

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

---

## **Right to Administrative Appeal**

### **Purpose**

To describe state agency (SA) procedures for providing the right of administrative appeal to a WIC vendor who has experienced an adverse action exercised by the SA and/or SA representative.

### **Authority**

7 CFR Sections 246.12 and 246.18 and the WIC Vendor Agreement

### **Policy**

The SA shall provide a process that allows vendors to appeal an adverse action taken by the SA and/or SA representative through Full Administrative Review or Abbreviated Administrative Review depending on the nature of the adverse action taken by the SA.

### **Procedures**

- I. Adverse actions subject to Full Administrative Review. The SA will provide vendors the opportunity for full administrative review to appeal the following adverse actions:
  - A. Denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods or on a determination that the vendor is attempting to circumvent a sanction;
  - B. Termination of an agreement for cause;
  - C. Disqualification; and
  - D. Imposition of a fine or a civil money penalty in lieu of disqualification.

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

- II. Adverse actions subject to Abbreviated Administrative Review. The SA will provide Abbreviated Administrative Reviews to vendors that appeal the following adverse actions, unless the SA, at its sole discretion, decides to provide full administrative reviews for any of these types of adverse actions:
- A. Denial of authorization based on the vendor selection criteria for business integrity or for a current Supplemental Nutrition Assistance Program (SNAP - formerly known as the Food Stamp Program) disqualification or civil money penalty for hardship;
  - B. Denial of authorization based on the application of the vendor selection criteria for competitive price;
  - C. The application of the SA's vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
  - D. Denial of authorization based on a SA-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification;
  - E. Denial of authorization based on the SA's vendor limiting criteria;
  - F. Denial of authorization because a vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the SA;
  - G. Termination of an agreement because of a change in ownership or location or cessation of operations;
  - H. Disqualification based on a trafficking conviction;
  - I. Disqualification based on the imposition of a SNAP civil money penalty for hardship;

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

- 
- J. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State Agency (i.e. Arkansas, New Mexico);
  - K. A civil money penalty imposed in lieu of disqualification based on a SNAP disqualification; and,
  - L. Denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.
- III. The SA will not provide administrative reviews (Full or Abbreviated) to vendors that appeal the following actions:
- A. The validity or appropriateness of the SA's vendor limiting or selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;
  - B. The validity or appropriateness of the SA's selection criteria for competitive price, including, but not limited to, vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
  - C. The validity or appropriateness of SA's participant access criteria and the SA's participant access determinations concerning whether disqualification of a vendor would result in inadequate participant access;
  - D. The SA's determination to include or exclude an infant formula manufacturer, wholesale, distributor, or retailer from the SA's list of infant formula wholesalers, distributors, and retailers licensed under State law (including regulations), and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula;

<b>Nutrition Services</b> <b>Department of State Health Services</b>
---

Effective: October 1, 2013

Policy No. WV:13.0

---

- E. The validity or appropriateness of the SA's prohibition of incentive items and the SA's denial of an above-50-percent vendor's request to provide an incentive item to customers;
  - F. The SA's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;
  - G. The SA's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
  - H. Denial of authorization if the SA's vendor authorization is subject to the procurement procedures applicable to the SA;
  - I. The expiration of a vendor's agreement;
  - J. Disputes regarding WIC EBT food instrument and cash-value benefit payments or claims assessed against a vendor (other than the opportunity to justify or correct a vendor overcharge or other error);
  - K. Disqualification of a vendor as a result of disqualification from the SNAP; and
  - L. The validity or appropriateness of the SA's WIC Vendor Agreement provisions.
- IV. Full Administrative Review Procedures
- A. The SA and/or SA representative shall provide a vendor with written notification of an adverse action, the cause(s) for the action, the effective date of the action, and the right to appeal the adverse action through a Full Administrative Review. The Full Administrative Review process provides the vendor with a fair hearing before a neutral hearing examiner.

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

---

- B. The SA and/or SA representative shall provide a vendor notice of an adverse action at least 20 days prior to the effective date of the action except when the adverse action results from conviction for trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, which is effective on receipt of the notice.
  
- C. A vendor shall submit to the SA and/or SA representative a written request for a hearing within 20 days of the receipt of the notice of denial or adverse action. The date of receipt by the vendor will be established from the signed/dated return slip for delivery of a certified letter, or in its absence, four days from the date the letter was mailed.

The vendor's request for a hearing must be postmarked or faxed to the SA on or before the 20<sup>th</sup> day from receipt of the notice of denial or adverse action, with the responsibility for timely submission residing with the affected vendor. The written request shall, at a minimum, describe the action being appealed.

