

HUMAN SERVICES DEPARTMENT[441]

Regulatory Analysis

Notice of Intended Action to be published: 441—Chapter 67

“Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 234.6(1)“f”

State or federal law(s) implemented by the rulemaking: 42 U.S.C. §1786 and 7 CFR 246

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 6, 2024

Microsoft Teams

2 to 3 p.m.

Meeting ID: 238 807 808 374

Passcode: sCAuM5

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department of Health and Human Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

The WIC program must follow USDA regulations. States do have some flexibility in how some of the federal regulations are implemented—the Iowa Administrative Code can

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provide more Iowa-specific practices; however, the USDA regulations would take precedence.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

None were identified.

- Classes of persons that will benefit from the proposed rulemaking:

Iowans who are eligible for, or have interest in, the WIC program and contracting agencies and vendors will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

None were identified.

- Qualitative description of impact:

These rules benefit clients, contracting agencies, and vendors by providing clarity and consistency.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

No additional costs are anticipated beyond those appropriated.

- Anticipated effect on state revenues:

No impact is anticipated.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

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Eliminating these rules entirely could lead to confusion; lack of available information for clients, contracting agencies and vendors; and lack of program clarity.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

None were identified.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were seriously considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Alternatives, such as the sole reference point being a state plan, may cause inconsistencies or lack of clarity. In addition, this chapter clarifies federal regulations and establishes a legal basis for Iowa's administrative options.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

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- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

None were identified.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new**441—Chapter 67:

CHAPTER 67

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

(WIC)

441—67.1(135) Definitions. Definitions can be found in 7 CFR Part 246 (as amended to August 1, 2024) and state-specific definitions can be found in Iowa WIC policies and procedures. Iowa WIC policies and procedures describe the manner in which the department implements and operates all aspects of program administration within its jurisdiction in accordance with 7 CFR Part 246 (as amended to August 1, 2024), USDA policy memorandums, USDA guidance documents, and any other documents issued by USDA to implement the WIC program.

441—67.2(135) Administration of program. The Iowa department of health and human services implements the WIC program by following guidance from 7 CFR Part 246 (as amended to August 1, 2024), United States Department of Agriculture (USDA) policy memos, USDA guidance documents, and any other documents issued by USDA to implement the WIC program.

441—67.3(135) Certification of participants. Eligibility will be determined pursuant to 7 CFR 246.7 (as amended to August 1, 2024), any USDA issued documents used to implement the WIC program, and the WIC Policy and Procedure Manual.

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441—67.4(135) Food delivery.

67.4(1) *Responsibilities of department—approving or denying applications.* The department will determine if applications meet mandatory specifications and may deny an application pursuant to 7 CFR 246 (as amended to August 1, 2024), USDA federal regulations, USDA guidance documents, or the Iowa WIC Program Vendor Guidance, Iowa WIC Program Vendor Application, and the Iowa WIC Program Vendor Handbook and Agreement.

67.4(2) *Responsibilities of WIC vendors.*

a. A potential vendor shall make application to the department of health and human services WIC program and shall accept the obligations imposed by the signing of the Iowa WIC Program Vendor Agreement and Handbook prior to acceptance of any WIC food instrument. To qualify as a WIC vendor, the vendor shall meet all of the criteria outlined in the Iowa WIC Program Vendor Guidance, Iowa WIC Program Vendor Application, and Iowa WIC Program Vendor Agreement and Handbook.

b. The vendor must agree to adhere to all provisions of the Iowa WIC Program Vendor Application, Iowa WIC Program Vendor Agreement and Handbook, Iowa WIC Program Vendor Guidance.

67.4(3) *Criteria for approving products for inclusion in the WIC food package.*

a. A product shall meet the federal regulations governing the WIC food package.

b. If a vendor offers specialty eggs for retail sale, the vendor shall maintain an inventory of conventional eggs for retail sale sufficient to meet federal and state requirements for participation in the WIC program.

c. Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost, and participant preference. The state reserves the right to limit the number of foods, infant

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formulas, exempt infant formulas, and WIC-eligible nutritionals for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.

d. The approved food list provides more specifics on what is allowed or not allowed for each of the WIC-approved foods.

e. In addition to the criteria specified above, the department reserves the right to make changes to the criteria or further restrict the number and types of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

f. The department reserves the right to discontinue specific brand names and products if the cost is administratively burdensome for that particular product.

g. The department reserves the right to add or delete products pursuant to federal regulations.

