

Health

Chapter 420-10-2

STATE BOARD OF HEALTH
BUREAU OF FAMILY HEALTH SERVICES
DIVISION OF WIC
ADMINISTRATIVE CODE

CHAPTER 420-10-2
WOMEN, INFANTS, AND CHILDREN
SUPPLEMENTAL NUTRITION PROGRAM

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420-10-2-.01 **Applicability.** This Chapter prescribes general procedures that apply to the Women, Infants, and Children Supplemental Nutrition Program, hereinafter referred to as WIC, adoption, amendment, and repeal of rules of the State Board of Health. The Alabama Department of Public Health is hereinafter referred to as "the Department."

Author: James M. Richard; Carolyn Battle; Stacey Neumann
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed October 20, 1999; effective November 24, 1999. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.02 **Certification Defined.** Certification is the use of criteria and procedures to assess and document each applicant's eligibility for participation in the Alabama WIC Program.

(1) This eligibility determination is to be made at no cost to the applicant/participant. During this process, the holistic and social needs of the applicant/participant are considered.

(2) Food instruments may not be issued to a participant unless that participant's certification is current.

Author: James M. Richard; Carolyn Battle; Stacey Neumann
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

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420-10-2-.03 **Eligibility Requirements.** To be certified as eligible for the Alabama WIC Program, the applicant shall meet the following requirements and provide proof of identification, residence, and income.

(1) **Individual Status.** Participants shall be one of the following:

(a) A woman who is:

(i) Pregnant;

(ii) Within six months after the baby is born or the pregnancy ends; or

(iii) Breast-feeding up to one year postpartum.

(b) An infant up to one year of age.

(c) A child up to his or her fifth birthday. Benefits terminate at the end of the month a child turns

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five years old.

(2) **Residence Status.** Participants shall be a full-time resident of the State of Alabama. Length of residency shall not be a consideration. This requirement does not apply to migrants and their families, homeless, incarcerated individuals, or Indians.

(3) **Income Standards.** Participants shall meet the income guidelines based on family size according to the Department of Health and Human Services's (HHS) Poverty Guidelines, which are updated annually. Current participation in Medicaid, the Supplemental Nutrition Assistance Program (SNAP), or Family assistance adjunctively income qualifies the applicant for WIC benefits regardless of household income. Proof is required for earned income, and adjunctive eligibility must be verified.

(4) **Nutritional Risk Criteria.** Participants shall meet at least one of the Nutritional Risk Criteria specified in the Alabama WIC Procedure Manual.

Author: James M. Richard; Carolyn Battle; Stacey Neumann

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed October 20, 1999; effective November 24, 1999. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.04 **Food Delivery System.**

(1) **Approved Food Selection Criteria.** Written criteria used in selecting authorized foods are outlined in the WIC Procedure Manual. Established criteria must meet the minimum Federal requirements. The Department reserves the right to, at any time, disallow certain brands, types, or varieties of foods because of cost, availability, packaging, or any other reason deemed necessary.

(2) The review period for adding new foods will be posted on the Department's web site.

Author: James M. Richard; Carolyn Battle; Stacey Neumann
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: New Rule: Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed October 20, 1999; effective November 24, 1999. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.05 Vendor Management.

(1) **General.** The Department through the Alabama WIC Program provides special supplemental food to its participants through a retail purchase delivery system. Some special infant formulas are exceptions to this; these infant formulas are provided by direct distribution at the local WIC clinics. The retail purchase delivery system allows a WIC participant to redeem food instruments or Electronic Benefits Transfer (EBT)e-WIC cards for special supplemental food at authorized vendors. The State WIC Office issues blank stock food instrument paper or e-WIC cards to each clinic. The clinics produce a computer printed or manual food instrument or issue an e-WIC card. Each food instrument or e-WIC card has a unique sequential identifying number. Clinic staff issue benefits to WIC participants for the purchase of authorized foods. The participant may redeem the food instrument or e-WIC card only at authorized WIC vendors. In accordance with the terms of the Alabama WIC Vendor Contract, the vendor deposits food instruments at its bank. The food instruments are then processed through the Alabama WIC Program's contract bank for payment to the vendor. Vendors that use e-WIC shall have their bank account credited with payments for completed EBT transactions. e-WIC card reimbursement occurs through electronic transfer. Authorized WIC vendors shall not be reimbursed for food instruments, cash value vouchers, or e-WIC transactions that are not properly transacted at their store.

(2) **Vendor Applicants.**

(a) Vendors who wish to participate in the Alabama WIC Program shall submit a completed Vendor Application Packet. Vendors can obtain an application packet at all local WIC clinics and on the Department's website. During a contract renewal year the Alabama WIC

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Program will not accept applications from June 1 to September 30.

(b) If a vendor's application is denied, the vendor may reapply 90 days after service of the notice of denial. A vendor may not submit more than two applications in a 12-month period.

(c) The Department may, in its discretion, waive any of the vendor criteria for participation outlined in 420-10-2-.05 (3) in order to ensure adequate participant access to WIC Program benefits. Adequate participant access exists if another authorized WIC vendor is located within ten miles and no geographic barriers or other conditions make participant access unreasonably difficult.

(d) Out of state vendors will not receive approval unless needed for adequate participant access. Participant access determinations in regards to out of state vendors is at the discretion of the Department.

