

Clearinghouse Rule 19-127

**WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT PERMANENT RULES**

The Wisconsin Department of Health Services proposes an order to **repeal** DHS 149.08 (3) (b) and (4), 149.18 (4) **to amend** DHS 149.01 (intro.), 149.02 (intro.), 149.04 and (title) and (intro.), 149.06 (1) (a) to (c), (2), (3) (c), 149.08 (3) (f), (k), (6) (a) and (b), (7), (8), (10), 149.09 (1) and (2), 149.10 (1) (a) 1., (2) (intro.), (a) and (b), (3) (intro.), (a), (b) 2. to 6., (4) (intro.), (a) and (b), (5), (6), 149.13 (intro.), 149.15 to 149.17, 149.18 (3) (b) to (i), (a) 1. & 2., (b), (c) 1 c. and 3., 149 Subch. IV (title), 149.21 (1) to (3), 149.22 (1) and (2), 149.23, 149.25 (1) to (4), (5) (title), (intro.), (a) to (d), and (6), **repeal and recreate** DHS 149.03, 149.05, 149.07 (1) (d) and (e), (2) to (4), 149.08 (2) (a), (b), (d), (3) (a), (d), (h), (L) and (m), (6) (b) (Note), (10) (Note), 149.10 (7), 149.11 (1) and (2), and 149.12, 149.14, 149.18 (title), (2), (a) to (c), and (Note), 149.20, and 149.24; **to create** DHS 149.06 (1) (Note), 149.07 (1) (c) 5., 149.08 (1) (d), (2) (e) to (h), 149.08 (3) (am), (5) (d), 149.085 and 149.135, relating to the special supplemental nutrition program for women, infants and children (WIC) .

RULE SUMMARY

Statute interpreted

Section 253.06, Stats.

Statutory authority

Section 253.06 (5) (a), Stats.

Explanation of agency authority

Section 253.06, Stats. directs the department to set minimum qualifications for participation or authorization, standards of operation, minimum requirements, and procedures for approving or denying an application, including appeal procedures for the state special supplemental nutrition program for women, infants and children (WIC). Explicit rulemaking authority is given in s. 253.06 (5) (a), Stats.

Related statute or rule

Title 7 CFR Part 246 – Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Plain language analysis

WIC is a federal grant program providing funds to states to provide nutritious foods, nutrition education and referrals to health and other social services to low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. The department proposes to update ch. DHS 149 to achieve consistency with Title 7 CFR Part 246, remove obsolete requirements, and to improve prevention and detection of fraud, waste, and abuse. Specifically this includes adding references to the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) Electronic Benefit Transfer (EBT) operating rules, removing outdated provisions, and clarifying responsibilities to improve program integrity for authorized retail grocery stores, convenience stores and pharmacies, also known as vendors. The current rule addresses benefit redemption practices using vendor stamps, paper checks, drafts or vouchers that are no longer in use in Wisconsin. The program changes for EBT, implemented statewide in 2015, include technology

requirements to ensure WIC participants receive the correct food benefits, retail point of sale system requirements to ensure the vendors are reimbursed for providing the foods, and improved data mining capability from the electronic transaction. The WIC state agency is required to publish a list of infant formula suppliers authorized to provide infant formula to vendors annually. Currently the only requirement is a license with the state. In order to protect Wisconsin infants, the proposed rule adds standards of operation and minimum requirements for infant formula suppliers in addition to a license. The existing rule has not been substantially updated since 2008 and is not consistent with the federal rule. The updated rule will provide consistency for regulatory enforcement of program requirements and provide improved tools to prevent and detect fraud, waste, and abuse. The WIC program utilizes a contract agreement and a vendor procedure manual for authorized vendors. That information needs to be based in administrative rule for enforcement purposes. The department or designated WIC state agency, WIC vendors, and WIC vendor applicants will be affected by this rule.

Summary of, and comparison with, existing or proposed federal regulations

The existing federal regulation, Title 7 CFR Part 246, was amended on July 13, 2016, to include EBT language, additional requirements, and accepted practices that are not currently provided in ch. DHS 149. The proposed rule will also remove obsolete practices and terminology.

Comparison with rules in adjacent states

Illinois:

The state of Illinois administrative rule was last updated in 2006 and is comparable to the current Wisconsin rule. Illinois has not implemented WIC EBT as of April 10, 2019; therefore, it is still current. Illinois Administrative Code, Title 77: Public Health, Ch. X: Department of Human Services, Subchapter i: Maternal and Child Health, Part 672 WIC Vendor Management Code

Iowa:

Iowa Administrative Code, 641: Public Health, Ch. 73: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) adopts by reference federal regulations in Title 7 CFR Part 246, WIC EBT Operating Rules, WIC EBT Technical Implementation Guide, FNS Handbook 901, and FNS Instructions including any additional amendments, last updated 1/1/2017. Iowa implemented WIC EBT in 2016 and has adopted by reference the federal requirements that Wisconsin is proposing to update.

Michigan:

Michigan Public Health Code: Act 368 of 1978, ch. 333, sec. 2221 provides authority which is referenced in the Michigan WIC Vendor Contract and Certification. The vendor agrees to comply with federal and state statutes, rules, regulations, policies and procedures, including USDA regulations at 7 CFR 246.1 et. seq. similar to Wisconsin. Michigan does not have administrative rules that specifically mention the federal requirements, as amended. Michigan fully implemented WIC EBT in 2010 and has been applying the federal language Wisconsin is proposing to add since 2016.

Minnesota:

Minnesota Administrative Rules, chapter 4617, WIC Program was published Oct 2007. Minnesota is currently implementing WIC EBT but has not updated the administrative rule as of April 10, 2019.

Summary of factual data and analytical methodologies

Title 7 Part 246 was updated March 31, 2016, and the final rule for Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of Electronic Benefit Transfer- Related Provisions became effective May 2, 2016. An advisory committee was created, consisting of representatives from Wisconsin Grocers' Association, Emprexel LLC, SD

Services LTD, Meijer Corp, Festival Foods, Hansens IGA, Walgreens, and Lomeli Butcher Shop. The Advisory Committee met on March 25, 2019.

Analysis and supporting documents used to determine effect on small business

The Department published a solicitation in the Administrative Register, requesting comments on the economic impact of the proposed rule, from August 12th to August 26th, 2019

Effect on small business

Please see economic impact analysis.

Agency contact person

Carrie Coenen, (608) 267-9744, P.O. Box 2659, 1 W. Wilson Street, Madison, WI 53701-2659, carrie.coenen@wi.gov

Statement on quality of agency data

The data used by the Department to prepare these proposed rules and analysis comply with s. 227.14 (2m), Wis. Stats.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 149.01 (intro.) is amended to read:

DHS 149.01 (intro.) **Authority and purpose.** This chapter is adopted pursuant to ss. 46.016, ~~46.028~~, 227.11 (2) (a) and 253.06 (5) (a), Stats., and a state plan under s. 253.03, Stats., and 7 CFR 246. This chapter establishes the criteria for approval of grocery stores and pharmacies as authorized vendors to sell foods to participants under the special supplemental nutrition program for women, infants and children (WIC). This chapter establishes operation standards for infant formula suppliers. This chapter also establishes criteria for individuals who receive or apply to receive benefits under the WIC program. The WIC program was established under section 17 of the Child Nutrition Act of 1966, as amended, 42 USC 1786 and 7 CFR 246.