441—67.5(135) Education.

67.5(1) Participants who are high risk, as defined in the Iowa WIC Policy and Procedure Manual, shall be seen by a licensed dietitian as described in the Iowa WIC Policy and Procedure Manual with a care plan developed as described in the Iowa WIC Policy and Procedure Manual.

67.5(2) To the extent that time and resources are available, nutrition education may be provided to applicants who are not eligible to receive other WIC services.

441—67.6(135) Right to appeal—participant. Fair hearings and appeals are provided pursuant to 441—Chapter 7 and 7 CFR §246.9 (as amended to August 1, 2024).

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441—67.7(135) Right to appeal—local agencies. Fair hearings and appeals are provided pursuant to 441—Chapter 7, 7 CFR §246.18 (as amended to August 1, 2024), and 7 CFR §246.24 (as amended to August 1, 2024).

441—67.8(135) Right to appeal—vendor. Fair hearings and appeals are provided pursuant to 441—Chapter 7, 7 CFR §246.12 (as amended to August 1, 2024), and 7 CFR §246.18 (as amended to August 1, 2024).

441—67.9(135) State monitoring of contract agencies. At minimum, one of the persons from the department responsible for reviewing a contract agency shall be a licensed dietitian.

441—67.10(135) Civil rights. The Iowa WIC program shall operate in compliance with state and federal regulations and FNS Instruction 113-1 to ensure the rights of all individuals under the WIC program.

441—67.11(135) WIC program violation. Participants or vendors are subject to the sanctions outlined below if determined by contract agency or department staff to be guilty of abusing the WIC program or its regulations.

67.11(1) Participant violation. Violations may be reported by contract agency staff, vendors, the public, FNS staff, or department staff. All suspected cases of fraud will be investigated by the department. All sanctions will be administered by the department. Contract agencies will be notified of any actions taken against WIC participants by the department.

a. Whenever possible, the participant is contacted via telephone concerning the violation. Documentation is maintained according to procedures set forth in the Iowa WIC Policy and Procedure Manual.

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b. Participants who violate WIC program regulations are subject to sanction in accordance with the schedule below:

Violation	Sanction Action
1. Intentional false statement(s) or misrepresentation of income, name, residence, family size (including receiving and using benefits for children no longer in the family), medical data, pregnancy, and/or date of birth to obtain WIC benefits.	One-year disqualification and pay full restitution
2. Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount less than \$100.	Two-month disqualification and pay full restitution
Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell, or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer or sell eWIC card/benefits for unapproved food items, nonfood items, cash or favors. Claim amount less than \$100.	Subsequent violation of any claim amount: one-year disqualification and pay full restitution

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3. Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount greater than \$100.
- Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer, or sell WIC foods for unapproved food items, nonfood items, cash or favors. Claim amount greater than \$100.
- One-year disqualification and pay full restitution
4. Creating a public nuisance or disrupting normal activities through verbal misconduct or physical disruptions at the local WIC agency, farmers market, or vendor location.
- First violation: Education/counseling
- Second subsequent violation: Warning letter
- Third subsequent violation: Two-month disqualification
- Fourth subsequent violation: Any subsequent violation(s) will result in a one-year disqualification.
5. Verbal abuse or harassment of WIC staff, vendors, farmers market vendors and/or other WIC participants. This includes verbal abuse or harassment in person, on social media, or over the telephone.
- Two-month disqualification
- Subsequent violation will result in a one-year disqualification.

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| 6. | Physical abuse (directly or indirectly carrying out the actual harm or threatening to do harm) of WIC staff, vendors, vendor staff, farmers market vendors, farmers market vendor staff, and/or other WIC participants. | Any violation will result in a one-year disqualification. |
| 7. | Destruction of property, theft of eWIC card(s) or theft from a local WIC agency, vendor, vendor staff, farmers market vendor, farmers market vendor staff, and/or another WIC participant. | Any violation will result in a one-year disqualification. |
| 8. | Collusion with staff to improperly obtain benefits. | One-year disqualification and pay full restitution |
| 9. | Dual participation resulting from intentional misrepresentation. | One-year disqualification and pay full restitution |
| 10. | Trafficking WIC food benefits, WIC benefits, or WIC items and/or collusion with an authorized vendor. | One-year disqualification and pay full restitution |
| 11. | Other violations of this chapter or the Iowa WIC Policy and Procedure Manual. | As appropriate per this chapter or the Iowa WIC Policy and Procedure Manual |

c. Local law enforcement may be notified in appropriate cases.

