

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

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

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 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 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.

~~[(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.

~~[(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.

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

~~[(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 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 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, state, or local law enforcement agency for ~~an~~~~a compliance~~ investigation.

*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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks, Krista Quarles

Subject Headings: Public Assistance; Public Health; Retail and Sales

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the high-risk criteria for contracted vendors with 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 establish the criteria used to identify vendors who are at risk for violating the requirements for participation in the WIC program.

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

7 C.F.R. 246.12 requires states to be accountable for the food delivery systems under its jurisdiction. 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 vendors are aware of the requirements for participation and what classifies them as a high-risk 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 revises the point system for classifying a vendor as high-risk, increases the allowable redemption dollar amount from \$2,000 to \$10,000 in a federal fiscal year, and makes other changes necessary for KRS Chapter 13A compliance.

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

The amendment to this administrative regulation is necessary to update to the administrative oversight of WIC vendors and to address increase in cost of WIC approved foods.

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

7 C.F.R. 246.12 requires states to be accountable for the food delivery systems under its jurisdiction. 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 high-risk vendors are properly identified.

(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 contracted WIC vendors.

(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 will need to be aware of the proposed changes to the high-risk points system and make any necessary adjustments to their daily operations.

(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 to contracted vendors to comply with this administrative regulation.

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

Vendors who comply with state and federal laws and regulations will not be subject to sanctions or other enforcement actions.

(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 all vendors or potential vendors shall meet the established participation requirements.

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 impact 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 point system used to classify a vendor as high-risk for noncompliance with state and federal laws and regulations.

(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(a)(1) requires states to have a system in place for accountability for the food delivery systems under its jurisdiction. 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.