SECTION 2. DHS 149.02 (intro.) is amended to read:

DHS 149.02 (intro.) **Applicability.** This chapter applies to applicants for WIC vendor authorization, authorized vendors, applicants for direct distribution center authorization, direct distribution centers, WIC participants, applicants for WIC program benefits, applicants for infant formula supplier authorization, and ~~persons serving as proxies for participants~~ approved infant formula suppliers.

SECTION 3: DHS 149.03 is repealed and recreated to read:

DHS 149.03 **(1)** "Above-50-percent vendor" means a vendor that derives more than 50 percent of annual food sales revenue from WIC food instruments. It includes vendor applicants applying

for initial authorization that estimate they will derive more than 50 percent of annual food sales revenue from WIC food instruments.

DHS 149.03 **(2)** "Agreement" or "Vendor Agreement" means the document or electronic record entered into by a vendor and the department that contains the terms and conditions under which a vendor or direct distribution center is authorized to provide approved food in exchange for a WIC food instrument.

DHS 149.03 **(3)** "Approved food" or "authorized supplemental food" has the meaning provided in s. 253.06 (1) (am), Stats.

DHS 149.03 **(4)** "Authorized infant formula supplier list" means the list of wholesalers, distributors, retailers, and manufacturers approved by the department to provide approved infant formula to vendors and direct distribution centers.

DHS 149.03 **(5)** "Cardholder" means a person in possession of a food instrument and attendant personal identification number.

DHS 149.03 **(6)** "Change of ownership" means the transfer of the right to control the assets or management of a vendor or direct distribution center, or any majority changes in ownership interest.

DHS 149.03 **(7)** "Civil money penalty" means a monetary penalty imposed on a vendor in lieu of disqualification under 7 CFR 246.12 (l) (1) (ix) and (x).

DHS 149.03 **(8)** "Conditional authorization" means additional terms and conditions imposed by the department, including restrictions due to a relationship with an individual with an unacceptable history with WIC or SNAP, or a family member participant.

DHS 149.03 **(9)** "Contract period" means the period of time stated in the agreement that a vendor or direct distribution center is authorized to provide approved food in exchange for a WIC food instrument.

DHS 149.03 **(10)** "Customer area" means the portion of a grocery store or pharmacy that is normally frequented by customers and does not include storage or other areas that are normally not frequented by customers.

DHS 149.03 **(11)** "Department" means the Wisconsin department of health services.

DHS 149.03 **(12)** "Direct distribution center" means an entity, other than a vendor, that is under contract with the department or a local agency under s. 253.06 (3m), Stats., to distribute approved food to participants.

DHS 149.03 **(13)** "Disqualification" means the act by the department of ending WIC participation of a vendor, direct distribution center, infant formula supplier, or participant because of a program violation.

DHS 149.03 **(14)** "EBT" or "Electronic benefit transfer system" has the meaning provided in s. 253.06 (1), Stats.

DHS 149.03 **(15)** "EBT-capable" means a cash register system or payment device, approved by the department, that can accurately and securely obtain the WIC benefit balance associated with a food instrument, maintain the necessary files, such as the approved product list, and successfully complete WIC transactions.

DHS 149.03 **(16)** "Enforcement assessment" means the amount added to a forfeiture or recoupment required under s. 253.06 (5) (c), Stats.

DHS 149.03 **(17)** "Family" means a household or economic unit composed of a person or group of persons, related or unrelated who usually live together and whose production of income and consumption of goods are related. Exceptions include residents of a homeless facility or an institution shall not be considered as members of a single family. A foster child is counted as a separate family unit of one.

DHS 149.03 **(18)** "Food instrument" has the meaning provided in s. 253.06 (1), Stats.

DHS 149.03 **(19)** "Food sales" means the sales of all foods that are eligible items under SNAP.

DHS 149.03 **(20)** "Forfeiture" means the sum of money required to be paid to the department as a result of a vendor violation as provided in s. 253.06 (5) (b) (4), Stats.

DHS 149.03 **(21)** "Grocery store" means a retail store, or a store authorized by SNAP as a specialty store, that sells a general line of food such as breads, cereals, fruits and vegetables, meats, fish, poultry, and dairy products.

DHS 149.03 **(22)** "Incident" means one or more compliance buys, as defined in 7 CFR 246.2, conducted on the same date, or one sub-category level designation within the approved product list (APL) as used in an inventory audit, or a program violation observed on one date for discretionary sanctions.

DHS 149.03 **(23)** "Initial authorization" means the authorization of a specific business entity to serve as a vendor at a designated location.

DHS 149.03 **(24)** "Inventory audit" means the examination of invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of approved foods compared to valid claims for payment.

DHS 149.03 **(26)** "Local agency" means an entity that has a contract with the department to provide WIC services including preauthorization site visits, eligibility determination, WIC benefit issuance, and nutrition counseling for participants.

DHS 149.03 **(27)** "Local agency clinic" means a site established by a local agency where WIC participants receive services including the local agency main office or its satellite locations.

DHS 149.03 **(28)** "Maximum food price" means the maximum amount a vendor within each vendor peer group may charge for an approved food item or for a standardized combination of foods.

DHS 149.03 **(29)** "Minimum stock requirement" means the food items, categories, approved sizes and quantities of foods that vendors are required to maintain in the customer area as specified in the vendor manual and stock price survey.

DHS 149.03 **(30)** "Non-sale price" means the price of an item that has not been reduced for a limited time.

DHS 149.03 **(31)** "Preauthorization site visit" means the on-site review of the vendor to verify that the vendor meets WIC program requirements, including minimum stock requirements, pricing, freshness, and cleanliness.

DHS 149.03 **(32)** "Participant" means a person who is eligible for and receives services under s. 253.06, Stats., including an infant, child under age 5, and a pregnant, breastfeeding, or postpartum woman within six months of delivery.

DHS 149.03 **(33)** "Pattern" means two or more documented incidents subject to discretionary sanctions.

DHS 149.03 **(34)** "Pharmacy" means an establishment that is licensed to operate as a pharmacy under s. 450.06, Stats. "Pharmacy" includes a person conducting transactions on behalf of the pharmacy, including the owner, manager, a representative, an employee or any other individual who directly or indirectly participates in the operation of the pharmacy.

DHS 149.03 **(35)** "SNAP" means the federal Supplemental Nutrition Assistance Program under 7 USC 2011 to 2029, formerly known as Food Stamp Program, and known in Wisconsin as FoodShare Program.

DHS 149.03 **(36)** "Sanction" means a penalty imposed by the local agency or department on a vendor, direct distribution center, infant formula supplier or participant because of a violation of this chapter and includes denial of an application, termination of authorization for a vendor or termination of the contract for a direct distribution center, disqualification, recoupment, forfeiture, enforcement assessments under s. 253.06 (5) (b), Stats., or civil money penalties.

DHS 149.03 **(37)** "Standardized combination of foods" means a group of approved foods selected by the department and used for cost containment and vendor eligibility.

DHS 149.03 **(38)** "Stock price survey" means the department form used to record current vendor non-sale shelf prices for approved foods, which must be submitted with a vendor application when requested by the department.

(Note) The stock price survey may be obtained from the WIC vendor website at <http://www.dhs.wisconsin.gov/wic/vendor/application/htm>.

DHS 149.03 **(39)** "USDA" means the United States department of agriculture.

DHS 149.03 **(40)** "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more grocery stores or pharmacies authorized by the department to provide approved foods to participants under a retail food delivery system. Each location operated by a business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity.