(3) **Vendor Criteria for Participation.** Vendor applicants and authorized vendors shall comply with the criteria for participation at all times. The Department may reassess any authorized vendor at anytime during the vendor contract period using the criteria for participation in effect at the time of the reassessment. The Department shall terminate a vendor who violates any criteria for participation.

(a) **Square Footage of Retail Space.** The vendor shall have a minimum of 3,000 square feet of continuous retail space exclusively devoted to food sales. Square footage areas that are not continuous retail food sales areas open to the public and are used for other purposes that are irrelevant to the purpose of the Alabama WIC Program will not be considered as a part of the minimum square footage requirement. Retail space does not include office space, storage areas, or restrooms.

(b) **Retail Grocery Requirements.** The vendor shall be a business whose primary purpose is to be a retail grocer. Retail grocery does not include the following: gas stations, specialty stores, liquor stores, home delivery groceries, bait shops, etc. All vendors shall have a recognized grocery department in a stationary location that is a separate and distinct area. The vendor, on any given day of operation, shall offer for sale and normally display

a variety of different types of staple foods in addition to Alabama WIC Program approved foods. The vendor shall be open for business to customers at least eight hours per day and six days per week.

(c) **Food Sales.** At least 60 percent of a vendor's total sales must be in staple foods, with the exception of vendors whose square footage exceeds 10,000 square feet. This requirement allows a WIC participant to purchase a variety of foods for home preparation and consumption, as recommended by the United States Department of Agriculture MyPlate dietary guidance.

1. Staple food groups include meat, poultry, fish, breads, cereal, vegetables, fruit, and dairy products. A portion of the vendor's total staple foods must include perishable foods that are either frozen staple food items; or fresh, un-refrigerated or refrigerated staple food items that will spoil or suffer significant deterioration in quality within two to three weeks.

2. Staple foods do not include accessory foods such as coffee; tea; cocoa; soda; non-carbonated drinks such as sports drinks, punches, and flavored waters; candy; chips; condiments; spices; hot foods; or foods ready to go or made to take out, like prepared sandwiches or salads.

(d) **Health Department Food Permit.** The vendor shall have a current Food Establishment Permit issued by a local health department or a state inspection certificate, as approved by the Alabama WIC Program.

(e) **Minimum Stock of WIC-Approved Foods.** The vendor must have and maintain the minimum required stock of WIC-approved foods. Items outside the manufacturer's expiration date will not be counted as part of the minimum required stock. Vendors cannot use another store's brand items as part of the minimum stock requirements.

(f) **Competitive Pricing.**

1. The competitive price determination for individual food items or a combination of food items will be computed by peer group using the most recent shelf prices submitted by authorized vendors. Vendors whose

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prices for individual WIC approved food items or a combination of WIC approved food items that fall within two standard deviations of the mean are cost competitive.

2. In analyzing prices for an individual food item or a combination of food items, the Department shall ensure that the distribution is not skewed by outliers or sample size. If a food item price is skewed by outliers or sample size, the Department, in its discretion, may use an alternative statistical principle to establish the maximum reimbursement level for that food item.

3. The Department shall reassess the maximum reimbursement level of individual food items at least twice a year.

4. The Department may make price adjustments to the purchase price on food instruments or e-WIC food items submitted by the vendor for redemption or seek recoupment of excess payments made to the vendor in order to ensure compliance with allowable reimbursement levels applicable to the vendor. A vendor's failure to remain price competitive is cause for termination of the vendor contract, even if the actual payments made to the vendor are within the maximum reimbursement amount.

(g) **Disqualification from Supplemental Nutrition Assistance Program (SNAP) or WIC.** A vendor applicant or authorized vendor may not currently be disqualified from a SNAP or WIC Program in any state and may not currently be paying a SNAP civil money penalty unless the civil money penalty is due to inadequate participant access.

(h) **Business Integrity.** Unless the Department determines that the denial of a vendor applicant would result in inadequate participant access, the Department may not authorize a vendor applicant if during the last six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or have had a civil judgment entered against them for any activity indicating a lack of business integrity. Activities indicating a lack of business integrity include, but are not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false

statements, receiving stolen property, making false claims, or obstruction of justice.

(i) **50 Percent Criterion.**

1. Vendors that derive more than 50 percent of their annual food sales revenue from WIC transactions and/or redemptions and new vendor applicants expected to meet this criterion based upon assessments conducted by the Department are defined as above-50-percent vendors.

2. A vendor applicant may not participate in the WIC vendor program if the vendor applicant is expected to be an above-50-percent vendor. The foregoing also applies to a new location of a currently authorized vendor.

3. If the new vendor applicant indicates that less than 50 percent of the vendor's annual food sales revenue will be derived from WIC food instruments, the Department shall conduct an assessment, using the chart in Appendix A of these rules, to determine whether the vendor applicant may be authorized. The Department shall not authorize a vendor applicant who is expected to derive more than 50 percent of annual food sales revenue from WIC transactions and/or redemptions.

4. The Department shall assess the status of a new vendor within six months after authorization to determine whether or not the vendor is an above-50-percent vendor. If WIC transactions and/or redemptions for the period evaluated are more than 50 percent of the vendor's total food sales, the vendor is an above-50-percent vendor, and the Department shall terminate the vendor contract and disqualify the vendor from participating in the Alabama WIC Program.

