

**Subject 511-8-1 THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)**

**Rule 511-8-1-.01 Legal Authority**

These rules are adopted and published pursuant to Section 17 of the Child Nutrition Act of 1966, as amended.

**Rule 511-8-1-.02 Title and Purpose**

These rules shall be known as the Administrative Rules for the Special Supplemental Nutrition Program for Women, Infants and Children (Georgia WIC). The purpose of these rules is to provide for the administration of Georgia WIC as set forth by the Child Nutrition Act of 1966, as amended, and the Code of Federal Regulations.

**Rule 511-8-1-.03 Definitions**

- (1) "Adverse action" means an action taken by the State agency, and which is subject to full or abbreviated administrative review as provided by 7 C.F.R. § 246.18(a)(1)(i)(ii), as a result of a vendor violation of the Georgia WIC rules and regulations.
- (2) "Days" means calendar days.
- (3) "Department" means the U.S. Department of Agriculture.
- (4) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (5) "Food delivery system" means the method used by State and local agencies to provide supplemental foods to participants.
- (6) "State" means the state of Georgia.
- (7) "State agency" means the Georgia Department of Public Health.
- (8) "State Plan" means the Georgia WIC plan of operation and administration that describes the manner in which the State agency intends to implement and operate all aspects of Georgia WIC.
- (9) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the State agency to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately

from other stores operated by the business entity. Each store must have a single, fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the Georgia WIC State Plan of operation.

- (10) "Vendor authorization" means the process by which the State agency assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be authorized as vendors."
- (11) "WIC" means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, [42 U.S.C. 1786](#).

#### **Rule 511-8-1-.04 Purpose and Administration**

- (1) **Purpose.** The Special Supplemental Nutrition Program for Women, Infants and Children follows from the Child Nutrition Act of 1966 which states, in part, that the Congress finds that substantial numbers of pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of Georgia WIC is to:
  - (a) provide supplemental foods, and nutrition education and counseling through payment of cash grants to State agencies which administer Georgia WIC through local agencies at no cost to eligible persons;
  - (b) serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons; and
  - (c) supplement the Supplemental Nutrition Assistance Program (SNAP) and any program under which foods are distributed to needy families in lieu of food stamps and receipt of food or meals from soup kitchens, or shelters or other forms of emergency food assistance.
- (2) **Administration of State Plan.** The State agency shall administer the Georgia WIC State Plan of operation in accordance with these Rules and all relevant Federal and State law, rules and regulations, and policies and procedures governing Georgia WIC.
- (3) **Policies, Guidelines and Manuals.** The State agency shall promulgate policies, guidelines and manuals to facilitate operation of Georgia WIC in accordance with the agreement with the Department, the guidelines and instructions issued by the Department and FNS in policy letters and management evaluations, and the Georgia WIC State Plan of operation and the rules contained in this Subchapter.

#### **Rule 511-8-1-.05 Vendor Terms and Conditions**

The State agency shall publish the terms and conditions for vendor authorization and participation under the Georgia WIC State Plan of operation through the Georgia WIC Procedures Manual, the Vendor Agreement, and Georgia WIC Vendor Handbook. A copy of the Georgia WIC Vendor Handbook containing the terms and conditions for vendor authorization and participation shall be made available to each authorized vendor. Such terms and conditions may be amended from time to time when Georgia WIC finds it necessary or appropriate to do so. All such amendments shall be made available to vendors at the addresses provided by the vendors to Georgia WIC. Vendors are required to abide by the provisions of the current Vendor Handbook, as amended, including the sanction system outlined therein. Vendors will be subject to sanctions for program violations in accordance with the version of the handbook and all amendments in effect at the time the violation occurs. Amended terms and conditions shall be effective as specified by Georgia WIC at the time of publication.

### **Rule 511-8-1-.06 Procedures for Vendor Administrative Review, Hearings and Appeals**

(1) **Intent.** It is the intent of this regulation to comply with the requirements of 7 C.F.R. § 246.18 while following the existing procedures of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., in cases entitled to full administrative review; and to provide for the prompt, fair, and efficient internal review of cases entitled to abbreviated administrative review in accordance with the requirements of 7 C.F.R. § 246.18.

#### **(2) Full Administrative Review**

(a) The following adverse actions shall be subject to full administrative review upon timely request by the vendor:

1. Denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods, or on a determination that the vendor is operating a store sold by its previous owner in an attempt to circumvent a sanction, as stated in 7 C.F.R. § 246.12(g)(7) ;
2. Termination of an agreement for cause;
3. Disqualification; and
4. Imposition of a fine or a civil money penalty in lieu of disqualification.