DHS 149.03 **(41)** "Vendor authorization" means the determination by the department that assesses, selects, and then enters into an agreement with a grocery store or pharmacy that applies or reapplies to be authorized as a vendor.

DHS 149.03 **(42)** "Vendor manual" means the electronic or printed manual the department publishes that describes the WIC program and program policies related to the provision of approved food to participants, including program policies, periodic updates and amendments, applicable rules, and other requirements.

DHS 149.03 **(43)** "Vendor peer group" means a group of 2 or more vendors determined by the department to have similar characteristics and used to set distinct competitive price criteria and allowable reimbursement levels.

DHS 149.03 **(44)** "WIC" or "WIC Program" means the special supplemental nutrition program for women, infants and children established pursuant to 42 USC 1786, 7 CFR 246, and s. 253.06, Stats.

DHS 149.03 **(45)** "WIC benefit" means a WIC food instrument, approved food available with a food instrument, approved food purchased with a food instrument, or a WIC breast pump.

SECTION 4. DHS 149.04 (title) and (intro.) are amended to read:

DHS 149.04 **Food Direct distribution centers.** ~~Food Direct~~ distribution centers shall comply with this chapter and s. 253.06, Stats.

SECTION 5. DHS 149.05 is repealed and recreated to read:

DHS 149.05 **Minimum requirements for vendor authorization.** A vendor may be eligible to become an authorized vendor, or remain an authorized vendor if all of the following conditions are met:

DHS 149.05 **(1)** The vendor is located in Wisconsin.

DHS 149.05 **(2)** The vendor has a fixed location unless otherwise allowed by the department, as in the case of a designated disaster or emergency.

DHS 149.05 **(3)** The vendor is SNAP authorized.

DHS 149.05 **(4)** The vendor has a current retail food establishment license.

DHS 149.05 **(5)** The vendor is registered and maintains registration in good standing with the Wisconsin department of financial institutions (DFI).

DHS 149.05 **(6)** The vendor demonstrates business integrity. Activities that indicate a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or aiding and abetting any of these activities.

DHS 149.05 **(7)** The vendor and any representative, agent, manager, employee, or other person who directly or indirectly participates in the operation of the grocery store or pharmacy has not been convicted of a crime, or has a civil or criminal judgment entered against them in Wisconsin or any other state during the last 6 years for an activity that would indicate a lack of business integrity, including possession of a controlled substance with intent to deliver.

DHS 149.05 **(8)** The vendor and any of its representatives, agents, managers, employees or other persons who directly or indirectly participate in the operation of the grocery store or pharmacy, who has current or prior involvement with WIC or SNAP, has an acceptable history with WIC and SNAP. In determining whether the history is acceptable, the department shall consider the person's history with either WIC or SNAP, including whether the person conducts or has conducted business without authorization by WIC or SNAP as applicable.

DHS 149.05 **(9)** The vendor demonstrates the business was purchased in good faith with a verifiable form of payment.

DHS 149.05 **(10)** The vendor is not currently disqualified from SNAP and has not had a SNAP civil money penalty suspended for hardship where the disqualification period that would otherwise have been imposed has not expired.

DHS 149.05 **(11)** The vendor has not been adjudicated to be delinquent in the payment of taxes under ch. 71, 72, 76, 77, 78 or 139, Stats.

DHS 149.05 **(12)** The vendor has not been sold by its previous owner to another vendor or owner in an attempt to circumvent a WIC sanction. The department may consider such factors as whether the previous owner sold the grocery store or pharmacy to a person who is related by blood or marriage to the previous owner or sold to any individual or organization for less than the grocery store or pharmacy's fair market value, or is unable to provide verifiable proof of payment.

DHS 149.05 **(13)** The vendor has no outstanding forfeitures, recoupment assessments, enforcement assessments, or civil money penalties that were levied against that vendor for a violation of this chapter, or for a violation of s. 253.06, Stats., or 7 CFR 246.

DHS 149.05 **(14)** The vendor has an EBT capable cash register system or payment device, approved by the department. The system or device must have acceptable documented testing prior to a WIC participant purchase.

DHS 149.05 **(15)** The vendor has sufficient EBT capable cash register system terminals or payment devices deployed in accordance with the minimum lane coverage provisions of s. 7 CFR 246.12 (z) (2).

DHS 149.05 **(16)** The vendor is not an above-50-percent vendor at the time of the initial application for authorization to be a WIC vendor.

DHS 149.05 **(17)** The vendor's maximum price for a standardized combination of foods is the same or less than the prices charged by other vendors in the vendor's peer group.

DHS 149.05 **(18)** The vendor purchases infant formula provided to participants only from a supplier listed on the authorized infant formula supplier list.

DHS 149.05 **(19)** The vendor has established hours of operation which include a minimum of two 4-hour blocks of time on each of 5 days per week and daily operating hours are consistent from week to week.

DHS 149.05 **(20)** The vendor has not accepted WIC food instruments before becoming an authorized vendor.

DHS 149.05 (21) The vendor meets the minimum stock requirement on shelves or in coolers in the customer area, unless otherwise stated in the vendor agreement.

DHS 149.05 (22) The vendor meets conditional authorization terms, if required.

SECTION 6. DHS 149.06 (1) (intro.) is amended to read:

DHS 149.06 (1) Only persons who meet the eligibility requirements under s. DHS 149.05 may apply for authorization as a WIC vendor. An eligible person who wishes to apply for authorization shall apply to the ~~state WIC office~~ department on an application form obtained from the department ~~or department's office~~. The person applying for initial authorization shall complete each application form fully and accurately; submit for each application a stock price survey indicating the non-sale prices of approved food available on the day the application is submitted to the ~~state WIC office~~ department; participate in training as required under sub. (2); ~~and provide additional information requested from by the state WIC office department or the state WIC office designee, and demonstrate an EBT capable cash register system or payment device.~~

SECTION 7. DHS 149.06 (1) (Note) is created to read:

DHS 149.06 (1) (Note): The application form can be obtained from the WIC vendor website at <http://www.dhs.wisconsin.gov/wic/vendor/application/htm>.

SECTION 8. DHS 149.06 (1) (a) to (c) and (2) are amended to read:

DHS 149.06 (1) (a) *Multiple locations.* If a person wishes to accept and redeem WIC ~~checks~~ food instruments at multiple locations, a separate application shall be completed and submitted for each grocery store or pharmacy for which the person or business entity wishes to accept and redeem WIC ~~checks~~ food instruments.

DHS 149.06 (1) (b) *Change of ownership.* If a person, group of persons, or business entity takes ownership, ~~or becomes a majority owner or shareholder,~~ whether by gift, purchase, or lease of an authorized a vendor, the person, persons or business entity taking ownership shall submit an application at least 15 days before change of ownership.

DHS 149.06 (1) (c) *Change of vendor location.* Except as provided in s. DHS 149.08 (6), if a vendor changes its location the person responsible for the change shall complete an application for authorization for the new location. The vendor may not accept or redeem WIC ~~checks~~ food instruments at the new location until the vendor ~~has received~~ receives authorization from the ~~state WIC office~~ department for the new location.

DHS 149.06 (2) As part of the application process, the vendor or its designee, for each location for which authorization is requested, shall participate in a training session at a time and location designated by the ~~state WIC office~~ department or the ~~state WIC office~~ department designee.