5. The Department may assess the status of a currently authorized vendor, as necessary, to determine whether the vendor meets the above-50-percent criterion. If WIC transactions and/or redemptions for the period evaluated are more than 50 percent of the vendor's total food sales, the vendor is an above-50-percent vendor. If, based upon an annual assessment of sales data, a vendor becomes an above-50-percent vendor, the Department shall terminate the vendor contract and disqualify the vendor from participating in the Alabama WIC Program.

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(j) **Infant Formula Purchase Requirement.** The vendor shall purchase formula solely from entities approved by the Department. The Department maintains a list of approved entities.

1. The Department does not allow vendors to purchase contract infant formula from other program vendors.

2. In the event of an investigation, only purchase invoices from those permitted suppliers will be considered as legitimate.

3. Vendors must retain invoices, receipts, copies of purchase orders, and any other proofs of purchase for all WIC supplemental foods, including infant formula. The program may also require vendors to supply the program with written permission to confirm their infant formula purchase history with suppliers.

4. This purchase documentation must be prepared entirely by the seller or be on the seller's business letterhead. At a minimum, this documentation shall include: the name of the seller; the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity.

5. Failure to retain and provide this purchase documentation upon request may lead to disqualification from the WIC Program.

(k) **Supplemental Nutrition Assistance Program (SNAP).** The vendor shall be an authorized United States Department of Agriculture SNAP retailer.

(l) **EBT Capability.** Upon statewide implementation vendor applicants must have the capability to accept WIC benefits through the use of EBT.

(4) **Vendor Compliance.** The Department is responsible for ensuring that vendors comply with state and federal WIC Program requirements. Vendors shall make any and all records pertinent to the vendor contract available for review including records of purchases of WIC items for resale, Food Instruments, and Cash Value Vouchers

upon request by the Department. These records must include the information described in 420-10-2-.05(3)(j)3. Methods of ensuring compliance include:

(a) **Vendor Monitoring.** Representatives of the Department may conduct unannounced monitoring visits any time that the vendor is open for business. All records pertinent to this monitoring visit must be available for review upon request of the Department's representative.

(b) **Compliance Buys.** Compliance buys are covert investigations conducted by the Department.

(c) **Inventory Audits.** An inventory audit is the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental foods to provide participants the quantities specified on the vendor's redeemed food instruments or e-WIC transactions during a given time period.

(d) **Recoupment of Funds.** The Department must recoup funds for price adjustments and overcharges.

(e) **Vendor Sanctions.** The Department shall impose the following vendor sanctions:

1. **Category VIII--Mandatory Permanent Disqualification.**

(i) Convicted of trafficking in food instruments or cash-value vouchers or selling firearms, ammunition, explosives, or controlled substances as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802) in exchange for food instruments or cash-value vouchers.

(ii) Permanent disqualification from the Supplemental Nutrition Assistance Program.

2. **Category VII--Mandatory Disqualification for Six Years.**

(i) One incidence of buying or selling food instruments for cash (trafficking).

(ii) One incidence of selling firearms, ammunition, explosives, or controlled substances, as

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defined in 21 U.S.C. § 802, in exchange for food instruments or cash-value vouchers.

3. Category VI--Mandatory Disqualification for Three Years.

(i) One incidence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for food instruments or cash-value vouchers.

(ii) A pattern of claiming reimbursement for the sale of an amount of a specific WIC food item that exceeds the vendor's documented inventory of that WIC food item for a specific period of time.

(iii) A pattern of vendor overcharges.

(iv) A pattern of receiving, transacting, or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person.

(v) A pattern of charging for supplemental food(s) not received by the participant.

(vi) A pattern of providing credit or non-food items, other than alcohol, alcohol beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. § 802, in exchange for food instruments or cash-value vouchers.

4. Category V--Mandatory Disqualification for One Year.

(i) A pattern of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental foods provided in excess of those listed on the food instrument.

5. Category IV--Warning on First Offense; On Second or Subsequent Offense, Disqualification for One Year.

(i) Entering false information on a food instrument or cash-value voucher.

(ii) Requiring a participant to make a cash purchase in order to redeem a food instrument, cash-value

voucher, or conduct an e-WIC transaction.

(iii) Failure to scan and enter all Universal Product Codes (UPCs), directly from the product being sold into the redemption system.

(v) Using a "scan book" or similar device in which a UPC label(s) in such book or other device are used in place of scanning the UPC directly from the product being sold.

(v) Failure to comply with the e-WIC operating rules, standards, and technical requirements established in the current Operating Rules and the Technical Implementation Guide (TIG).

(vi) Holding or possessing a participant's e-WIC card for any purpose by the vendor, its employee, or agents.

(vii) Accepting e-WIC card(s) in the promise of providing foods at a future date or at a different location.

(viii) Attempting to seek restitution from a participant for a food instrument or cash-value voucher returned not paid or for a rejected e-WIC transaction.

(ix) Contacting a WIC participant regarding an improperly processed food instrument or cash-value voucher or a rejected e-WIC transaction.

(x) Transacting and/or redeeming e-WIC transactions outside of normal operating hours, as reported to the WIC Program.

(xi) Purchasing infant formula from a source not approved by the Alabama WIC Program.

6. Category III--Warning on First Offense; On Second Offense, \$400.00 Fine and Vendor Submits a Written Corrective Action Plan and Attends Mandatory Training as Defined by the Department; On Third or Subsequent Offense, Disqualification for 12 Months.

