule is agreed on; or
 - (c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).
- (5) A participant may reply to participate in the WIC program before the end of a mandatory disqualification period ~~when~~~~if one (1) of the following conditions has been met~~:
 - (a) Full restitution is made;
 - (b) A repayment schedule is agreed upon; or
 - (c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).
- (6) The amount of a claim shall be determined by the value of the WIC benefits redeemed. If the claim is not paid, the participant shall be denied application to the WIC program for the number of months of benefits which were used to calculate the claim amount.

(7) A participant with a pattern of **violations[abuse]** of the WIC program shall be referred to the Office of the Inspector General for prosecution under KRS 194A.505.

(8) Activities prohibited by KRS 194A.505 apply to participants, vendors, and agency personnel. Penalties in KRS 194A.990 apply to participants, vendors, and agency personnel who have violated KRS 194A.505.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

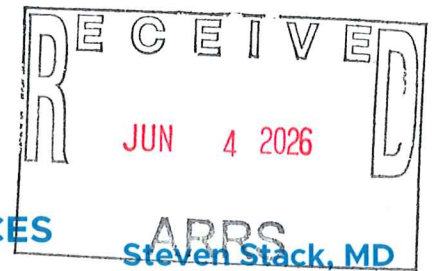
DEPARTMENT FOR PUBLIC HEALTH

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John Langefeld, MD
COMMISSIONER

June 4, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
702 Capitol Ave.
Frankfort KY 40601

Re: **902 KAR 18:040**, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090

Dear Co-Chairs West and Lewis,

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090, the Department for Public Health proposes the suggested enclosed substitute to 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at (502) 229-3377.

Sincerely,

Stacy Carey
Executive Staff Advisor
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health

902 KAR 18:040. Fair hearing procedures for participants.

RELATES TO: KRS [~~Chapter 13B,~~] 15.111, 194A.050, 194A.505, 194A.990, 205.231, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, 211.180[~~211.090(3)~~], 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 ~~authorize~~[~~provide~~][~~for~~] grants for state operation of the Special Supplemental Nutrition Program for Women, Infants[~~,~~] and Children (WIC). KRS 194A.050(1) ~~requires~~[~~authorizes~~] the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the fair hearing procedures for participants for the Kentucky Special Supplemental Nutrition Program for Women, Infants[~~,~~] and Children (WIC).

Section 1. Fair Hearing Procedures.

(1) In accordance with 7 C.F.R. 246.9, a local agency shall inform an individual in writing of the right to a fair hearing and the method by which a hearing may be requested ~~if~~[~~when~~] the person is:

- (a) Determined to be ineligible for the program;
- (b) Disqualified or suspended during a certification period; or
- (c) Issued a claim.

(2)

(a) [~~In accordance with 7 C.F.R. 246.9, a]~~ A person shall request a fair hearing by contacting the state WIC agency within sixty (60) days from the date the person receives the adverse action letter by hand delivery, electronic mail, or [~~by~~] certified mail.

(b) Requests for a hearing shall be forwarded by the cabinet to the Office of Administrative Hearings within the Department of Law in accordance with KRS 15.111(2)(g), within two (2) working days of receipt.

(c) [~~In accordance with 7 C.F.R. 246.9,~~] The hearing shall be accessible to the appellant and shall be conducted as soon as ~~practical~~[~~practicable~~]. Notice of the hearing shall be given to all involved parties at least[~~not less than~~] twenty (20) days in advance of the date set for the hearing unless otherwise required by 7 C.F.R. 246.9[~~federal law~~][~~held within twenty one (21) days from the date a person requests a hearing, or the next regular work day if the twenty first day is a holiday or weekend~~].

(d)[~~(e)~~] The Office of Attorney General hearing official shall provide the person with at least twenty (20)[~~ten (10)~~] days advanced written notice of the time and place of the hearing.

(3) The request for a hearing shall not be denied or dismissed[~~state WIC agency shall not deny or dismiss a request for hearing~~] unless:

- (a) The request is not received within the time limit established[~~set~~] by subsection (2)(a) of this section;
- (b) The request is withdrawn in writing by the appellant or a representative of the appellant;
- (c) The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
- (d) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to the WIC program eligibility have changed in a way that would justify a hearing.

(4) The state or local agency shall refer complaints that allege discrimination based on race, color, national origin, sex, handicap, or age to the Secretary of Agriculture or the Director of the Office of Equal Opportunity.

(5) The hearing shall be conducted in accordance with KRS Chapter 13B[, ~~subject to any specific provisions set forth herein~~][the][partial exemption from that chapter, as certified by the Office of the Attorney General, a copy of which certification is available online at <http://chfs.ky.gov/dph/mch/ns/wic.htm>].