SECTION 9. DHS 149.07 (1) (c) 5. is created to read:

DHS 149.07 (1) (c) 5. If the vendor fails to submit a completed initial application, or fails to submit requested information within 90 days of initial submission, the department may close the application without action. The vendor may submit a new application.

SECTION 10. DHS 149.07 (1) (d) and (e), and (2) to (4) are repealed and recreated to read:

DHS 149.07 **(1)** (d) A vendor meeting the preauthorization site visit requirements shall participate in a WIC-approved training session at a time, date, and location designated by the department or local agency.

DHS 149.07 **(1)** (e) The department shall provide the WIC vendor agreement and vendor manual to the vendor upon satisfactory completion of the application requirements under this subsection and ss. DHS 149.05 and 149.06.

DHS 149.07 **(2)** REAPPLICATION FOR AUTHORIZATION. (a) The vendor agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization.

DHS 149.07 **(2)** (b) Within 120 days after receipt of a completed application for continued authorization as a vendor for a new contract period, the department shall either approve or deny the application for WIC authorization.

DHS 149.07 **(2)** (c) A new application shall be submitted for each authorization period.

DHS 149.07 **(2)** (d) Any conditions placed on the initial authorization remain in place unless the authorization is amended or terminated.

DHS 149.07 **(3)** EXPIRATION OR TERMINATION OF AUTHORIZATION. (a) Unless terminated earlier, a WIC authorization shall expire on October 31, 2019, and every 3 years thereafter on October 31, regardless of the date initial authorization was granted.

DHS 149.07 **(3)** (b) Vendor authorization terminates upon a change of ownership, including when the department determines that a change of location constitutes a change of ownership.

DHS 149.07 **(4)** DENIAL OF AUTHORIZATION. (a) The department may deny vendor authorization for any one of the following reasons:

DHS 149.07 **(4)** (a) 1. The vendor does not meet the requirements under sub. (1) or s. DHS 149.05 or 149.06. Except for the initial preauthorization site visit, the department may waive any WIC authorization requirement if the department determines that denying an application for authorization would inhibit participant access to WIC services.

DHS 149.07 **(4)** (a) 2. The vendor fails to comply with WIC program requirements including federal and state statutes, local ordinances, or federal and state regulations relating to WIC program operation, or other USDA food and nutrition service programs.

DHS 149.07 **(4)** (a) 3. The vendor's application contains false information.

DHS 149.07 **(4)** (a) 4. The vendor is in violation of any other applicable federal, state, or local health protection laws or ordinances.

DHS 149.07 **(4)** (b) If the department denies an application, the department shall give the vendor reasons for the denial in writing and inform the vendor of the right to appeal under s. DHS 149.18.

SECTION 11. DHS 149.08 (1) (d) is created to read:

DHS 149.08 **(1)** (d) Vendor agreement or vendor manual amendments and program updates as necessary.

SECTION 12. DHS 149.08 (2) (a), (b), and (d) are repealed and recreated to read:

DHS 149.08 **(2)** (a) Provide to a participant or cardholder alcohol, an alcoholic beverage, a tobacco product, or substitute any food or commodity other than the approved food specified on the WIC food instrument, in exchange for a WIC food instrument, or provide any coupon or certificate for these items contingent upon spending the WIC food instrument or provided to a participant or cardholder for a purchase made with a WIC food instrument.

DHS 149.08 **(2)** (b) Provide cash, credit, including rainchecks, refunds, or exchanges, except for exchanges for an identical approved food item when the original approved food item is defective, spoiled, or exceeded its sell by, or use by date, in exchange for a WIC food instrument to a participant or cardholder.

(Note) Providing cash or other consideration in exchange for a WIC food instrument is included in the definition of trafficking found in s. 253.06 (1), Stats.

DHS 149.08 **(2)** (d) Provide approved foods in quantities that are more than the quantities specified on the WIC food instrument to a participant or cardholder in exchange for a WIC food instrument.

SECTION 13. DHS 149.08 (2) (e) to (h) are created to read:

DHS 149.08 **(2)** (e) Charge participants or cardholders for approved foods obtained with food instruments or seek restitution from these individuals for food instruments not paid or partially paid by the department.

DHS 149.08 **(2)** (f) Accept food instruments outside of authorized channels.

DHS 149.08 **(2)** (g) Ask for any additional form of identification from a WIC participant or cardholder.

DHS 149.08 **(2)** (h) Provide an incentive item without department approval.

SECTION 14. DHS 149.08 (3) (a) is repealed and recreated to read:

DHS 149.08 **(3)** (a) Comply with WIC program processing and redemption procedures in this chapter, ch. 410 and s. 253.06, Stats., 7 CFR 246, the vendor agreement, the vendor manual, and the current WIC EBT operating rules.

SECTION 15. DHS 149.08 (3) (am) is created to read:

DHS 149.08 **(3)** (am) Purchase all WIC eligible food items for resale with verifiable form of payment.

SECTION 16. DHS 149.08 (3) (b) is repealed.

SECTION 17. DHS 149.08 (3) (c) is amended to read:

DHS 149.08 **(3)** (c) Charge the participant or the ~~participant's proxy~~ cardholder prices that are less than or equal to prices charged to other customers.

SECTION 18. DHS 149.08 (3) (d) is repealed and recreated to read:

DHS 149.08 **(3)** (d) Provide stock price surveys to the department upon request of the department.

SECTION 19. DHS 149.08 (3) (f) is amended to read:

DHS 149.08 **(3)** (f) Charge a price for an ~~authorized~~ approved food or standardized combination of foods that is the same as or lower than the maximum food price established by the ~~state WIC office~~ department.

SECTION 20. DHS 149.08 (3) (h) is repealed and recreated to read:

DHS 149.08 **(3)** (h) Keep a copy of the current vendor agreement on file or be able to access the electronic document.

SECTION 21. DHS 149.08 (3) (k) is amended to read:

DHS 149.08 **(3)** (k) Provide all information or documents requested by the department during the application process and contract period within the timeframes specified in the request.

SECTION 22. DHS 149.08 (3) (L) and (m) are repealed and recreated to read:

DHS 149.08 **(3)** (L) Maintain inventory and accounting records for a minimum of 3 years.

DHS 149.08 **(3)** (m) Make available upon the request of representatives of the department, the USDA, or the comptroller general of the United States all WIC food instruments in the possession of the vendor and all required inventory and accounting records for inspection and audit.

SECTION 23. DHS 149.08 (4) is repealed.

SECTION 24. DHS 149.08 (5) (d) is created to read:

DHS 149.08 **(5)** (d) A vendor may not include the WIC acronym, WIC logo, or close facsimiles of the WIC logo, in whole or in part, in any advertising material containing references to alcohol or tobacco products.

SECTION 25. DHS 149.08 (6) (a) and (b) are amended to read:

DHS 149.08 **(6)** REPORTING REQUIREMENTS. (a) At least 15 days before a change of location, name, address, management, corporate officers or majority stockholders the vendor shall report the change in writing to the ~~state WIC office or its designee~~ department on a form provided by ~~that office~~ the department.

DHS 149.08 **(6)** (b) A new location within a 5-mile radius of the vendor's previous authorized location with the previous location being closed, ~~will~~ does not require a new application for authorization. If the new location is more than a 5 mile radius of the vendor's previous location ~~and or~~ or the previous location is not being closed, a new application for authorization ~~will be~~ is required.