(i) Failure to properly process a food instrument or cash-value voucher, including but not limited to, not checking a participant's WIC ID card, requiring

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participants to sign a food instrument or cash-value voucher before first entering the purchase amount, failing to obtain a signature at the time of the WIC transaction, failing to conduct signature comparison, or accepting a food instrument or cash-value voucher outside of the valid dates to use.

(ii) Store personnel requesting and/or entering a WIC Participant's e-WIC Personal Identification Number (PIN).

(iii) Failure to mark the price of a WIC-approved food on the shelf or on the item.

(iv) Stocking a WIC-approved food item outside of the manufacturer's expiration date.

(v) Issuing a rain-check, IOU, or store credit when unable to fill a WIC food instrument or cash-value voucher.

(vi) Failure to provide the quantity or type of infant formula specified on the food instrument.

(vii) Requiring a separate check-out lane for WIC participants.

(viii) Failure to offer a WIC participant any courtesy offered to other customers, including but not limited to, a buy one get one promotional opportunity or the use of a store loyalty card, manufacturer and/or store coupon.

(ix) Threatening or abusing, either verbally or physically, a WIC participant or WIC personnel in the conduct of official WIC business.

7. Category II--Warning on First Offense; On Second Offense, \$300.00 Fine and Vendor Submits a Written Corrective Action Plan and Attends Mandatory Training as Defined by the Department; On Third or Subsequent Offense, Disqualification for Nine Months.

(i) Failure to submit a vendor price survey within the specified time frame.

(ii) Requiring an additional form of identification from a person who has signed the WIC ID folder.

(iii) Requiring an additional form of identification, besides the Personal Identification Number (PIN), in order to process an e-WIC transaction.

(iv) Allowing the purchase of a WIC food item in an unauthorized container size.

8. Category I--Warning on First Offense; On Second Offense, \$200.00 Fine and Vendor Submits a Written Corrective Action Plan and Attends Mandatory Training as Defined by the Department; On Third or Subsequent Offense, Disqualification for Six Months.

(i) Allowing the exchange of a WIC food item obtained with food instruments, cash value vouchers, or e-WIC cards other than items that are defective, spoiled, or outside their sell/use date at time of redemption.

(ii) Allowing a refund for a returned WIC food item obtained with food instruments, cash value vouchers, or e-WIC cards.

(iii) Requiring the purchase of a specific brand if more than one WIC-approved food brand is available and allowed by the State WIC Program.

(iv) Failure to provide a WIC participant a cash register receipt.

(v) Failure to provide employee training on WIC procedures.

(vi) Failure to provide a WIC participant an itemized cash register receipt with each e-WIC transaction.

(vii) Failure to provide required training of store personnel on how to process e-WIC transactions.

(viii) Making or keeping a record of a participant's name or WIC identification number after the e-WIC card is transacted by or on behalf of a participant for which payment has been denied by the WIC Program.

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(ix) Requiring a WIC participant to purchase all items in the participant's e-WIC account.

(x) Improper use of the WIC service mark, WIC logo, or letters "W", "I", "C".

(xi) Charging sales tax on WIC foods.

(f) **Pattern.** A pattern for the purpose of determining the vendor sanction for a violation of paragraph (4)(e)3.(ii) of this rule can be established during a single review if a vendor's records indicate that, for a two month audit period, the vendor's redemptions for a specific food item exceeds its documented inventory. For the purpose of determining other vendor sanctions in paragraphs (4)(e)(1) through (4), a pattern is defined as committing the same violation two or more times during a compliance buy investigation that consists of at least three buys.

(g) **Second Mandatory Sanction.** When a vendor, who previously has been assessed a sanction for any of the violations in Category V through Category VIII, receives sanctions for any of these violations, the Department shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under 7 CFR §246.12.

(h) **Subsequent Mandatory Sanctions.** When a vendor, who previously has been assessed two or more sanctions for any of the violations listed in Category V through Category VIII, receives sanctions for any of these violations, the Department shall double the third sanction and all subsequent sanctions. The Department may not impose civil money penalties in lieu of disqualification for third and subsequent sanctions for violations listed in Category V through VIII.

(i) **Timeframe for State Sanctions.** If a vendor receives a warning for a first offense found in Category I through Category IV, the vendor will receive a monetary penalty or disqualification for a second or subsequent offense that occurs within two years of the notice of the first violation.

(j) **Participant Access and Civil Money Penalty.**

1. Prior to disqualifying a vendor for a

Supplemental Nutrition Assistance Program disqualification or any violations listed in paragraphs (5)(e)(2) through (4) of this Rule, the Department shall determine if the disqualification would result in inadequate participant access. If the Department determines that disqualification of a vendor would result in inadequate participant access, the Department shall impose a civil money penalty, calculated in accordance with 7 CFR §246.12, in lieu of disqualification. However, the Department may not impose a civil penalty in lieu of disqualification for third or subsequent sanctions for violations of paragraphs (4)(e)(2) through (4) of this rule.

2. The Department shall determine there is inadequate participant access if geographic barriers or other conditions make participant access unreasonably difficult and no authorized WIC vendors are located within 10 miles of the violative vendor.

(k) **Notification of Violations.**

1. The Department shall notify a vendor in writing if an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction, before another such violation is documented, unless the Department determines that notifying the vendor would compromise the investigation.