- D. When a vendor appeals an adverse action, the adverse action may, at the sole discretion of the State WIC Program, be postponed until a hearing decision is reached.
  - 1. Appealing an adverse action does not relieve a vendor permitted to continue participating in the program while an appeal is pending from the obligation of continued compliance with the terms of the written agreement with the SA.
  
  - 2. The SA will not postpone the collection of a disallowance or vendor claim and/or an invoice audit disallowance and/or dispute regarding electronic benefit transaction or cash-value benefit transaction disallowance pending a hearing decision.

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

- 
- E. The SA and/or SA representative shall provide a vendor appealing an adverse action the following:
1. At least ten days advance notice of the time and place for the hearing;
  2. The opportunity to reschedule the hearing one time;
  3. The opportunity to examine the case file, claim file, and any other documents or records the State Agency intends to use at the fair hearing at a reasonable time before and during the hearing. There shall be no other discovery;
  4. The opportunity to be represented by counsel if desired;
  5. The opportunity to call witnesses and present documentary evidence;
  6. The opportunity to confront and cross-examine adverse witnesses except that such examination shall be conducted behind a protective screen or other device when necessary to protect the identity of monitors;
  7. An impartial decision-maker who will prepare a written decision based solely on whether the SA has correctly applied federal and state statutes, regulations, rules, policies and procedures governing the program according to the evidence presented at the hearing; and
  8. Written notification of the final decision within 90 days from the date of receipt of the request for a hearing by a vendor. This timeframe is only an administrative requirement for the state agency and does not provide a basis for overturning the state agency's adverse action if a decision is not made within the specified timeframes.

V. Abbreviated Administrative Review Procedure

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

- A. The SA shall provide a vendor with written notification of the adverse action, the cause(s) for the action, the effective date of the action, and the right to appeal the adverse action through the Abbreviated Administrative Review procedures described in this Section.
- B. The SA shall provide a vendor notice of the adverse action at least 20 days prior to the effective date of the action except when the adverse action results from denial of authorization, which is effective on receipt of the notice.
- C. A vendor shall submit to the SA a written request for a review within 20 days of the receipt of the notice of adverse action. The date of receipt by the vendor will be established from the signed/dated return slip for delivery of a certified letter, or in its absence, four days from the date the letter was mailed.

The vendor's request for a review must be postmarked or faxed to the SA on or before the 20<sup>th</sup> day from receipt of the notice of denial or adverse action, with the responsibility for timely submission residing with the affected vendor. The written request shall, at a minimum, describe the action being appealed and explanations, clarifications, or other factual evidence that the vendor believes relevant to the review.

- D. When a vendor appeals an adverse action through the Abbreviated Administrative Review process with the exception of denial of authorization, the adverse action may, at the sole discretion of the State WIC Program, be postponed until the review is completed and a decision is rendered by the SA.
  - 1. Appealing an adverse action does not relieve a vendor permitted to continue participating in the program while a review is pending from the obligation of continued compliance with the terms of the written agreement or contract with the SA.

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

---

2. The SA will not postpone the collection of a disallowance or vendor claim and/or an invoice audit disallowance and/or dispute regarding electronic benefit transaction or cash-value benefit transaction disallowance pending a hearing decision.
- E. The SA shall provide a vendor appealing an adverse action through the Abbreviated Administrative Review process the following:
1. A review of the adverse decision and information submitted by the vendor under Section II.C above by a decision-maker who is someone other than the person who rendered the initial decision.
  2. A final decision of the reviewing official based solely on whether the SA has correctly applied Federal and State statutes, regulations, policies, and procedures governing the WIC Program, according to the information provided to the vendor concerning the cause(s) for the adverse action and the vendor's response.
  3. Written notification of the reviewing official's final decision within 90 days from the date of receipt of the request for an Abbreviated Administrative Review by a vendor. This timeframe is only an administrative requirement for the state agency and does not provide a basis for overturning the state agency's adverse action if a decision is not made within the specified timeframes.
- VI. The SA is not responsible for losses incurred by the vendor as a result of disqualification and/or denial of an application to participate.
- VII. If the results in a final decision of Full Administrative Review or an Abbreviated Administrative Review are adverse to the vendor:
- A. The vendor may seek judicial review of the decision to the extent authorized by state law. The SA or its legal counsel shall not provide legal advice to adverse parties concerning judicial review

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
---

Effective: October 1, 2013

Policy No. WV:13.0

---

of final administrative decisions. Appellants must seek advice from their own attorneys; and

- B. The appealed adverse action is effective the date the vendor receives the Full or Abbreviated Administrative Review final decision.