SECTION 26. DHS 149.08 (6) (b) (Note) is repealed and recreated to read:

DHS 149.08 **(6)** (b) (Note): Authorization forms may be obtained from the WIC vendor website at <http://www.dhs.wisconsin.gov/forms/f4/f40108.pdf>.

SECTION 27. DHS 149.08 (7), (8), and (10) are amended to read:

DHS 149.08 **(7)** SERVICES TO PARTICIPANTS. A vendor shall afford a participant or ~~participant's proxy cardholder~~ cardholder the same courtesies afforded to other customers, and treat a participant and the ~~participant's proxy~~ cardholder in accordance with non-discrimination requirements under 7 CFR 15, subpart A.

DHS 149.08 **(8)** TRAINING. The vendor or at least one designee from each authorized location shall satisfactorily complete any training sessions required by the ~~state WIC office~~ department or designee. The ~~authorized~~ vendor shall ensure that all employees who process WIC ~~checks~~ food instruments are trained in ~~check~~ food instrument processing procedures.

DHS 149.08 **(10)** REPORTING OF PARTICIPANT NONCOMPLIANCE. A vendor shall ~~may~~ report to the ~~state WIC office~~ department or its designee on a form provided by the ~~office~~ department any instance in which a participant fails to comply with WIC requirements.

SECTION 28. DHS 149.08 (10) (Note) is repealed and recreated to read:

DHS 149.08 **(10)** (Note): Complaint forms may be obtained from the WIC vendor website at <http://www.dhs.wisconsin.gov/forms/f4/f44322.pdf>.

SECTION 29. DHS 149.085 is created to read:

DHS 149.085 **Infant formula suppliers. (1)** An infant formula supplier that distributes WIC approved infant formula for resale to WIC vendors shall do all of the following:

DHS 149.085 **(1)** (a) Maintain the appropriate state or local food safety license.

DHS 149.085 **(1)** (b) Complete the WIC authorized infant formula supplier application form upon request by the department.

DHS 149.085 **(1)** (c) Provide sales records or invoices with each delivery including a unique sales identification or invoice number, the name and address of the infant formula supplier, name and address of the WIC vendor purchasing the product, month, date and 4-digit year of delivery, items purchased including product name, size of container, stock number or uniform product code, quantity and unit price, and type of payment received.

DHS 149.085 **(1)** (d) Purchase infant formula from the infant formula manufacturer or another entity on the Wisconsin approved infant formula supplier list.

DHS 149.085 (1) (e) Retain purchase records for a minimum of one year.

DHS 149.085 (1) (f) Allow the department unrestricted access to the infant formula storage facility, delivery vehicle, and purchase records during normal business hours for inspection purposes.

DHS 149.085 (1) (g) Provide purchase records and sales receipts to the department upon request.

DHS 149.085 (1) (h) Demonstrate business integrity as provided in s. DHS 149.05.

DHS 149.085 (2) Failure to meet the requirements in sub. (1) may result in the infant formula supplier being removed from the authorized infant formula supplier list.

SECTION 30. DHS 149.09 (1) and (2) are amended to read:

DHS 149.09 **Monitoring of vendors. (1)** The ~~state WIC office~~ department or designee may monitor a vendor at any time during a contract period including conducting compliance buys, inventory audits, record reviews, monitoring visits, or routine on-site inspections.

DHS 149.09 (2) When, during the course of a single monitoring visit, the ~~state WIC office~~ department determines that a vendor has committed multiple violations, the ~~state WIC office~~ department shall impose the sanction corresponding to the most serious violation under ss. DHS 149.10 or 149.11.

SECTION 31. DHS 149.10 (1) (a) 1., (2) (intro.), (a) and (b), (3) (intro.), (a), (b) 2. to 6., (4) (intro.), (a) and (b), (5), (6) are amended to read:

DHS 149.10 (1) (a) 1. The ~~state WIC office~~ department shall permanently disqualify a vendor from participation in the WIC program if the vendor is convicted of trafficking, providing cash in exchange for a WIC ~~check~~ food instrument, or of selling a firearm, ammunition, explosive or controlled substance in exchange for a WIC ~~check~~ food instrument. Disqualification of a vendor shall be effective upon the postmark date of the notice of administrative action by the ~~state WIC office~~ department to the vendor's address of record.

DHS 149.10 (2) MANDATORY SIX YEAR DISQUALIFICATION. Unless a determination is made under s. DHS 149.12 (1) that disqualification would result in inadequate participant access, the ~~state WIC office~~ department shall disqualify a vendor from participation in the WIC program for 6 years for any one of the following:

DHS 149.10 (2) (a) One incident of trafficking, buying or selling a WIC ~~check~~ food instrument for cash.

DHS 149.10 (2) (b) One incident of selling in exchange for a WIC ~~check~~ food instrument a firearm, ammunition, an explosive, or a controlled substance as defined in 21 USC 802.

DHS 149.10 (3) MANDATORY THREE YEAR DISQUALIFICATION. Unless a determination is made under s. DHS 149.12 (1) that disqualification would result in inadequate participant access, the ~~state WIC office~~ department shall disqualify a vendor from participation in the WIC program for 3 years for any one of the following:

DHS 149.10 **(3)** (a) ~~One or more incident incidents~~ of selling in exchange for a WIC ~~check~~ food instrument, alcohol, an alcoholic beverage or a tobacco product.

DHS 149.10 **(3)** (b) 2. ~~Intentionally~~ Three or more incidents of intentionally or unintentionally charging a participant or ~~the participant's proxy~~ more for authorized cardholder more for approved food than non-participants are charged for ~~authorized supplemental~~ approved food.

DHS 149.10 **(3)** (b) 3. ~~Charging~~ Three or more incidents of charging a participant or ~~the participant's proxy~~ cardholder more than the current shelf price for an ~~authorized supplemental~~ approved food.

DHS 149.10 **(3)** (b) 4. ~~Receiving~~ Three or more incidents of receiving or redeeming a WIC ~~check~~ food instrument outside of authorized channels, including receiving or redeeming a WIC ~~check~~ food instrument for a vendor that is not an authorized vendor; or redeeming a WIC ~~check~~ food instrument for food purchased at an address other than the store address that appears on the authorized vendor's application; ~~or depositing a WIC check into a bank account other than the authorized vendor's bank account.~~

DHS 149.10 **(3)** (b) 5. ~~Charging~~ Three or more incidents of charging for ~~authorized~~ approved food not received by a WIC participant or ~~the participant's proxy~~ cardholder.

DHS 149.10 **(3)** (b) 6. ~~Providing~~ Three or more incidents of providing in exchange for a WIC ~~check~~ food instrument, credit, including rainchecks, or non-food items other than alcohol, an alcoholic beverage, a tobacco product, cash, a firearm, ammunition, explosive, or controlled substance as defined in 21 USC 802.

DHS 149.10 **(4)** MANDATORY ONE YEAR DISQUALIFICATION. Unless a determination is made under s. DHS 149.12 (1) that disqualification would result in inadequate participant access, the ~~state WIC office~~ department shall disqualify a vendor from participation in the WIC program for one year for any one of the following:

DHS 149.10 **(4)** (a) Three or more incidents of providing ~~unauthorized~~ unapproved food in exchange for a WIC ~~check~~ food instrument.

DHS 149.10 **(4)** (b) Three or more incidents of charging for ~~authorized~~ approved food provided in excess of the amount of food listed on the WIC ~~check~~ food instrument.

DHS 149.10 **(5)** SECOND MANDATORY DISQUALIFICATION. When a vendor who previously has received a mandatory disqualification receives a second subsequent mandatory disqualification, the ~~state WIC office~~ department shall impose a double period of disqualification.