2. In determining whether an initial notice would compromise the investigation, the Department may consider factors, including but not limited to, the severity of the initial violation, the compliance history of the vendor, whether the vendor has been determined to be high-risk vendor consistent with 7 CFR §246.12(j)(3), and whether the notice could compromise a covert investigation, such as a compliance buy investigation that involves an investigative agent posing as a WIC participant and transacting WIC food instruments.

3. The Department shall document the basis for determining that such written notice would compromise the investigation in the vendor's file.

4. Notice is not required for violations involving a vendor's transactions and/or redemptions exceeding its documented inventory. Additionally, notice is not required for WIC vendor disqualifications or the imposition of civil money penalties based on Supplemental

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Nutrition Assistance Program sanctions or for violations that only require one incidence before a sanction is imposed.

Authors: James M. Richard; Wendy S. Blackmon; Dana Driscoll; Greg Locklier; Carolyn Battle; Stacey Neumann

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420-10-2-.06 Appeals For Vendors And Local Agencies.

(1) **Vendor appeals.**

(a) **Adverse actions subject to administrative review.** The Department shall provide full administrative reviews to vendors that appeal the following adverse actions:

1. Denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods or on a determination that the vendor is attempting to circumvent a sanction.

2. Termination of a vendor contract for cause.

3. Disqualification.

4. Imposition of a fine or a civil money penalty in lieu of disqualification.

5. Denial of authorization based on the vendor selection criteria for business integrity or for a current

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disqualification or civil money penalty for hardship.

6. Denial of authorization based on a state agency-established vendor selection criteria if the basis of the denial is a WIC vendor sanction or a Supplemental Nutrition Assistance Program withdrawal of authorization or disqualification.

7. Denial of authorization based on the Department's vendor limiting criteria.

8. Denial of authorization because a vendor submitted its application outside the time frames during which applications are being accepted and processed as established by the Department under 7 CFR §246.12(g)(7).

9. Termination of a vendor contract due to a change in ownership, a change in location, or the cessation of operations.

10. Disqualification based on a trafficking conviction.

11. Disqualification based on the imposition of a Supplemental Nutritional Assistance Program civil money penalty for hardship.

12. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency.

13. A civil money penalty imposed in lieu of disqualification based on a Supplemental Nutritional Assistance Program disqualification under 7 CFR §246.12(1)(1)(vii).

14. Denial of authorization based on a determination of whether an applicant vendor is currently authorized by the Supplemental Nutritional Assistance Program.

15. Denial of authorization based on the application of the vendor selection criteria for competitive pricing.

16. The application of the Department's vendor peer group criteria and the criteria used to identify

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vendors that are above-50-percent vendors or comparable to above-50-percent vendors.

(b) **Actions not subject to administrative reviews.** The Department may not provide administrative reviews pursuant to this section to vendors that appeal the following actions:

1. The validity or appropriateness of the Department's vendor limiting criteria or vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current Supplemental Nutrition Assistance Program disqualification or civil money penalty for hardship.

2. The validity or appropriateness of the Department's participant access criteria and the Department's participant access determinations.

3. The Department's determination regarding whether a vendor had an effective 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.

4. Denial of authorization if the Department's vendor authorization is subject to the procurement procedures applicable to the Department.

5. The expiration of a vendor's agreement.

6. Disputes regarding food instrument or cash-value voucher payments and vendor claims other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR §246.12(k)(3).

7. Disqualification of a vendor as a result of disqualification from the Supplemental Nutritional Assistance Program.

8. The validity or appropriateness of the Department's selection criteria for competitive pricing, including but not limited to, vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors.

9. The Department's determination regarding whether to include or exclude an infant formula

manufacturer, wholesaler, distributor, or retailer from the Department's approved list pursuant to 7 CFR §246.12(g)(11).

10. The validity or appropriateness of the Department's prohibition of incentive items and the Department's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to 7 CFR §246.12(h)(8).

11. The Department's determination regarding whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established to impose a sanction pursuant to 7 CFR §246.12(l)(3).

(c) **Effective date of adverse actions against vendors.**

1. The Department shall make denials of authorization and disqualifications imposed under 7 CFR §246.12(l)(1)(i) effective on the date of receipt of the notice of adverse action.

2. The Department shall make all other adverse actions effective no earlier than 15 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the vendor receives the administrative decision.

(2) **Local agency appeals.**

(a) **Adverse actions subject to full administrative reviews.** The Department shall provide full administrative reviews to local agencies that appeal the following adverse actions:

1. Denial of a local agency's application.
2. Disqualification of a local agency.
3. Any other adverse action that affects a local agency's participation.

(b) **Actions not subject to administrative review.** The Department may not provide administrative

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reviews pursuant to this section to local agencies that appeal the following actions:

1. Expiration of the local agency's agreement.

2. Denial of a local agency's application if the Department's local agency selection is subject to the procurement procedures applicable to the Department.

(c) **Effective date of adverse actions against local agencies.**

1. The Department shall make denials of local agency applications effective immediately.

2. The Department shall make all other adverse actions effective no earlier than 60 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the local agency receives the review decision.

(3) **Full administrative review procedures.** The Department's administrative review procedures provide for the following:

(a) Written notification of the adverse action.

1. The Department shall give written notification of a proposed adverse action, the cause(s) for the action, and the effective date of the proposed adverse action. This notification must also advise the vendor or local agency of its right to a full administrative review, the opportunity to present its case, the opportunity to confront and cross-examine witnesses, the opportunity to be represented by counsel, and the opportunity to examine evidence prior to the full administrative review hearing. The time period for requests for appeal must be given in the notification.