(6)[(5)]

~~[(a)] [In accordance with 7 C.F.R. 246.9, The hearing officer shall complete and submit to the cabinet and the appellant or representative a written notification of the recommended order no later than forty-five (45) days after the cabinet's receipt of the request for the hearing, which shall include the findings of fact, conclusions of law, and recommended disposition, including recommended penalties, if any.]~~

~~[(b)] [In accordance with 7 C.F.R. 246.9,] Decisions of the hearing official shall be based upon the application of KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 as related to the facts of the case as established in the hearing record.~~

(7)[(6)]

(a) Participants who appeal the termination of benefits within the fifteen (15) day[days] advance adverse action notice period provided by 7 C.F.R. 246.7 shall continue to receive WIC program benefits until the hearing officer reaches a decision or the certification period expires, whichever occurs first.

(b) WIC program benefits~~[This]~~ shall not be provided or continued with a filed appeal in the following situations~~[apply to]~~:

1. Applicants who are denied benefits at initial certification;
2. Participants whose certification periods have expired; or
3. Participants who become categorically ineligible.

(c) If the hearing officer's recommended order concerns disqualification and is in favor ~~of~~to the state WIC agency, as soon as administratively feasible any continued benefits shall be terminated.

(d) If the decision regarding repayment of the benefits by the appellant is in favor of the state WIC agency, efforts to collect the claim shall be resumed, even during pendency of an appeal of a fair hearing decision.

(8)[(7)]

~~[(a)] The appellant may appeal a hearing officer's decision [to the][Appeal Board for Public Assistance] by filing exceptions to the recommended order with the [in accordance with KRS 13B.110(4)].~~

~~[(b)] [Exceptions shall be filed with or mailed to] Cabinet for Health and Family Services, Office of the Secretary, [Appeal Board for Public Assistance,] 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.~~

(9)[(e)] Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order with the cabinet.

(10)[(d)] A party may file a response to an opposing party's exceptions. The response shall be filed within twenty-five (25) days from the date the recommended order is mailed.

(11)[(e)] Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

(12)[(8)] Any party aggrieved by the decision of the Cabinet for Health and Family Services, Office of the Secretary~~[Appeal Board for Public Assistance]~~ may seek judicial review of the decision by filing a petition in the circuit court of the county where~~[in which]~~ the petitioner resides. Judicial review shall be~~;~~ in accordance with KRS 13B.140, 13B.150, and 13B.160.

(13) In accordance with 7 C.F.R. 246.8, complaints alleging civil rights discrimination for United States Department of Agriculture (USDA) funded programs, such as the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), WIC Farmers Market Nutrition Program, and WIC Breastfeeding Peer Program, shall be filed with the USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TTY).

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

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Steven Stack, MD
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June 4, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
702 Capitol Ave.
Frankfort KY 40601

Re: 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090

Dear Co-Chairs West and Lewis,

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090, the Department for Public Health proposes the suggested enclosed substitute to 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at (502) 229-3377.

Sincerely,

Stacy Carey
Executive Staff Advisor
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

902 KAR 18:050. Vendor authorization criteria.

RELATES TO: KRS [Chapter 13B,]194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.180[211.090(3)], 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 authorize[provide] grants for state operation of the Special Supplemental Nutrition Program for Women, Infants[,] and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the vendor authorization criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants[,] and Children (WIC).

Section 1. Vendor Authorization Criteria. (1) Only a vendor authorized by the state WIC agency pursuant to 902 KAR Chapter 18 shall redeem a food instrument.

(2) Each store operated by a business entity shall be authorized separately from other stores operated by the business entity.

(3) Each store shall have a single, fixed location and redeem the WIC food instruments and provide the WIC foods within the [four (4)]walls of the establishment.

(4) A vendor[retailer] authorized as a pharmacy shall only redeem food instruments for exempt infant formulas and WIC-eligible nutritional[s]~~[medical foods]~~.

(5) ~~[Føøø]~~ Vendors shall be authorized in sufficient numbers and with distribution adequate to ensure:

(a) Participant convenience and access; and

(b) Effective management of vendor review by the cabinet ~~[and the local agency]~~.

(6) In order to be an authorized WIC vendor, a vendor shall:

(a) Complete the application process established in 7 C.F.R. 246.4, meet authorization criteria, and be approved by the WIC state agency pursuant to 902 KAR Chapter 18~~[in accordance with the Kentucky WIC Manual for Applying Retailers]~~;

(b) Provide business information ~~[required by the WIC Manual, including sales volume and an updated application,]~~ requested by the state WIC agency;

(c) Stock, at all times, minimum inventory in accordance with the ~~[Quantified]~~Minimum Stock~~[Inventory]~~ Requirements established[outlined] in the Kentucky WIC Vendor Agreement~~[Manual for Applying Retailers]~~.~~[:]~~

1. ~~[The stock shall be in the store or in the store's stockroom;~~

2. ~~] Expired foods shall not count towards meeting the minimum stock~~[inventory]~~ requirement. ~~[; and]~~~~

2.~~[3.]~~ A pharmacy shall supply exempt formula or WIC-eligible nutritional[s]~~[medical foods]~~ within forty-eight (48) hours of ~~[the state WIC agency]~~ request;