DHS 149.10 **(6)** THIRD OR SUBSEQUENT MANDATORY DISQUALIFICATION. When a vendor who has received 2 or more mandatory disqualifications receives another subsequent mandatory disqualification, the ~~state WIC office~~ department shall double the third period of disqualification and all subsequent periods of disqualification.

SECTION 32. DHS 149.10 (7) is repealed and recreated to read:

DHS 149.10 **(7)** PRIOR NOTIFICATION. For any violation listed in subs. (3) (b) or (4), the department shall notify the vendor of the initial violation prior to documenting another violation,

unless the department determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

SECTION 33. DHS 149.11 (1) and (2) are repealed and recreated to read:

DHS 149.11 **Discretionary vendor sanctions. (1)** UP TO ONE YEAR DISQUALIFICATION. The department may send a warning letter to the vendor, require training for designated vendor personnel, require implementation of a corrective action plan, require payment of a forfeiture, require recoupment, disqualify the vendor for no more than one year unless a determination is made under s. DHS 149.12 (1) that disqualification would result in inadequate participant access, or impose any combination of sanctions based on a pattern of the following violations:

DHS 149.11 **(1)** (a) Providing cash for returned approved food.

DHS 149.11 **(1)** (b) Failing to implement a corrective action plan imposed by the department.

DHS 149.11 **(1)** (c) Failing to maintain the minimum requirements for WIC authorization in s. DHS 149.05 (3) to (22).

DHS 149.11 **(1)** (d) Providing false information to the department.

DHS 149.11 **(1)** (e) Violating s. DHS 149.10 (3) (b) or (4).

DHS 149.11 **(2)** UP TO 6 MONTH DISQUALIFICATION. The department may send a warning letter to the vendor, require training for designated vendor personnel, require implementation of a corrective action plan, require payment of a forfeiture, require recoupment, disqualify the vendor for no more than 6 months unless a determination is made under s. DHS 149.12(1) that disqualification would result in inadequate participant access, or impose any combination of sanctions for the following violations:

DHS 149.11 **(2)** (a) Failing to comply with WIC food instrument processing and redemption procedures described in the vendor agreement.

DHS 149.11 **(2)** (b) Failing to mark or affix the prices of approved food directly on food containers, on the shelves in close proximity to the food, or in the immediate area where the foods are kept in the customer area of the store.

DHS 149.11 **(2)** (c) Stocking or selling foods that are not fresh and have expired dates or codes of freshness use-by date in the customer area.

DHS 149.11 **(2)** (d) Failing to complete training as required by the department or designee.

DHS 149.11 **(2)** (e) Failing to maintain the grocery store or pharmacy in a clean, orderly and safe condition.

DHS 149.11 **(2)** (f) Failing to provide all information requested during the application process and contract period by the department within the timeframes specified in the request for information.

DHS 149.11 **(2)** (g) Failing to afford to a WIC participant or cardholder the same courtesies as offered to other customers based on the person's status as a WIC participant.

SECTION 34. DHS 149.12 is repealed and recreated to read:

DHS 149.12 **Civil money penalty in lieu of disqualification.** (1) Under ss. DHS 149.10 (2) to (4) or s. DHS 140.11 (1) or (2), if the department determines that disqualification of the vendor would result in inadequate participant access, the department shall impose a civil money penalty in lieu of disqualification. A civil money penalty may not be imposed in lieu of a disqualification under s. DHS 149.10 (1).

DHS 149.12 (2) The department shall use the formula under 7 CFR 246.12(l)(1)(x) to calculate a civil money penalty imposed in lieu of disqualification for violations in ss. DHS 149.10 (2) to (4) and s. DHS 149.11 (1) or (2). The civil money penalty shall not exceed the maximum amount specified in 7 CFR 3.91(b)(3)(v) for each violation. When during the course of a single investigation the department determines a vendor has committed multiple violations, the department shall impose a civil money penalty for each of the violations, not to exceed the maximum amount for violations occurring during a single investigation per 7 CFR 391(b)(3)(v).

DHS 149.12 (3) If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty, the department shall disqualify the vendor for the length of the disqualification corresponding to the most serious violation for which the civil money penalty was assessed.

DHS 149.12 (4) The department may use installment plans to collect civil money penalties.

DHS 149.12 (5) The department may double civil money penalties up to the limits allowed under sub. (2).

DHS 149.12 (6) The department may not impose a civil money penalty in lieu of disqualification for third or subsequent violations that mandate disqualification.

SECTION 35. DHS 149.13 (intro.) is amended to read:

DHS 149.13 **Recoupment.** The ~~state WIC office~~ department may recoup excess payments made to the vendor, as verified by the ~~state WIC office~~ department, resulting from the vendor's violation of s. DHS 149.10 or DHS 149.11. If a recoupment is imposed, the ~~state WIC office~~ department shall also impose an enforcement assessment of 50 percent of the amount of the recoupment imposed.

SECTION 36. DHS 149.135 is created to read:

DHS 149.135 **Vendor claim.** When the department determines a vendor has committed a vendor violation that affects the payment to the vendor, the department will establish a claim in the amount of the full purchase price of each WIC food instrument that contained the vendor overcharge or other error as permitted by 7 CFR 246.12(k)(3). The department will provide the vendor with an opportunity to justify or correct a vendor overcharge or other error. The vendor must pay any claim assessed by the department. In collecting a claim, the department may offset the claim against current and subsequent amounts to be paid to the vendor. In addition to assessing a claim, the department may sanction the vendor for vendor overcharges or other errors as provided in s. DHS 149.10 or 149.11.

SECTION 37. DHS 149.14 is repealed and recreated to read:

DHS 149.14 **Reciprocal SNAP actions. (1)** The department shall disqualify from the WIC program a vendor who is disqualified from SNAP.

DHS 149.14 **(2)** If a vendor is disqualified from SNAP, the department shall impose a civil money penalty in lieu of a WIC disqualification if the department determines it would result in inadequate participant access.

DHS 149.14 **(3)** The department may disqualify a vendor who has had a civil money penalty for hardship imposed by SNAP in lieu of disqualification.

DHS 149.14 **(4)** If the vendor receives a SNAP civil money penalty for hardship in lieu of disqualification and the department determines WIC disqualification of that vendor would result in inadequate participant access, the department may not disqualify or impose a civil money penalty in lieu of disqualification. The department must include documentation of the participant access determination in the vendor file.

SECTION 38. DHS 149.15 is amended to read:

DHS 149.15 **Written notice.** The ~~state WIC office~~ department shall begin an adverse action, including disqualification, denial, or imposition of a civil money penalty, forfeiture, recoupment or enforcement assessment by serving upon the vendor a written notice of the action which shall include applicable appeal rights. Except for actions under s. DHS 149.10 (1), the department shall serve the notice by certified mail or personal delivery at least 15 days before the effective date of the action in the notice.

SECTION 39. DHS 149.16 is amended to read:

DHS 149.16 **Voluntary withdrawal or non-renewal of agreement.** Except as provided in s. DHS 149.11, the ~~state WIC office~~ department may not accept a vendor's voluntary withdrawal from the WIC program, or use non-renewal of the vendor contract as an alternative to disqualification.

SECTION 40. DHS 149.17 is amended to read:

DHS 149.17 **Summary suspension.** If the department finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of WIC authorization may be ordered pending proceedings for ~~revocation-disqualification~~ or other action. Such proceedings shall be promptly instituted and determined.

