

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

**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

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 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 procedures for WIC vendor disqualification including the participant access determination and civil money penalty.

Section 1. Participant Access Determination.

(1) Except for a violation specified in 902 KAR 18:061, Section 1(1)(h) and (i), prior to disqualifying a vendor for a violation 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 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~~~~[13-01]~~, 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 defined in paragraph (a) of this subsection who can supply the products which were previously redeemed; 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 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. 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 listed in 902 KAR 18:061. The civil money penalty shall be calculated in accordance with 7 C.F.R. 246.12(1)(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 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.

*JOHN R. LANGEFELD, Commissioner*  
*STEVEN J. STACK, MD, MBA, Secretary*

APPROVED BY AGENCY: September 16, 2025

FILED WITH LRC: February 3, 2026 at 11:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 27, 2026, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 20, 2026, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation through April 30, 2026. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:** Julie Brooks, Krista Quarles

**Subject Headings:** Children and Minors; Public Assistance; Public Health

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This administrative regulation establishes procedures for WIC vendor disqualification including the participant access determination and civil money penalty.

**(b) The necessity of this administrative regulation:**

This administrative regulation is necessary to ensure vendor disqualification does not significantly impact participant access to WIC approved foods.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:**

7 C.F.R. 246.12(1) outlines the mandatory vendor sanctions available to states. KRS 194A.050 authorizes the cabinet to implement programs required by federal law.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:**

This administrative regulation ensure proper procedures are followed to determine participant access before disqualifying a vendor.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:**

The amendment to this administrative regulation updates the procedures for calculating participant access.

**(b) The necessity of the amendment to this administrative regulation:**

The amendment to this administrative regulation is necessary to update the participant access procedures to the current federal standards.

**(c) How the amendment conforms to the content of the authorizing statutes:**

7 C.F.R. 246.12(1)(8) requires states to develop participant access determination criteria.

**(d) How the amendment will assist in the effective administration of the statutes:**

The amendment to this administrative regulation will help to ensure participants have sufficient access to vendors before the state disqualifies a vendor.

**(3) Does this administrative regulation or amendment implement legislation from the previous five years? No**

**(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:**

There are currently 552 enrolled WIC vendors. The state averages 107,000 participants per month.

**(5) Provide an analysis of how the entities identified in question (4) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

**(a) List the actions that each of the regulated entities identified in question (4) will have to take to comply with this administrative regulation or amendment:**

Vendors and participants need to be aware of the sanctions for violating federal and state laws and regulations.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):**

There is no cost to vendors or participants.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):**

Participants will be assured access to WIC foods.

**(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:**

This is an ongoing program, there are no initial costs.

**(b) On a continuing basis:**

There will be no increase in cost to the state WIC program to implement the amendment to this administrative regulation.

**(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment:**

According to the U.S. Department of Agriculture, the WIC program receives federal grant funding of approximately \$112 million dollars to administer the program.

**(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

**(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:**

There are no fees established in this administrative regulation.

**(10) TIERING: Is tiering applied?**

Tiering is applied. Vendors who are in an area with low or limited participant access may be issued a civil monetary penalty in lieu of disqualification.

## FISCAL IMPACT STATEMENT

**(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 194A.050, 211.180, 7 C.F.R. Part 246, and 42 U.S.C. 1786.

**(2) Identify the promulgating agency and any other affected state units, parts, or divisions:**

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) in the Department for Public Health, Cabinet for Health and Family Services is the promulgating agency.

**(a) Estimate the following for the first year:**

**Expenditures:**This administrative regulation does not impact expenditure for the promulgating agency.

**Revenues:**The WIC program receives approximately \$112 million dollars in grant funding from the U.S. Department of Agriculture (USDA).

**Cost Savings:**This administrative regulation does not result in cost savings.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

The funding from USDA to support the WIC program is depended on federal monies available.

**(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):**

Local health departments that operate a WIC program are affected local entities.

**(a) Estimate the following for the first year:**

**Expenditures:**The amendment to this administrative regulation will not impact expenditures for the local agencies who implement WIC.

**Revenues:**The state program provides funding from the grant dollars received to support the local agencies who implement WIC.

**Cost Savings:**This administrative regulation does not result in cost savings.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

Subsequent year expenditures, revenues and cost savings will be dependent on the amount of federal funding received from the USDA.

**(4) Identify additional regulated entities not listed in questions (2) or (3):**

Additional regulated entities include authorized WIC vendors and potential vendors.

**(a) Estimate the following for the first year:**

**Expenditures:**This administrative regulation will not result in expenditures for WIC vendors.

**Revenues:**Participating as a WIC vendor is budget neutral for vendors.

**Cost Savings:**This administrative regulation will not result in cost savings for authorized WIC vendors.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

Expenditures, revenue, and cost savings will not change in subsequent years.

**(5) Provide a narrative to explain the:**

**(a) Fiscal impact of this administrative regulation:**

This administrative regulation will have a budget neutral fiscal impact. This administrative regulation will not generate revenue for the promulgating agency or other impacted entities. Expenditures will not be increased or decreased as a result of this administrative regulation and there will be no costs savings.

**(b) Methodology and resources used to determine the fiscal impact:**

The amendment to this administrative regulation updates the participant access determination process to comply with federal standards.

**(6) Explain:**

**(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)**

This administrative regulation does not have an overall negative or adverse major economic impact.

**(b) The methodology and resources used to reach this conclusion:**

This administrative regulation is budget neutral.

## FEDERAL MANDATE ANALYSIS COMPARISON

**(1) Federal statute or regulation constituting the federal mandate.**

7 C.F.R. 246 and 42 U.S.C. 1786.

**(2) State compliance standards.**

KRS 194A.050 requires the secretary of the Cabinet for Health and Family Services to promulgate and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for federal funds.

**(3) Minimum or uniform standards contained in the federal mandate.**

7 C.F.R. 246 provides grant funding to states agencies to administer the Special Supplemental Nutrition Program for Women, Infants and Children through local agencies at no cost to eligible recipients. 7 C.F.R. 246.12(1)(8) requires states to develop and implement participant access determination criteria. 42 U.S.C. 1786 requires states to submit a plan for operation and administration each fiscal year.

**(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?**

No, this administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements.

**(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.**

Not applicable.