

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

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

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 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; 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~~~~Fa 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; 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 when an investigation reveals an initial violation for which a pattern of violations 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, 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 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)(2), 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 defined in KRS 13B.130.

(c) An official ~~[A hearing officer]~~ shall not reduce or modify sanctions that are 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 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 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.

JOHN R. LANGEFELD, MD, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks, Krista Quarles

Subject Headings: Administrative Hearings; Local Health Departments; Public Health; Retail and Sales

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes local agency and vendor rights to a hearing in regard to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to ensure due process for local agencies and vendors who may be subject to an adverse action.

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

7 C.F.R. 246.18 outlines the adverse actions that are subject to administrative review. 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 ensures local agencies and vendors have access to due process procedures.

(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 procedure for requesting an administrative hearing.

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

The amendment to this administrative regulation is necessary to update the requirements for requesting an administrative hearing to comply with 2023 Ky Acts ch.124 which created the Division of Administrative Hearings in the Office of Attorney General.

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

7 C.F.R. 246.18 outlines the adverse actions that are subject to administrative review. KRS 194A.050 authorizes the cabinet to implement programs required by federal law.

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

The amendment to this administrative regulation will ensure proper due process procedures are followed.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? Yes, RS 2023 Senate Bill 48.

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

Local agencies for WIC include sixty-one (61) county and district health departments and three (3) pediatric medical centers. There are currently 552 vendors for WIC

services.

(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:

Local agencies and vendors will need to be aware of the updated procedures.

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

There will be no cost associated with compliance.

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

Local agencies and vendors will have access to proper due process procedures.

(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 not applied as this administrative regulation is applied equally to local agencies and vendors.

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 dependent 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 may have result in minimal expenditures for authorized WIC vendors who file a request for an administrative hearing.

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?

Updates to price display is a one-time expense for WIC vendors. 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 due process procedures for local agencies and vendors to comply with federal regulation.

(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. 246.18 lists the adverse actions subject to an administrative review. 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.