SECTION 41. DHS 149.18 (title), (2), (a) to (c), and (Note) are repealed and recreated to read:

DHS 149.18. (title) **Vendor and direct distribution centers appeals.**

DHS 149.18 **(2)** (intro) REQUESTS FOR HEARING. A request for an administrative hearing shall be sent to the department of administration's division of hearings and appeals so that the written request is received by the division within 10 days of receipt of the notice and include all of the following:

DHS 149.18 **(2)** (a) The vendor's name and address.

DHS 149.18 (2) (b) A description of the adverse action for which the vendor requests a hearing.

DHS 149.18 (2) (c) A specific description of the mistake in fact or law which the vendor contends constitutes reasonable grounds for reversing the decision of the department to deny or terminate an authorization, require recoupment, require forfeiture and attendant assessment, and disqualify the vendor from WIC participation for a period of time. If the vendor asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the vendor intends to establish at the review. If the vendor asserts a mistake in law was made, the request shall include a statement of the law upon which the vendor relies.

DHS 149.18 (2) (Note): A request for an administrative hearing is to be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707-7875 or faxed to 608-264-9885. Requests may be delivered in person to that office at 4822 Madison Yards Way, Madison, Wisconsin.

SECTION 42: DHS 149.18 (3) (b) to (i) are amended to read:

DHS 149.18 (3) (b) The validity or appropriateness of the ~~state WIC office's~~ department's selection criteria.

DHS 149.18 (3) (c) The validity or appropriateness of the ~~state WIC office's~~ department's vendor peer group criteria.

DHS 149.18 (3) (d) The validity or appropriateness of the ~~state WIC office's~~ department's criteria used to identify a vendor that is an above-50-percent vendor or the criteria used to determine maximum allowable payment to an above-50-percent vendor.

DHS 149.18 (3) (e) The validity or appropriateness of the ~~state WIC office's~~ department's participant access criteria and the ~~state WIC office's~~ department's determination regarding participant access to WIC services.

DHS 149.18 (3) (f) The ~~state WIC office's~~ department's determination of whether a vendor had an effective policy and program in effect to prevent trafficking of WIC benefits and whether the vendor owner was involved in the conduct of the violation.

DHS 149.18 (3) (g) Denial of authorization if the ~~state WIC office~~ department's vendor authorization is subject to procurement procedures applicable to the state agency.

DHS 149.18 (3) (h) Disputes regarding WIC ~~check~~ food instrument payments and vendor claims, other than the opportunity as permitted by 7 CFR 246.12(k)(3) to justify or correct a vendor overcharge or other error.

DHS 149.18 (3) (i) Disqualification of ~~an authorized~~ a vendor as a result of disqualification from the ~~food stamp program~~ SNAP.

SECTION 43: DHS 149.18 (4) is repealed.

SECTION 44: DHS 149 Subch. IV (title) is amended to read:

DHS 149 Subch. IV (title) **Subchapter IV — Participants and Proxies Cardholders**

SECTION 45: DHS 149.20 is repealed and recreated to read:

DHS 149.20 **Notification of participant responsibilities. (1) CERTIFICATION APPOINTMENTS.** During each certification appointment the local agency shall do all of the following:

DHS 149.20 **(1)** (a) Inform each applicant, participant, parent, guardian, or alternate that it is a violation of state and federal law to participate in more than one local agency or local agency clinic at the same time. The local agency shall provide each applicant, participant, parent, guardian, or alternate with a written copy of the participant rights and responsibilities and offer the opportunity to have these rights and responsibilities read to them upon request.

DHS 149.20 **(1)** (Note) A participant violation has the meaning given in 7 CFR 246.2.

DHS 149.20 **(1)** (b) Offer each participant, parent, guardian, or alternate an explanation of how to use WIC food instruments, a copy of instructions for using WIC food instruments, an explanation on how to select approved food, and a list of authorized vendors.

DHS 149.20 **(2)** Before the local agency loans a participant a WIC-purchased electric breast pump, the local agency shall notify the participant that the pump must be returned to the local agency at the end of the agreed period.

SECTION 46. DHS 149.21 (1) to (3) are amended to read:

DHS 149.21 **(1)** If the local ~~project~~ agency determines that an applicant does not meet all of the eligibility requirements for the WIC program, the local ~~project~~ agency shall notify the applicant or ~~his or her~~ parent/guardian in writing of the ineligibility, the reasons for the ineligibility, and the right to a fair hearing on the determination of ineligibility within 15 days of the determination of ineligibility.

DHS 149.21 **(2)** If the local ~~project~~ agency determines, at any time during the certification period, that a participant is disqualified from program participation, the local ~~project~~ agency shall notify the participant or parent/guardian in writing at least 15 days before the disqualification. The notice shall specify the reason for the disqualification and advise the participant or parent/guardian of the right to a fair hearing on the determination of the disqualification.

DHS 149.21 **(3)** A local ~~project~~ agency may serve notice of denial or disqualification by certified mail to the participant's last known address of record or by personal delivery. If service is by certified mail, notice shall be considered filed on the date of mailing.

SECTION 47. DHS 149.22 (1) and (2) are amended to read:

DHS 149.22 **(1)** If the local ~~project~~ agency determines that a participant has received or disposed of WIC benefits fraudulently, the local ~~project~~ agency shall provide written notice to the participant or parent/guardian of the intent to recover the funds. Such notification shall include an explanation of the reasons for the repayment and of the participant's right to an administrative hearing. The local ~~project~~ agency shall allow 30 days for the participant to repay the funds or to set up a repayment schedule between the local ~~project~~ agency and the participant before taking additional collection actions.

DHS 149.22 **(2)** A local ~~project~~ agency may serve a determination that repayment is required by certified mail to the participant's last known address of record or by personal delivery. If service is by certified mail, notice shall be considered filed on the date of mailing.

SECTION 48. DHS 149.23 is amended to read:

DHS 149.23 **Terminating or suspending WIC benefits due to shortage of funds.** If the ~~state WIC office~~ department determines that due to a shortage of funds for the WIC program, a participant's WIC program benefits will be terminated or suspended, the local ~~project~~ agency shall issue a notice to the participant or parent/guardian at least 15 days before the termination or suspension.

SECTION 49. DHS 149.24 is repealed and recreated to read:

DHS 149.24 **Mandatory participant disqualification. (1) MANDATORY ONE YEAR DISQUALIFICATION.** (a) Except as provided in par. (b), the local agency shall disqualify a participant and other family members from the WIC program for one year if the local agency determines that the participant or cardholder has committed any of the following violations:

DHS 149.24 **(1)** (a) 1. Intentionally participating in and receiving food instruments from more than one local agency or local agency clinic during the same time period.

DHS 149.24 **(1)** (a) 2. Intentionally participating in the WIC program and in the commodity supplemental food program at the same time.

DHS 149.24 **(1)** (a) 3. Committing any violation that results in fraudulent receipt or disposal of \$100 or more in WIC benefits.

DHS 149.24 **(1)** (a) 4. Being assessed by the local agency a second or subsequent repayment of any amount.

DHS 149.24 **(1)** (b) **EXCEPTIONS TO MANDATORY ONE YEAR DISQUALIFICATION.** The local agency may decide not to impose the mandatory one year disqualification if within 30 days of the date of mailing a repayment letter, the participant makes full repayment or agrees to a repayment schedule acceptable to the local WIC agency, or approves an alternate cardholder for a participant who is an infant, child, or person under the age of 18.

