

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, 211.090(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 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. 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. 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 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 customers according to the 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, 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 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.

(40 Ky.R. 505; 834; eff. 10-16-2013; Crt eff. 4-13-2020.)