(b) These procedures shall be followed in cases meriting full administrative review:

1. The State agency shall give written notice to the vendor of the adverse action, the procedures to follow to obtain full administrative review, the causes for and the effective date of the action. When a vendor is disqualified due in whole or in part for any of the violations listed in 7 C.F.R. § 246.12(1)(1), the notice shall include the following statement: "This disqualification from WIC may result in disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP."
2. A vendor seeking review must send a written request for review to the Commissioner of the State agency within fifteen days from the date of the notice of adverse action, with a copy of the decision to be reviewed;
3. Upon receiving a timely request for review, the Commissioner shall refer the case to the Office of State Administrative Hearings (OSAH) for initial decision.

4. The hearing before OSAH shall be conducted in accordance with the Georgia Administrative Procedures Act and the rules of OSAH. In addition, the Administrative Law Judge (ALJ) shall ensure that the vendor is given:
  - (i) Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review;
  - (ii) The opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request;
  - (iii) The opportunity to cross-examine adverse witnesses. When necessary to protect the identity of WIC Program investigators, such examination may be conducted behind a protective screen or other device to conceal the investigator's face and body;
  - (iv) The opportunity to be represented by counsel; and
  - (v) The opportunity to examine prior to the hearing the evidence upon which the State agency's action is based.
5. The ALJ's determination shall be based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the WIC Program, according to the evidence presented at the review.
6. The Commissioner shall appoint an attorney from the Office of General Counsel as a reviewing official to review the ALJ's initial decision at the request of either party within ten days of the date of the ALJ's initial decision, to ensure that it conforms to approved policies and procedures, and to render the final agency decision in accordance with O.C.G.A. § [50-13-41](#). If neither party requests that the ALJ's decision be reviewed, then the ALJ's decision shall become the final agency decision thirty days after it was entered.
7. When the ALJ's decision is reviewed at the request of either party, the reviewing official shall provide written notification of the final agency decision, including the basis for the decision, and the vendor's right to seek judicial review pursuant to O.C.G.A. § [50-13-19](#), within the time period prescribed by O.C.G.A. § [50-13-41](#). If the adverse action under review has not already taken effect, the review official's decision shall be effective on the date of receipt by the vendor.

### **(3) Abbreviated Administrative Review**

- (a) The following adverse actions shall be subject to abbreviated administrative review upon timely request by the vendor:
  1. Denial of authorization based on the vendor selection criteria for business integrity or for a current SNAP disqualification or civil money penalty for hardship;
  2. Denial of authorization based on the application of the vendor selection criteria for competitive price;
  3. The application of the State agency'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;
  4. Denial of authorization based on a State agency-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification;
  5. Denial of authorization based on the State agency's vendor limiting criteria;
  6. Denial of authorization because a vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency;
  7. Termination of an agreement because of a change in ownership or location or cessation of operations;

8. Disqualification based on a trafficking conviction;
  9. Disqualification based on the imposition of a SNAP civil money penalty for hardship;
  10. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency;
  11. A civil money penalty imposed in lieu of disqualification based on a SNAP disqualification; and
  12. Denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.
- (b) These procedures shall be followed in cases meriting abbreviated administrative review:
1. The State agency shall give written notice to the vendor of the adverse action, the procedures to follow to obtain an abbreviated administrative review, the causes for and the effective date of the action;
  2. A vendor seeking review must send a written request for review to the Commissioner of the State agency within fifteen days from the date of the notice of adverse action, with a copy of the decision to be reviewed and any documents, argument, or information that the vendor contends would justify reversal;
  3. Upon receiving a timely request for review, the Commissioner shall appoint a decision-maker who is someone other than the person who rendered the initial decision on the action to review the information provided to the vendor concerning the causes for the adverse action and the vendor's response, and to make a determination based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program;
  4. The decision-maker shall provide written notification of the final agency decision, including the basis for the decision, and the vendor's right to seek judicial review pursuant to O.C.G.A. § [50-13-19](#), within 90 days of the date of receipt of the request for an administrative review. If the adverse action under review has not already taken effect, the decision-maker's ruling shall be effective on the date of receipt by the vendor.

#### **(4) Actions not Subject to Administrative Review**

The following adverse actions are not subject to administrative review:

- (a) The validity or appropriateness of the State agency's vendor limiting criteria or vendor 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 State agency'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 the State agency's participant access criteria and the State agency's participant access determinations;
- (d) The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to §246.12(g)(11);
- (e) The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to §246.12(h)(8);

- (f) The State agency'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, pursuant to §246.12(1)(3);
- (g) The State agency'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 State agency's vendor authorization is subject to the procurement procedures applicable to the State agency;
- (i) The expiration of a vendor's agreement;
- (j) Disputes regarding food instrument or cash-value voucher payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by §246.12(k)(3); and
- (k) Disqualification of a vendor as a result of disqualification from SNAP.