2. When a vendor's disqualification is based on the violations listed in §246.12(1)(1), the written notification must include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the Supplemental Nutrition Assistance Program. Such disqualification is not subject to administrative or judicial review under the Supplemental

Nutrition Assistance Program."

3. Except for denials of authorization and disqualifications imposed under 7 CFR §246.12(l)(1)(i), the Department shall provide vendors with 15 days advance notice before the effective date of the adverse action.

4. Except for denials of local agency applications, the Department shall provide local agencies with 60 days advance notice before disqualification or 30 days before termination.

(b) An aggrieved vendor or local agency shall request a full administrative review hearing within 15 days of receipt of a notice of adverse action. Failure to submit a specific, written request within 15 days constitutes a waiver of the vendor or local agency's right to a full administrative review.

(c) An aggrieved vendor or local agency shall submit a written request for a full administrative review hearing to: Alabama Department of Public Health; Bureau of Family Health Services; Division of WIC; The RSA Tower, Suite 1300; P.O. Box 303017; Montgomery, AL 36130-3017.

(d) The Department shall give an aggrieved vendor or local agency at least 10 days advance written notice of the time, place, and date of the full administrative review hearing.

(e) An aggrieved vendor or local agency has one opportunity to reschedule the administrative review date upon specific written request.

(f) An aggrieved vendor or local agency has the right to cross-examine adverse witnesses. If necessary to protect the identity of Department investigators, such examination may be conducted behind a protective screen or other device (also referred to as an "in camera" examination).

(g) An aggrieved vendor or local agency has the right to an impartial decision-maker, whose determination is based solely on whether the Department has correctly applied federal and state statutes, regulations, policies, and procedures governing the WIC Program, according to the evidence presented at the review.

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(h) The Department shall provide written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of a vendor's request for an administrative review or within 60 days from the date of receipt of a local agency's request for an administrative review. These time frames are only administrative requirements for the Department and do not provide a basis for overturning the Department's adverse action if a decision is not made within the specified time frame.

(4) **Abbreviated Review Hearings.** The Department provides full administrative reviews in all adverse actions referenced in 7 CFR §246.18(a)(1)(ii). Therefore, pursuant to 7 CFR §246.18(A)(1)(ii) and 7 CFR §246.18(c), abbreviated reviews are not available to aggrieved parties.

(5) **Civil Monetary Penalties.** The hearing official and the WIC director have the authority to impose a civil monetary penalty or fine in lieu of disqualification, if inadequate participant access exists. The calculations used to compute the amount(s) can be found in 7 CFR §246.12 and §22-12C-5, Code of Ala. 1975. Civil monetary penalties may not be imposed in lieu of disqualification for third or subsequent sanctions for violations listed in the Vendor Sanctions, Category VII, Category VI, and Category V.

(6) **Continuing responsibilities.** Appealing an adverse action does not relieve a vendor or local agency that is permitted to continue WIC Program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement with the Department. The WIC director shall allow a vendor to continue in the WIC Program while an administrative review is in process, except for a vendor disqualified due to trafficking conviction and a vendor disqualified based upon a SNAP disqualification, which is not subject to an administrative or judicial review under the program.

Author: James M. Richard; Carolyn Battle; Stacey Neumann
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed

October 20, 1999; effective November 24, 1999. **Amended:** Filed May 16, 2002; effective June 20, 2002. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed November 8, 2006; effective December 13, 2006. **Amended:** Filed April 16, 2012; effective May 12, 2012. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.07 Appeal Procedures For Participants.

(1) **Availability of hearings.** The Department shall provide a hearing procedure through which any individual may appeal a state or local agency action that:

(a) Results in a claim against the individual for repayment of the cash value of improperly issued benefits.

(b) Results in the individual's denial of participation in the Alabama WIC Program

(c) Results in the individual's disqualification from the Alabama WIC Program.

(2) **Informal resolution of adverse action.** The aggrieved individual should discuss his or her problem with a staff member of the county health department, WIC clinic, area office, or State WIC Program prior to requesting a formal hearing. Staff members at the local clinic, area office, or State WIC Program may not limit or interfere with a person's right to request an appeal hearing.

(3) **Notification of appeal rights.** At the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the WIC Program, the Department shall inform the individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel, or other spokesperson. This notification is not required at the expiration of a certification period. Notification is required at:

(a) Time of Application, Income. When an

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applicant's income exceeds the maximum allowed for the WIC Program, the applicant must be informed of his ineligibility and how an appeal may be requested using the WIC Notification Form, ADPH-WIC-119.

(b) Time of Application, Medical Assessment. If after screening, the applicant does not meet the medical requirements for participation in the WIC Program, the applicant must be informed of his ineligibility and how an appeal may be requested using the WIC Notification Form, ADPH-WIC-119.

(c) Termination from the WIC Program. When terminating a participant from the WIC Program, the participant must be informed of how to request an appeal. Use the WIC Notification Form, ADPH-WIC-119, when removing a participant between certification or a time of categorical ineligibility. Except for a participant who will be disqualified for not picking up cash-value vouchers, supplemental foods, or food instruments in accordance with 7 CFR §246.7(h)(3)(i), the client must receive 15 days advance notice of this adverse action.