DHS 149.24 **(1)** (c) **MANDATORY REPAYMENT.** 1. Except as provided in subd. 3., if a person fraudulently receives or disposes of WIC program benefits, the local agency shall require repayment of the full amount fraudulently received or disposed.

DHS 149.24 **(1)** (c) 2. If the participant does not make full repayment within 30 days or if a repayment schedule is not agreed upon within 30 days, the local agency shall provide a second written request for repayment. The department may take additional collection actions for total repayments exceeding \$250.

DHS 149.24 **(1)** (c) 3. For repayment of infant formula benefits, the department may allow the participant to repay an amount that is less than the full retail price of the infant formula.

DHS 149.24 **(2)** MANDATORY SIX MONTH DISQUALIFICATION. The local agency shall disqualify a participant, cardholder, and other family members from WIC for 6 months if the local agency determines that the participant or cardholder has committed any of the following violations:

DHS 149.24 **(2)** (a) Intentionally and falsely reported the loss or theft of WIC food instruments.

DHS 149.24 **(2)** (b) Intentionally provided a false statement, concealed or misrepresented a fact, gave information that misrepresents true circumstances, or failed to give information about changes in circumstances resulting in fraudulent enrollment in the WIC program and receipt of WIC benefits.

DHS 149.24 **(2)** (c) Stole or attempted to steal a WIC food instrument from a local agency.

DHS 149.24 **(2)** (d) Physically abused or threatened physical abuse of a department or local agency staff member, a WIC vendor owner or employee, or another WIC participant at a local agency, the department, or vendor location.

DHS 149.24 **(3)** MANDATORY THREE MONTH DISQUALIFICATION. After providing a warning letter for the first offense, the local agency shall disqualify a participant and other family members from WIC for 3 months if the local agency determines that the participant or cardholder has committed any of the following violations:

DHS 149.24 **(3)** (a) Obtained or used a WIC food instrument without the permission of the participant or an alternate, if the participant is an infant or child.

DHS 149.24 **(3)** (b) Verbally abused a department or local WIC agency staff member, a WIC vendor owner or employee, or another WIC participant at a local agency or related function.

DHS 149.24 **(3)** (c) Sold or attempted to sell, exchange, or return a WIC program benefit to others for cash, credit, non-approved WIC food, or another item.

DHS 149.24 **(3)** (d) Aided or abetted fraud or abuse of the WIC program.

DHS 149.24 **(4)** MANDATORY ONE MONTH DISQUALIFICATION. After providing a warning letter for the first offense, the local agency shall disqualify a participant and other family members from the WIC program for one month if the local agency determines that the participant or cardholder has committed any of the following violations:

DHS 149.24 **(4)** (a) Accepted a free non-WIC food item, cash or credit, as a gift or incentive to use a WIC food instrument at a WIC vendor.

DHS 149.24 **(4)** (b) Exchanged or attempted to exchange a WIC food instrument at a vendor for food that is not an approved food, or an approved food that is not available in the participant's benefit.

DHS 149.24 **(4)** (c) Used a WIC food instrument at a grocery store or pharmacy that is not a WIC vendor.

DHS 149.24 **(4)** (d) Failed to cooperate in a WIC program vendor audit, monitoring procedure, or investigation.

DHS 149.24 **(5) PERSONS DISQUALIFIED.** Disqualification from WIC participation applies to all members of a family who are participants of the WIC program. The local agency director may waive the disqualification for one or more members of the family if it is determined that a serious health risk may result from program disqualification, or if the participant is a foster child and is transferring to a new family.

SECTION 50. DHS 149.25 (1) to (4), (5) (title), (intro.), (a) to (d), and (6) are amended to read:

DHS 149.25 **(1) ACTIONS APPEALABLE.** An applicant or participant may appeal any of the following actions by the local ~~project~~ agency:

DHS 149.25 **(1)** (a) Denial of an application for participation in ~~the WIC program~~.

DHS 149.25 **(2) REQUEST FOR HEARING.** (a) An applicant, participant, or representative of the applicant or participant desiring to contest an action under sub. (1) may request a hearing. A request for hearing shall be received by the local ~~project~~ agency within 60 days after service of the written notice by the local agency action.

DHS 149.25 **(2)** (b) The local ~~project~~ agency shall honor any clear expression of a desire for an opportunity to present the matter to a higher authority for review. A request may be made orally or in writing.

DHS 149.25 **(2)** (c) An applicant, participant, or representative of the applicant or participant shall address ~~his or her~~ a hearing request to the local ~~project~~ agency serving the participant.

DHS 149.25 **(3) CONTINUATION OF BENEFITS.** (a) The local ~~project~~ agency shall continue to issue WIC ~~program~~ benefits to participants who appeal a termination of benefits within 60 days after service of the written notice. Benefits shall continue until the hearing official reaches a decision or the certification period expires, whichever occurs first.

DHS 149.25 **(3)** (b) Applicants who are denied benefits at initial certification, or participants who are no longer categorically eligible as a child under age 5, or a pregnant, breastfeeding, or postpartum woman within ~~six~~ 6 months of delivery during a certification period, or whose certification period expires, are not eligible to receive benefits while awaiting a hearing.

DHS 149.25 **(4) HEARING PROCEDURES.** (a) For hearing requests received within 60 days after service of the written notice, the local ~~project~~ agency shall appoint a person as hearing 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. The hearing official shall do all of the following:

DHS 149.25 **(4)** (a) 1. Provide a written notice of the time and place for hearing to the applicant, participant, or representative of the applicant or participant and the local ~~project~~ agency at least 10 days before the date of the hearing.

DHS 149.25 **(4)** (a) 2. Conduct the hearing within 21 days of receipt by the local ~~project~~ agency of the request for hearing.

DHS 149.25 **(4)** (a) 3. Within 45 days of the request for hearing, issue to the parties written notification of the decision and notification of the participant's ~~or proxy's~~ rights to appeal.

DHS 149.25 (4) (b) Hearings shall be conducted in accordance with the requirements of 7 CFR 246.9 (h), (i) and (j) and the hearing officer shall require that testimony be given under oath or affirmation.

DHS 149.25 (5) ~~STATE WIC OFFICE REVIEW.~~ DEPARTMENT REVIEW (a) An applicant, participant, or representative of the applicant or participant desiring to contest a local hearing decision shall submit a request in writing to the ~~state WIC office~~ department within 15 working days of the date of written notification of a decision by a local ~~project agency~~.

DHS 149.25 (5) (b) The ~~state WIC office~~ department shall appoint a person to review the local hearing decision 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.

DHS 149.25 (5) (c) The ~~state WIC office~~ department review shall be limited to the record, and the reviewer's determination shall be based solely on whether the local hearing decision correctly applied federal and state statutes, regulations, policies, and procedures governing the program, according to the information provided in support of the notice of action and the participant's response.

DHS 149.25 (5) (d) The ~~state WIC office~~ department's decision shall include notice to the applicant or participant of ~~his or her~~ the right to request a rehearing or petition for judicial review of the adverse decision pursuant to subch. III of ch. 227, Stats. The notice shall include the time allowed for filing a request or petition.

DHS 149.25 (6) DISCONTINUATION OF BENEFITS PENDING APPEAL. A participant may not continue to receive benefits while an appeal to the ~~state WIC office~~ department is pending.

SECTION 51. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.