d. Fifteen days' notice must be given prior to all disqualifications. In all cases, the participant must be informed of the reason for the disqualification, of the right to appeal the decision through the fair hearing process, and of eligibility to receive WIC services at the end of the disqualification period.

e. A disqualification may apply to all members of a family who are on the WIC program.

f. Violations are cumulative. However, a participant will not have sanctions assessed for committing a second violation when the second violation occurs before the participant

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receives notice of the first violation and the second violation is the same as the first. A participant who commits the same violation a second time following receipt of a notice for the first violation is subject to a one-year disqualification.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement(s) or intentionally misrepresenting, concealing, or withholding facts or sells or attempts to sell benefits the participant received from the WIC program and is disqualified from the WIC program, the participant may be required to make restitution of the cash value of the improperly received or used WIC benefits. The department may establish a claim against the participant for the full value of the improperly received benefits.

The department will issue a written notice of restitution and disqualification.

If the participant chooses a repayment plan for claims, the department will assist in developing a payment schedule. If the participant has not paid the department directly within 30 days of the notice of restitution and disqualification, the department will pursue collection of the dollar amount owed and benefits will be discontinued until the claim is paid.

h. The department may decide not to impose a mandatory disqualification pursuant to 7 CFR §246.12(u)(2) (as amended to August 1, 2024). All decisions are at the discretion of the department.

i. When a disqualification period has ended, the individual disqualified may be reinstated if the individual's certification period is still current. If the individual's certification period is not current, the individual will need to complete a certification appointment.

j. The department will maintain a master list of all participant violation notices, disqualifications, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

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67.11(2) Vendor violations. There are five types of sanctions that are applied to vendors for violations of WIC program regulations: nonpayment of food instruments, issuance of violation points, temporary disqualification, permanent disqualification, and civil money penalties (CMPs).

a. Nonpayment of food instruments. If the vendor has been terminated from the WIC program and submits a claim, it will be fully denied.

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the Iowa WIC Vendor Agreement and Handbook that do not rise to the level of fraud against the WIC program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of the WIC vendor agreement. It is in the department's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

One or more transactions prior to notification of the vendor constitute only one violation if they contain the same error.

The assignment of violation points does not limit the department's right to effect stronger penalties and sanctions in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation	Points Per Event
1. Developing and using promotional materials including stickers, tags, labels, or channel strips with the WIC service mark to identify WIC-approved foods.	5
2. Developing and using vendor-created WIC vendor identification decals to indicate vendor is an authorized vendor.	5
3. Failure to allow WIC participants to leave the vendor with WIC foods that were debited/removed from their eWIC account during	5

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- a WIC transaction.
4. Failure to post eWIC signs in the cash register lane that has a working WIC terminal if the vendor is not integrated. 5
 5. Failure to provide vendor ECR system participant receipts to WIC participants during each WIC transaction. 5
 6. Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument. 10
 7. Refusal to accept valid WIC food instruments from participants. 10
 8. Discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification, or disallowing the use of coupons or other vendor discounts in WIC transactions that are allowed in non-WIC transactions. 10
 9. Treating WIC customers differently by offering them incentive items, vendor discounts, coupons, or other promotions that are not offered to non-WIC customers. 10
 10. Providing to WIC participants incentive items not prior authorized by the department. 10
 11. Failure to carry out corrective action plan developed as a result of monitoring visit. 10
 12. Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases. 10
 13. Issuing “rain checks” or credit in exchange for WIC food instruments. 10
 14. Stocking out-of-date, stale, or moldy WIC foods. 10

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15. Failure to submit vendor price assessment reports as requested. 10
16. Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet. 10
17. Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available. 10
18. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount. 10
19. Requiring to enter the PIN for the participant and/or asking for the participant's PIN. 10
20. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package. 15
21. Contacting WIC participants in an attempt to recover funds not paid by WIC. 15
22. Providing false information on the price assessment report. 15
23. Knowingly entering false information or altering information on the eWIC receipt/benefits. 10
24. Requiring other cash purchases to redeem WIC food instruments. 15
25. Failure to obtain infant and/or special needs formula from an approved source listed by the Iowa WIC program. 15
26. Offering incentive items with a value of more than \$1.99. 15
27. Scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant. 20
28. Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant. 20