(d) Obtain infant formula only from the listing of Kentucky WIC[Program] Authorized Formula Suppliers [~~of WIC Approved Infant Formulas, http://chfs.ky.gov/dph/mch/Vendor+Management.htm~~];

(e) Except for a pharmacy, be in compliance with the Kentucky Food Code, 902 KAR 45:005, and have a valid retail food establishment or retail food store permit in the current owner's name;

(f) Except for a pharmacy, be an authorized SNAP retailer;

(g) Have competitive prices with other authorized WIC vendors in the area[; ~~compared according to the policy outlined in the WIC Manual for Applying Retailers and the Manual for Contracted WIC Vendors~~];

(h) Post the current[~~Display the~~] prices of WIC approved foods[~~food items~~] on each individual product[~~item~~]~~[-or]~~ on the shelf directly in front of the product, or on the refrigerated display case where the items are located. A cost plus ten (10) percent store shall post the final price on the individual product[~~(WIC price)~~] on the shelf, or on the refrigerated display case where the items are located[~~signage in aisle~~];

(i) Be in compliance with the other Food and Nutrition Service programs or the Medicaid program, including:

1. Not be disqualified or withdrawn by the United States Department of Agriculture from participation in another Food Nutrition Service program or the Medicaid program;

2. Not be denied application to participate in SNAP or Medicaid;

3. Not be currently paying a civil money penalty to SNAP or Medicaid; or

4. Not have been assessed a civil money penalty by SNAP or Medicaid, and the disqualification period that would otherwise have been imposed has not expired;

(j) Request authorization for a business whose primary purpose is to be a retail grocery.~~[-];~~

1. Except for a pharmacy, a direct distribution outlet or wholesale food establishment shall not be eligible.

2. A vendor **that**[~~who~~] derives more than fifty (50) percent of annual food sales revenue from the sale of food items that are purchased with WIC food instruments shall not be eligible.

3. A retail grocery shall:

a. Have a separate and distinct grocery department in a stationary location **that**[~~which~~] stocks staple food items in addition to WIC approved foods; and

b. Have fifteen (15) percent of gross sales in nontaxable food sales[; ~~excluding specialty items such as bakery goods for a bakery or produce for a fruit and vegetable stand~~].

~~4. A dairy or home-delivery grocery shall not be approved if it operates solely as a mobile operation.~~

~~5. The use of drive-up windows shall not be approved;~~

(k) Be registered with the Secretary of State and be in good standing, if a corporation or partnership;

(l) Except for a farmers' market, be open for business year round at least eight (8) hours per day, six (6) days per week;

(m) Be accessible to monitoring by state and federal officials without prior notice;

(n) Not be indebted to the WIC program for an unpaid claim or a civil money penalty against a store owned or previously owned by the applying owners; and

(o) Have the capability to accept WIC program benefits electronically. A store shall have the use of an internet cable or a currently Food and Nutrition Services certified system to accept online WIC EBT.

(7) The WIC program shall not authorize a vendor applicant if, during the last six (6) years, an applicant, current owner, officer, or manager has been convicted of or had a civil judgment for:

(a) Fraud;

(b) Antitrust violation;

(c) Embezzlement, theft, or forgery;

- (d) Bribery;
- (e) Falsification or destruction of records;
- (f) Making false statements or claims;
- (g) Receiving stolen property;
- (h) Obstruction of justice; or
- (i) Another act reflecting on the business integrity and reputation of the applicant, such as removal from other federal or state programs.

(8) The WIC program shall not authorize a store that has attempted to circumvent a period of disqualification from the program, including a store that has undergone a sale or changes of operation if the transaction involved the following parties:

(a) The seller or transferor is an owner, operator, or manager currently suspended, sanctioned, has outstanding monetary claims, or disqualified from WIC, SNAP, or Medicaid; **or[and]**

(b) The buyer or transferee is related to the seller by marriage or consanguinity within the fourth degree, or was a manager or employee of the seller when the sanction, suspension, outstanding monetary claim, or disqualification was issued or the violation occurred:

(9) A contract shall not be entered into with a vendor if the contract would cause a conflict of interest, real or apparent.

(10) The WIC program shall terminate a vendor contract if ~~[it determines]~~ the vendor or vendor's employee provided false information in connection with the vendor application.

(11) An authorized WIC vendor shall send appropriate employees (owner, manager, or head cashier) to attend state WIC agency required training.

(12) If an applying vendor[retailer] does not meet the criteria upon review by ~~the[either the local or]~~ state WIC agency:

(a) ~~1.~~ The applying vendor[retailer] shall be notified in writing; **and**

~~2.[(b)]~~ After two (2) reviews, the applying vendor[retailer] shall not apply for the program for **at least** sixty (60) days from the date of denial;

~~(b) [(e)]~~ After three (3) reviews, the applying vendor[retailer] shall not apply for **at least** 120 days from the date of the denial; **and**

~~(c) [(d)]~~ Each subsequent denial shall result in an additional sixty (60) day waiting period[denial].