(d) Suspension from the Program. Suspension shall be done through formal written notification. Except for a participant who will be disqualified for not picking up cash-value vouchers, supplemental foods, or food instruments in accordance with 7 CFR §246.7(h)(3)(i), the client must receive 15 days advance notice of this adverse action.

(e) Denial of Participation. Use the WIC Notification Form ADPH-WIC-119 at certification attempt to inform the applicant why he or she is not being allowed to participate and how an appeal may be requested.

(4) **Request for hearing.** An individual may request an appeal hearing by contacting any staff member in the county health department, WIC clinic, area office, or the WIC director. A request may be made by any clear verbal or written expression. If the request is made verbally, a staff member will assist in reducing the request to writing so that a record is available. Written appeal hearing requests must be sent to the following address: Alabama Department of Public Health; Bureau of Family Health Services; Division of WIC; The RSA Tower, Suite 1300; P.O. Box 303017; Montgomery, AL 36130-3017.

(5) **Time limit for request.** A request for a hearing must be made within 60 days from the date of the receipt of the notification of the adverse action.

(6) **Acknowledgment of request.** The Division of WIC shall provide written acknowledgment of the receipt of the request for an appeal hearing within ten days from the date the request is received.

(7) **Notice of hearing.** The person requesting an appeal hearing must receive at least ten days advance written notice of the time and place of the formal hearing.

(8) **Scheduling the hearing.** The Department shall schedule a hearing within 21 calendar days from the date the request is first received unless that time period is waived by the aggrieved party. The place of the hearing must be accessible to the appellant.

(9) **Hearing decision.** Within 45 days of the receipt of the request for the hearing, unless this time period is waived by appellant, the Department shall notify the appellant or his or her representative in writing of the decision and the reasons for the decision.

(a) If the decision is in favor of the appellant and benefits were denied or discontinued, benefits must resume immediately.

(b) If the decision concerns disqualification and is in favor of the Department, as soon as administratively feasible, the continued benefits terminate, as decided by the hearing official.

(c) If the decision regarding repayment of benefits by the appellant is in favor of the Department, the Department shall resume its efforts to collect the claim.

(d) Time frames established for issuing review decisions are only administrative requirements and do not provide a basis for overturning the adverse action if a decision is not rendered within the specified time period. The decision of the hearing official is the final state agency action.

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(10) **Denial or dismissal of request.** The State may deny or dismiss a request for a hearing if:

(a) The request is not received within the time limit set by the Department.

(b) The appellant or a representative of the appellant withdraws the request in writing.

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

(d) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to WIC Program eligibility have changed in such a way as to justify a hearing.

(11) **Continuation of benefits.**

(a) Except for participants whose certification period has expired, participants who appeal the termination of benefits within the 15 days advance adverse notice period provided by 7 CFR §246.7(j)(6) must continue to receive WIC Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first.

(b) Applicants who are denied benefits at initial certification or because of the expiration of their certification may appeal the denial but may not receive benefits while awaiting the hearing.

Author: James M. Richard; Carolyn Battle; Stacey Neumann
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed October 20, 1999; effective November 24, 1999. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.08 Hearing Procedures. The formal administrative hearings regarding adverse actions taken against WIC vendors, local agencies, or participants must adhere to the Hearing of Contested Cases rules found in

Chapter 420-1-3 of the Alabama Administrative Code unless those rules are contrary to this Chapter or Part 246, Title 7 of the Code of Federal Regulations.

(1) **Hearing official.** An impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested shall conduct the hearings. For participant hearings, the hearing official shall order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the Department.

(2) **Conduct of the hearing.** The Department shall also provide the appellant or representative an opportunity to:

(a) Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(b) Be assisted or represented by an attorney or other persons at the appellant's expense;

(c) Bring witnesses;

(d) Advance arguments without undue interference;

(e) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(f) Submit evidence to establish all pertinent facts and circumstances in the case.

(3) **Depositions.** A deposition for which all parties have received notice of the taking of the deposition is admissible into evidence, if any party so requests, subject to evidentiary objections properly preserved during the deposition.

(4) **Expenses of appeal.** Any expenses incurred in retaining representation for an appeal are the sole responsibility of the person requesting the hearing. Neither the State of Alabama, its political subdivisions,

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local clinic, area office, nor the Division of WIC may pay or reimburse for representation, travel, or other expenses incurred by the appellant.

(5) **Fair hearing decisions.**

(a) The hearing official shall base decisions upon the application of appropriate federal law, regulations, and policy as related to the facts of the case as established in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by the hearing official.

(b) In the decision, the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision must become a part of the record.

(c) The Department shall make all hearing records and decisions available for public inspection and copying; however, the names and addresses of participants and other members of the public are confidential.

(d) **Finality and effective date of decisions.** In a participant's formal administrative appeal, the hearing officer's decision is the final state agency action. In a vendor or local agency's formal administrative appeal, the State Health Officer's decision is the final state agency action. If the adverse action under review has not already taken effect, the Department shall make the action effective on the date of receipt of the review decision.

(6) **Judicial review.** If additional administrative appeals are either unavailable or have been exhausted, the Department shall explain the right to pursue judicial review of the decision. A judicial review of an adverse action may be sought pursuant to §41-22-20, Code of Ala 1975.