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29. Failure to maintain minimum stocking requirements.	10
30. Other violations of this chapter or the Iowa WIC Program Vendor Agreement and Handbook or the Iowa WIC Policy and Procedure Manual.	As appropriate per this chapter, the Iowa WIC Program Vendor Agreement and Handout or the Iowa WIC Policy and Procedure Manual

c. One-year disqualification. With an administrative finding of the following patterns of sanctions, the vendor will be disqualified for one year.

(1) A pattern of allowing purchase of nonapproved food items in exchange for WIC food instruments or for foods provided in excess of those listed on the WIC food instrument. (federally mandated sanction)

(2) Accumulation of 45 or more violations points within a single federal fiscal year of the agreement period. (department sanction)

(3) Failure to provide access to vendor premises or in any manner to hinder, impede or misinform authorized WIC personnel in the act of conducting an on-site education, monitoring or investigation visit. (department sanction)

(4) Loss of department of inspections, appeals, and licensing license. (department sanction)

(5) Submitting for payment a WIC food instrument redeemed by another authorized vendor. (department sanction)

(6) Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions. (department sanction)

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(7) Submitting for payment WIC food instruments known by the vendor to have been lost or stolen. (department sanction)

(8) Participating with other individuals, including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instrument. (department sanction)

d. A vendor will be disqualified from being a WIC vendor for three years with an administrative finding of any violation detailed in 7 CFR §246.12(l)(iii) (as amended to August 1, 2024).

e. A vendor will be disqualified from being a WIC vendor for six years pursuant to 7 CFR §246.12(l)(1)(ii) (as amended to August 1, 2024).

f. The department will impose mandatory vendor sanctions pursuant to 7 CFR §246.12(l)(1)(i) (as amended to August 1, 2024).

g. The following does not have a point value, but shall result in or extend a disqualification period:

For each month in which a vendor accepts WIC food instruments during a disqualification period, the disqualification period shall be extended by 30 days.

h. The above sanctions notwithstanding, the state of Iowa reserves the right to seek civil and criminal prosecution of WIC vendors for any and all instances of dealing in stolen or lost food instruments, trading cash and other inappropriate commodities for food instruments, or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, or other practices meeting the definition of fraud as defined in 7 CFR Part 246 (as amended to August 1, 2024) or the Iowa Code.

i. A vendor shall not be entitled to receive any compensation for revenues lost as a result of any temporary or permanent disqualification.

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j. A minimum of 15 days' notice is provided prior to all disqualifications, except for permanent disqualifications assessed under paragraph 73.19(2) "f," which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a disqualification letter with supporting documentation is prepared for the WIC director's signature. The disqualification letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal. Voluntary withdrawal from the Iowa WIC Program Vendor Agreement and Handbook to avoid a sanction is not allowed.

k. The department is responsible for issuing all warning and disqualification letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

l. Disqualification from the WIC program may result in disqualification as a retailer in SNAP pursuant to 7 CFR §246.12(h)(3)(xxvi) (as amended to August 1, 2024), 7 CFR §246.18(b)(1) (as amended to August 1, 2024), and 7 CFR §246.12(l)(1)(xi) (as amended to August 1, 2024).

m. The department will disqualify a vendor who has been disqualified from SNAP pursuant to 7 CFR §246.12(l)(1)(vii) (as amended to August 1, 2024) and 7 CFR §246.12(l)(1)(ix) (as amended to August 1, 2024).

n. CMPs.

(1) When the department determines that a CMP shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2) "f" or "m," it shall use the civil money penalty formula in accordance with Title 7 CFR 246.12(k)(1)(x) to determine the CMP.

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(2) If a vendor does not pay, only partially pays, or fails to timely pay a CMP, the department will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. “Failure to timely pay a CMP” includes the failure to pay a CMP in accordance with an installment plan approved by the department.

(3) Money received by the state WIC agency as a result of CMPs or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as WIC program income.

These rules are intended to implement 42 U.S.C. §1786 and Iowa Code section 234.6(1).