(13) A person aggrieved by a decision of the cabinet may file a written request for a hearing with the cabinet within fifteen (15) days after receipt of notice of the adverse action. The hearing shall be conducted in accordance with KRS Chapter 13B.

~~[Section 2. Procedures for Authorized Vendors. Authorized vendors shall comply with the Manual for Contracted WIC Vendors.~~

~~Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Kentucky WIC Manual for Applying Retailers", October 2013; and~~

~~(b) "Manual for Contracted WIC Vendors", October 2013.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

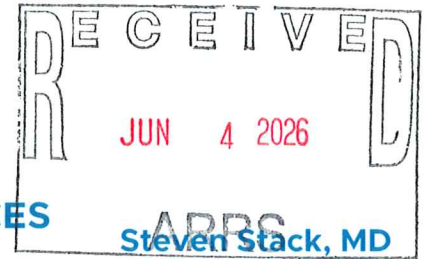
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APPS
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SECRETARY

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COMMISSIONER

June 4, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
702 Capitol Ave.
Frankfort KY 40601

Re: 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090

Dear Co-Chairs West and Lewis,

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090, the Department for Public Health proposes the suggested enclosed substitute to 902 KAR 18:040, 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at (502) 229-3377.

Sincerely,

Stacy Carey
Executive Staff Advisor
Office of Legislative and Regulatory Affairs

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health

902 KAR 18:061. Vendor violations and sanctions.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.180~~[211.090(3)]~~, 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 ~~authorize~~**[provide]** ~~J][for]~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants~~[,]~~ and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the vendor violations and sanctions for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Vendor Violations and Sanctions. (1) In addition to any criminal penalty imposed pursuant to KRS 194A.990, the cabinet shall impose one (1) or more of the following civil sanctions for ~~estab-~~**lished**~~[designated]~~ violations committed by a vendor ~~or[,]~~ his ~~or her~~ employee~~[,]~~ or agent:

(a) Failure of a vendor to meet the authorization criteria in 902 KAR 18:050:

1. First occurrence: a sixty (60) day disqualification or non-renewal;
2. Second occurrence: a ninety (90) day disqualification or non-renewal; or
3. Third and subsequent occurrences: a 120 day disqualification or non-renewal;

(b) Failure of a vendor to pay a claim. The state WIC agency shall request payment **by[as follows]:**

1. Written communication~~[Mail a letter]~~ to the vendor requesting payment by a **stated**~~[specified]~~ date;
2. If payment is not received by the stated~~[specified]~~ date, the state WIC agency shall contact the vendor by either email or telephone, reminding vendor of payment due;

3. If payment is not received within fifteen (15) days of the stated~~[specified]~~ date, the state WIC agency shall send a second letter by certified mail, return receipt requested, of past due claim; and

4. If payment is not received by the deadline **stated**~~[specified]~~ in the second letter, then the following disqualification shall be issued:

- a. First occurrence: a six (6) month disqualification; or

- b. Second occurrence and subsequent occurrences: a one (1) year disqualification from the WIC program;

- (c) Failure of a vendor to return the POS device~~[WIC vendor authorization stamp and XAC device]~~ (if applicable). The state WIC agency shall request return~~[receipt]~~ of the POS~~[stamp and XAC]~~ device (if applicable) **by[as follows]:**

1. Written communication~~[Mail a certified letter]~~ to the vendor requesting return of the POS ~~[vendor stamp and XAC]~~ device (if applicable) within seven (7) days of disqualification or termination;

2. If the POS~~[vendor stamp and XAC]~~ device (if applicable) is~~[are]~~ not received, the state WIC agency shall contact the vendor by either email or telephone, reminding the vendor that the POS device (if applicable) is~~[of the vendor stamp and XAC device (if applicable) being]~~ due; and

3. If the POS device (if applicable) ~~is [stamp and XAC device (if applicable) are]~~ not returned within seven (7) days of the effective date of termination or disqualification, then an additional six (6) month disqualification shall be issued;

(d) Store personnel requesting the PIN: two (2) positive buys out of three (3) shall result in a one (1) year disqualification;

(e) Using the integrated or WIC POS[XAC] device ~~Cash-Value~~**Cash-Value** Benefits (CVB) functionality to provide non-produce food item(s): two (2) positive buys out of three (3) shall result in a one (1) year disqualification from the WIC program;

(f) Providing free merchandise exclusively to WIC participants as an incentive to redeem WIC benefits: one (1) positive buy out of three (3) shall result in a six (6) month disqualification;

(g) Public notice by a WIC vendor of providing free merchandise exclusively to participants as an incentive to redeem WIC benefits: one (1) occurrence shall result in a six (6) month disqualification;

(h) Conviction of trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined **by[in]** 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a permanent disqualification;

(i) Trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined **by[in]** 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a six (6) year disqualification;