(g) **Records Retention.** The Department shall retain records of adverse actions and official records of an administrative hearing for a period of five years

Author: James M. Richard; Carolyn Battle; Stacey Neumann
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed October 20, 1999; effective November 24, 1999. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.09 Affirmative Action.

(1) Alabama WIC agencies are providing services in all of the 67 counties that are administered through the local clinics. The Affirmative Action Plan will be used as a method to reallocate existing funds, expand the WIC Program if additional funds are received, and target benefits to priorities of participants highest in need. The reallocations and expenses will be to the neediest one-third. All of these efforts have been made to increase the access points in geographically strategic areas of the state.

(2) Selection criterion for local agencies is based on the availability of health and administrative services. Selection is made on the priorities listed in 7 CFR §246.5(d). Private agencies will be reviewed for civil rights compliance.

Author: James M. Richard; Carolyn Battle; Stacey Neumann
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed October 20, 1999; effective November 24, 1999. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.10 Audits.

(1) **Private Non-Profit Agencies.** The Alabama Department of Public Health, WIC Division, will coordinate and perform internal reviews to ensure proper

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administration of WIC Program funds on an annual basis, and in accordance with existing contracts.

(a) A summary of audit findings and recommended corrective actions will be reviewed with the WIC director and given to the specified agency administrator.

(b) A written response will be requested from the agency within a specified time frame. The agency response must state the corrective action taken or if planned, submitted with a reasonable time period for completion.

(c) The WIC Division staff will be responsible for follow-up to ensure that appropriate corrective actions are in place and operating as planned. This follow-up will be conducted during regular monitoring visits.

(d) The WIC Division will provide technical assistance and training as needed to correct audit deficiencies.

Author: James M. Richard; Carolyn Battle; Stacey Neumann

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed October 24, 1995; effective November 28, 1995. **Repealed and New Rule:** Filed October 20, 1999; effective November 24, 1999. **Repealed and New Rule:** Filed November 20, 2003; effective December 25, 2003. **Repealed and New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.11 Severability. The parts, sections, paragraphs, and provisions of this chapter are severable. Should any portion thereof be ruled unconstitutional or unenforceable by any court, the said ruling shall not affect any other provisions of this chapter not ruled upon.

Author: James M. Richard; Carolyn Battle; Stacey Neumann

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: **New Rule:** Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.12 **Conflicts Of Regulations**. To the extent that these regulations conflict with the Code of Federal Regulations as adopted herein, the provisions of the Code of Federal Regulations shall prevail.

Author: Wendy Blackmon; Carolyn Battle; Stacey Neumann

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: New Rule: Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

420-10-2-.13 **Repealer**. All rules promulgated and adopted by the Board which are in conflict with this Chapter or any provisions thereof are hereby expressly repealed.

Author: Wendy Blackmon

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12c-2 and 3.

History: New Rule: Filed August 20, 2004; effective September 24, 2004. **Amended:** Filed May 17, 2013; effective June 21, 2013.

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APPENDIX A

**Data Sources and Methodologies for Determining if a
Vendor is Expected to Meet the More Than 50
Percent Criterion**

Indicator	Data Sources and Methodologies
The vendor applicant currently has one or more WIC-authorized stores where WIC food sales are more than 50 percent of total annual food sales.	<ol style="list-style-type: none"> 1) Compare WIC redemptions and food sales in existing stores owned by applicant vendor as reported by applicant, documented in tax records or other verifiable source. 2) Compare WIC redemptions to Supplemental Nutrition Assistance Program (SNAP) redemptions in existing stores owned by applicant vendor. If WIC redemptions are greater than SNAP redemptions, WIC revenue may exceed the more than 50 percent criterion. In this case, the state agency must consider documentation that shows the amount of revenue that the vendor obtained from other sources (e.g., cash and credit sales). 3) If vendor applicant is currently authorized in another state, contact state to determine if vendor applicant meets the more than 50 percent criterion in that state.
The vendor applicant is expected to accept WIC as the primary form of payment for the sale of supplemental food items.	<ol style="list-style-type: none"> 1) Request percentage of anticipated food sales by type of payment, i.e., cash, SNAP, WIC, credit/debit, etc. 2) To the extent possible, validate information against other data sources.
The vendor applicant is expected to or currently offers for sale primarily WIC-authorized food items (i.e., does not offer a variety of foods in the staple food groups—meat, poultry, or fish; bread or cereal; vegetables or fruits; and dairy).	<ol style="list-style-type: none"> 1) Request inventory invoices to substantiate foods that have been purchased for sale. 2) Determine if a variety of foods in each of the following staple food groups will be or are currently offered for sale on a continuous basis: meat, poultry or fish; bread or cereal; vegetables or fruits; and dairy. (Continuous basis means that on any given day of operation, a store must offer for sale and normally display in a public area, qualifying staple food items, with no fewer than three different varieties of food items in each of the four staple food categories.) 3) Request percentage of foods intended to be offered for sale in each category, i.e., 40 percent dairy, 2 percent meat, poultry or fish, etc.
The vendor applicant is dependent upon WIC authorization before the store can open for business.	Request date the store will open for continuous business on vendor application.

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Author: James M. Richard; Wendy Blackmon; Dana Driscoll; Carolyn Battle; Stacey Neumann

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-12C-2 and 3; 7 CFR §§246.12, 246.18.

History: New Rule: Filed September 21, 2005; effective October 26, 2005. **Amended:** Filed May 17, 2013; effective June 21, 2013.