(j) Sale of alcohol or alcoholic beverage or tobacco product in exchange for a food instrument: one (1) positive buy shall result in a three (3) year disqualification;

(k) Claiming reimbursement for the sale of an amount of a specific supplemental food item, ~~that[which]~~ exceeds the vendor's documented inventory of that supplemental food item for ~~[-a specific period of time]:~~

1. An inventory audit for a thirty (30) day period, ~~that[which]~~ results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification; ~~[or]~~

2. An inventory audit for a ninety (90) day period, ~~that[which]~~ results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification; or

3. An inventory audit for a 180-day period, that results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification;

(l) Charging a participant more for supplemental food than a non-WIC customer is charged or the current shelf price:

1. Two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification if:

a. The vendor has exhibited a prior pattern of overcharging based upon routine monitoring visits **that[which]** have resulted in two (2) letters for price discrepancies; or

b. The vendor has exhibited a pattern of two (2) out of four (4) quarters of low variance in the prior federal fiscal year;

2. The state WIC agency shall:

a. Require a vendor **that[who]** has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state WIC agency; and

b. Notify a vendor **that has exhibited[who exhibits]** a pattern of low variance for two (2) or more quarters during the federal fiscal year; and

3. Three (3) positive compliance buys out of three (3) shall result in a three (3) year disqualification for a vendor **that[who]** does not meet the conditions in subparagraph 1. of this paragraph;

(m) Receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or unauthorized person: two (2) positive buys out of three (3) shall

result in a three (3) year disqualification;

(n) Charging for supplemental food not received by the participant, such as charging for one (1) food item or more listed on the WIC benefits but not purchased by the WIC participant: three (3) positive buys out of three (3) shall result in a three (3) year disqualification;

(o) Providing credit, an IOU, a rain check, a due bill, or a store credit, or providing a nonfood item other than cash, alcohol, tobacco, firearms, ammunition, explosives, or controlled substances, as defined **by[in]** 21 U.S.C. 802, in exchange for a food instrument[benefits] ~~shall result in the following disqualification~~: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(p) Providing an unauthorized food item or items in exchange for a food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(q) Charging for supplemental food provided in excess of those listed on the food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(r) A vendor **that[who]** has been disqualified from the SNAP shall be disqualified from the WIC program for the same length of time as the SNAP disqualification; or

(s) A vendor **that[who]** has been assessed a civil money penalty by SNAP, as **established in[provided under]** 7 C.F.R. 278.6, shall be disqualified from the WIC program for the same length of time for which the vendor would have been disqualified from SNAP unless the WIC program determines that disqualification would result in inadequate participant access, in which case a penalty shall not be assessed.

(2) If multiple vendor violations are found during an investigation, the length of the disqualification shall be determined by the most serious violation.

(3) A vendor who has previously received two (2) or more of the mandatory sanctions **established[designated]** in subsection (1)(h) through (q) of this section, and **that[who]** receives another sanction for a violation **established[designated]** in subsection (1)(h) through (q) of this section, shall have the third and all subsequent sanctions be doubled. A civil monetary penalty shall not be assessed for a third or subsequent sanction.

(4) Disqualified vendors.[,] Even if the decision is later overturned, **a disqualified vendor** shall not be entitled to receive compensation for revenues lost as a result of a disqualification.

Section 2. Vendor Notification (1) Except for violations **established[identified]** in Section 1(1)(a) through (c), (f) through (j), (r), and (s) of this administrative regulation, the state WIC agency shall notify a vendor in writing if an investigation reveals a potential initial violation.

(2) The vendor shall be notified before another violation is documented unless the state WIC agency determines that notifying the vendor would compromise the investigation.

(a) The notification determination shall be made on a **case-by-case[case-by-case]** basis **based on this administrative regulation**.

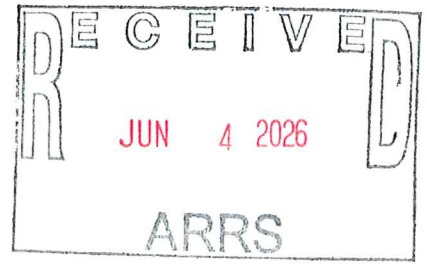
(b) A notification of a potential initial violation shall not be issued if:

1. The vendor is identified as a high-risk vendor in accordance with 902 KAR 18:090;

2. One (1) or more of the same type of violation occurred within the same federal fiscal year or prior federal fiscal year and the vendor has received prior notification; and

3. Sending a notification letter would divulge the identity of the investigator.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

DEPARTMENT FOR PUBLIC HEALTH

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Steven Stack, MD
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John Langefeld, MD
COMMISSIONER

June 4, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
702 Capitol Ave.
Frankfort KY 40601

Re: 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090

Dear Co-Chairs West and Lewis,

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090, the Department for Public Health proposes the suggested enclosed substitute to 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at (502) 229-3377.

Sincerely,

Stacy Carey
Executive Staff Advisor
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

902 KAR 18:071. Participant access determination and civil money penalty.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.180~~[211.090(3)]~~, 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 ~~authorize~~**provide** ~~J~~~~for~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes procedures for WIC vendor disqualification including the participant access determination and civil money penalty.

Section 1. Participant Access Determination.

(1) Except for a violation ~~established~~**specified** in 902 KAR 18:061, Section 1(1)(h) and (i), prior to disqualifying a vendor for a violation ~~established~~**specified** in 902 KAR 18:061, the state WIC agency shall determine if disqualification of the vendor will result in inadequate participant access.

(2) Mileage shall be measured by automobile odometer or geomapping.

(3) The determination and documentation of adequate participant access shall be made ~~based on if~~**based on if the sanctioned vendor**~~using the following criteria:~~

(a) ~~The sanctioned vendor~~ is located within:

1. A metropolitan area, as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 23-01~~[13-04]~~, and there is another authorized vendor located within two (2) miles of the sanctioned vendor; or

2. A nonmetropolitan area and there is another authorized vendor located within seven (7) miles of the sanctioned vendor;

(b) ~~The sanctioned vendor~~ Has redeemed food instruments for WIC nutritionals~~[medical foods]~~ or exempt infant formula within thirty (30) days preceding the date of the letter issuing the notice of disqualification, and there is another authorized vendor within the designated mileage as ~~established~~**defined** in paragraph (a) of this subsection ~~that~~**who** can supply the products which were previously redeemed; ~~or~~**and**

(c) ~~The sanctioned vendor~~ Has redeemed food instruments from a minimum number of unique customers within thirty (30) days preceding the date of the letter issuing the notice of disqualification.

1. ~~The following shall be the~~ minimum number of unique customers shall be calculated according to the vendor peer group system~~[vendor's peer group]~~:

a. Class 1: forty (40) or more unique customers;

b. Class 2: seventy-five (75) or more unique customers;

- c. ~~Class 3: 100 or more unique customers;~~
- d. ~~Class 4: 200 or more unique customers; or~~
- e. ~~Class 5: 400 or more unique customers].~~

2. If a sanctioned vendor meets the criteria for unique customers, the state WIC agency shall~~[then the local agency WIC coordinator or designee shall be consulted to]~~ determine if:

- a. Conditions exist **that[which]** would allow travel using public transportation to another authorized WIC vendor within the designated mileage in paragraph (a)1. of this subsection;
- b. Crosswalks exist across multilane highways or railroad tracks if another authorized WIC vendor is located in a metropolitan area; or
- c. **An** impassable mountain or an unbridged river would prevent travel if another authorized WIC vendor is located in a non-metropolitan area.

(4) If the WIC program determines there is adequate participant access, retailers shall be afforded the opportunity to submit written documentation providing evidence of the impact of the adverse action on WIC participants.

(5) If inadequate participant access is determined pursuant to subsection (3) of this section, a civil money penalty shall be assessed for a violation **established[listed]** in 902 KAR 18:061. The civil money penalty shall be calculated in accordance with 7 C.F.R. 246.12(l)(1)(x)~~[the procedures outlined in the Manual for Contracted WIC Vendors incorporated by reference in 902 KAR 18:050].~~

(6) The written documentation shall be received by the state WIC agency within fifteen (15) days from the date of receipt of the state WIC agency notification of disqualification. If the written documentation is not received within fifteen (15) days, further consideration shall not be given to participant access.

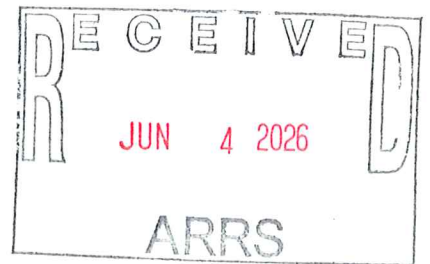
(7) Upon receipt and the review of the documentation, the WIC program shall send, within thirty (30) days, a written summary of the participant access review to the vendor. The vendor may then request a hearing. **The hearing shall be** in accordance with 902 KAR 18:081.

Section 2. Civil Money Penalty.

(1) The WIC program may negotiate an installment plan for the collection of a civil money penalty if requested by the vendor in writing prior to the payment due date.

(2) A vendor that fails to pay, partially pay, or timely pay a civil money penalty within the required time frame shall be disqualified for the length of time corresponding to the most serious violation.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



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June 4, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
702 Capitol Ave.
Frankfort KY 40601

Re: 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090

Dear Co-Chairs West and Lewis,

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090, the Department for Public Health proposes the suggested enclosed substitute to 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at (502) 229-3377.

Sincerely,

Stacy Carey
Executive Staff Advisor
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

902 KAR 18:081. Local agency fair hearing and vendor ~~[hearing process and]~~ administrative review~~[appeal]~~ process.

RELATES TO: KRS ~~[Chapter 13B,]~~15.111, 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.180~~[211.090(3)]~~, 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, authorize~~[provide]~~~~[for]~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the local agency right to a fair hearing and the vendor right to an administrative review in regard~~[agency's and vendor's rights to a hearing in regards]~~ to the Kentucky Special Supplemental Nutrition Program for Women, Infants~~[,]~~ and Children (WIC).

Section 1. Local Agency.

(1) A local agency may request a fair hearing for ~~[the following adverse actions]:~~

- (a) Denial of a local agency's application;
- (b) Disqualification of a local agency; or~~[and]~~
- (c) Any other adverse action that affects a local agency's participation.

(2) The following state WIC agency actions shall not be subject to administrative review via a fair hearing:

- (a) Expiration of the local agency's agreement; and
- (b) Denial of a local agency's application if the state WIC agency has issued a request for bid and followed finance procurement procedures.

(3) The following shall be the effective dates of adverse actions against local agencies:

- (a) Denial of local agency applications shall be effective immediately;
- (b) Adverse actions in subsection (1)(b) and (c) of this section shall be effective no later than sixty (60) days after the date of the notice of adverse action is served by hand delivery or certified mail receipt; and
- (c) Adverse actions that are appealed shall be effective the date that the local agency receives the fair hearing decision.

(4) A local agency may file a request for a fair hearing by electronic mail, hand delivery, or certified mail with the state WIC agency within fifteen (15) days after receipt of notice of the adverse action.

Section 2. Vendor Right to an~~[a Hearing or]~~ Administrative Review.

(1) In accordance with 7 C.F.R. 246.18, a vendor aggrieved by a qualifying adverse action may request

an administrative review~~[a hearing]~~ for ~~[the following]~~:

- (a) Denial of authorization based on the vendor authorization criteria found in 902 KAR 18:050;
- (b) Termination of an agreement;
- (c) Disqualification in accordance with 902 KAR 18:061; **or[and]**
- (d) Imposition of a fine or civil money penalty in lieu of a disqualification in accordance with 902 KAR 18:071.

(2) In accordance with 7 C.F.R. 246.18, the following state WIC agency actions shall not be subject to administrative review under this section:

(a) The validity or appropriateness of the vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;

(b) The validity or appropriateness of the selection criteria for competitive price, including vendor peer group system criteria and the criteria used to identify vendors that are above-50-percent vendors;

(c) The validity or appropriateness of the participant access criteria and the state WIC agency's participant access determinations;

(d) The determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list of entities where infant formula can be purchased;

(e) The validity or appropriateness of the prohibition of incentive items;

(f) The determination not to notify a vendor in writing **if[when]** an investigation reveals an initial violation for which a pattern of violations **shall[must]** be established in order to impose a sanction;

(g) The determination that a vendor did not have a 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;

(h) The expiration or non-renewal of a vendor's agreement;

(i) Disputes regarding food instrument payments and vendor claims; or

(j) Disqualification of a vendor as a result of disqualification from the SNAP.

(3) A vendor may file a request for an administrative review by electronic mail, hand delivery, or certified mail with the state WIC agency within fifteen (15) days after receipt of notice of the adverse action.

Section 3. Fair Hearing or Administrative Review~~[Appeal]~~.

(1) Requests for a fair hearing or an administrative review shall be forwarded by the cabinet to the Office of Administrative Hearings within the Department of Law in accordance with KRS 15.111(2)(g), within two (2) working days of receipt~~[A vendor or local agency may file a written request by hand delivery or certified mail with the state WIC agency within fifteen (15) days after receipt of notice of the adverse action]~~.

(2) The fair hearing or an administrative review~~[hearing]~~ shall be conducted in accordance with KRS Chapter 13B, **except as established in this administrative regulation**~~[subject to any specific provisions set forth herein]~~.

(3) The hearing or administrative official shall provide notice of the time and place of the fair hearing or administrative review within fifteen (15) days of a request ~~[for a hearing, the cabinet shall issue a date of hearing]~~.

(4) A request for a fair hearing or administrative review may be dismissed ~~[The state WIC agency may dismiss a request for hearing]~~ if:

(a) The request is not received within the time limit **established**~~[set]~~ by this administrative regulation;

(b) The request is withdrawn in writing by the appellant or a representative of the appellant; or

(c) The appellant or representative fails, without good cause, to appear at the scheduled fair hearing or administrative review.

(5) To protect the identity of the state WIC agency investigators, cross examinations of these witnesses shall be conducted behind a protective screen or other device in accordance with 7 C.F.R. 246.18(b)(5).

(6)(a) In accordance with 7 C.F.R. 246.18(b)(9), the fair hearing or administrative review official~~[officer]~~ shall issue a written recommended order no later than ninety (90) days after the cabinet receives the request for the fair hearing or administrative review, which shall include:

1. The findings of fact;

2. Conclusions of law; and

3. Recommended disposition, including recommended penalties, if any, in accordance with KRS 13B.110.

(b) In accordance with 7 C.F.R. 246.18(b)(8), decisions of the fair hearing or administrative review official shall be based on KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18, and the facts of the case as established in the official record~~[of the hearing]~~ as **established[defined]** in KRS 13B.130.

(c) ~~An official~~~~[A hearing officer]~~ shall not reduce or modify sanctions that are **established[prescribed]** by KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(7) Exceptions to the ~~official's~~~~[hearing officer's]~~ recommended order shall be filed with or mailed to Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.

(8) Each party ~~[in the hearing]~~ shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order, as provided in KRS 13B.110.

(9) A party may file a response to an opposing party's exceptions. **The response shall be filed** within twenty-five (25) days from the date the recommended order is mailed.

(10) Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

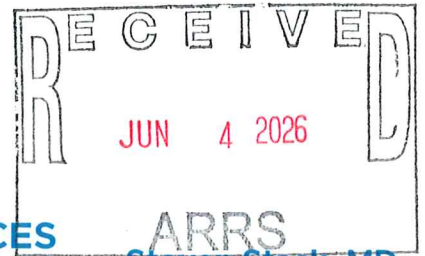
(11) Appealing an action shall not relieve an appellant from the responsibility of continued compliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(12) The final order shall be issued in accordance with KRS 13B.120.

(13) In accordance with 7 C.F.R. 246.18(e), the state WIC agency shall make denials of authorization and disqualifications imposed under 902 KAR 18:061 effective on the date of receipt of the notice of adverse action.

Section 4. In accordance with KRS 13B.140, any party aggrieved by the final order may seek judicial review of the decision. **Judicial review shall be requested** by filing a petition within thirty (30) days of receipt of final order notice in the Franklin Circuit Court or the circuit court of the county in which the party resides or operates a business.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



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COMMISSIONER

June 4, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
702 Capitol Ave.
Frankfort KY 40601

Re: 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090

Dear Co-Chairs West and Lewis,

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090, the Department for Public Health proposes the suggested enclosed substitute to 902 KAR 18:050, 902 KAR 18:061, 902 KAR 18:071, 902 KAR 18:081, and 902 KAR 18:090.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at (502) 229-3377.

Sincerely,

Stacy Carey
Executive Staff Advisor
Office of Legislative and Regulatory Affairs

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health

902 KAR 18:090. High risk criteria.

RELATES TO: KRS 194A.050, 194A.505, 194A.990, 205.231, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, ~~211.180[211.090(3)]~~, 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 ~~authorize~~**provide** ~~J[for]~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants~~[,]~~ and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the high-risk criteria for contracted ~~vendors~~~~[retailers]~~ with the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. High Risk Criteria. In accordance with 7 C.F.R. 246.12, high-risk vendors shall be identified at least once each federal fiscal year. The criteria and points established in this section shall be assessed.

(1) A vendor with low variance~~[, as defined by 902 KAR 18:011, Section 1,]~~ shall be assessed one (1) point~~[five (5) points]~~ per quarter.

(2)~~[A vendor who has greater than or equal to twenty (20) percent but less than fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed five (5) points per quarter. The transactions shall not include produce and formula.~~

(3)~~A vendor who has greater than or equal to fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed ten (10) points per quarter. The transactions shall not include produce and formula.~~

(4) A vendor **that redeemed**~~[in which]~~ six (6) or more gallons of milk ~~[were redeemed]~~ in a single transaction, occurring in thirty (30) or more transactions a quarter, shall be assessed five (5) points per quarter.

~~(3)~~~~(5)~~ A vendor with full package redemptions in one (1) transaction occurring in twenty (20) or more transactions per quarter shall be assessed five (5) points per quarter.

~~(4)~~~~(6)~~ A vendor shall be assessed ten (10) points for every overcharge letter unless the overcharge is justified in writing and accepted by the state WIC agency.

(7) A vendor with a lack of inventory~~[, as outlined in the Kentucky WIC Manual for Applying Retailers, incorporated by reference in 902 KAR 18:050,]~~ shall be assessed five (5) points per occurrence during a monitoring visit.

~~(5)~~~~(8)~~ A vendor **with**~~[whose]~~ prices for transactions **are** greater than or equal to ninety (90) percent **and** above the NTE shall be assessed five (5) points per quarter.

~~(6)~~~~(9)~~ A vendor whose percentage of WIC sales to food sales is greater than twenty (20) percent shall be assessed five (5) points for every ten (10) percent increment per federal fiscal year.

(10)] A vendor ***that[who]*** has redeemed more than \$10,000[\$2,000] in transactions per federal fiscal year from out of its contracted local WIC agency shall receive one (1) point per federal fiscal year.

(7)[(11)] A vendor ***that[who]*** received a Good Letter with Exceptions shall be assessed five (5) points per letter.

Section 2. High Risk Referrals. A vendor ***[who is-]*** assessed thirty (30) points or more per federal fiscal year shall be referred to a federal ***agency***, state ***agency***, or local law enforcement agency for an[~~a compliance~~] investigation.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.