

COLORADO WIC PROGRAM
ADMINISTRATIVE REVIEW PROCEDURES FOR RETAILER APPEALS

A. Definition of an Administrative Review

Administrative Review Procedures allow affected retailers, who file an appeal concerning one of the actions listed in Subsection B of this policy, an opportunity to have a formal hearing by an impartial Administrative Hearing Official (hearing officer). Hearings will be conducted at the State level in accordance with the Administrative Procedures Act §24-4-105 and §24-4-106 C.R.S., Code of Federal Regulations 7 Part 246, and WIC policies and procedures.

These procedures provide a mechanism to ensure that:

1. Retailers have an objective and impartial avenue of redress when they feel they have been denied authorization, treated unfairly, or have had an adverse action taken against them by the State WIC Program (Program) and/or Local WIC Agency (Agency); and
2. Program standards, policies, procedures and regulations are being applied without prejudice.

B. Actions subject to Administrative Review

1. Denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods, or on a determination that the vendor is attempting to circumvent a sanction;
2. Termination of an agreement for cause;
3. Disqualification; and
4. Imposition of a fine or a civil money penalty in lieu of disqualification.

C. Actions subject to Abbreviated Administrative Review

1. Denial of authorization based on the vendor selection criteria for business integrity or for a current Supplemental Nutrition Assistance Program (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 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; application of peer group criteria and above 50% status determination when the application for this criteria is the basis of the adverse action.
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;
12. Denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.

ADMINISTRATIVE REVIEW PROCEDURES FOR RETAILER APPEALS (Pg 2)

D. Actions not subject to an Administrative Review

1. 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 Supplemental Nutrition Assistance Program disqualification or civil money penalty for hardship;
2. 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;
3. The validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations;
4. The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to Sec. 246.12(g)(11);
5. 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;
6. 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;
7. 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;
8. Denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency;
9. The expiration of a vendor's agreement;
10. 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; and
11. Disqualification of a vendor as a result of disqualification from SNAP.

E. Procedures for an Administrative Review

1. Notification of Action
 - a. When the adverse action is a denial of authorization or permanent disqualification based on a conviction for trafficking in WIC checks or selling firearms, ammunition, explosives, or controlled substances, no advance notice will be issued. The effective date of the action will be on the date of receipt of the notice.
 - b. For all other adverse actions the Program will provide the retailer with a written notice of adverse action at least fifteen (15) calendar days prior to the effective date of the action.
 - c. The notice of adverse action shall include the action being taken, the cause(s) for the action, and the right to appeal the action. A copy of the Administrative Review Procedures will also be provided.
2. Appealing an Action
 - a. Within thirty (30) calendar days of the receipt of the notice of action the retailer must submit a written request for an Administrative Review to the State WIC Program. The request must include the following information: retailer name, retailer ID, action(s) being appealed, reason for appeal and date of request.

ADMINISTRATIVE REVIEW PROCEDURES FOR RETAILER APPEALS (Pg 3)

- b. A request for a hearing will be denied or dismissed if:
 - i. the request is not received within thirty (30) calendar days from the date the notice is received by the retailer;
 - ii. the request is withdrawn in writing by the retailer or representative; and/or
 - iii. the retailer or representative failed, without good cause as determined by the hearing officer, to appear at the scheduled hearing.
 - c. Appealing an action does not relieve a retailer, permitted to continue in the Program while its appeal is in process, from the responsibility of continued compliance with the terms of the Agreement. Continued participation in the Program, pending an appeal decision, will be granted only in situations when a Civil Money Penalty has been assessed due to inadequate participant access.
3. Administrative Review Hearing - General Rules and Procedures
- a. Upon receipt of an appeal request, the Program will acknowledge to the retailer, in writing, that it has received the request. An explanation of the hearing procedures will be sent with the acknowledgement.
 - b. The retailer will receive a minimum of ten (10) calendar days advance written notice of the time and place of the hearing.
 - c. The Colorado Department of Public Health and Environment (Department) will provide a hearing officer, an impartial decision maker, whose decision as to the validity of the action shall rest solely on the evidence presented at the hearing, the federal regulations and the Program's policies and procedures.
 - d. The retailer shall have the opportunity to:
 - i. present its case and at least one opportunity to reschedule the hearing date upon request;
 - ii. cross-examine adverse witnesses;
 - iii. be represented by counsel; and
 - iv. examine prior to the hearing the evidence upon which the adverse action is based.
 - e. The hearing shall be conducted in accordance with the provisions of §24-4-105 C.R.S.
4. Administrative Review Decision
- a. Within ninety (90) calendar days of the receipt of the appeal, the hearing officer must issue an initial Administrative Review Decision (decision) providing a summary of the facts of the case, specifying the reasons for the decision, and identifying the supporting evidence and the pertinent regulations or policy.
 - b. The initial decision of the hearing officer shall be submitted, in writing, to the Executive Director of the Department. A copy of the decision will also be provided to the State WIC Program and the retailer.
 - c. The retailer or Program may file a written appeal of the initial decision with the Department's Executive Director within twenty (20) calendar days of receipt of the initial decision. The Executive Director may affirm, modify, or reverse the initial decision in accordance with §24-4-105 C.R.S.
 - d. If an appeal is not received within twenty (20) calendar days the initial decision of the hearing officer will be adopted by the Executive Director and shall constitute the final action.

ADMINISTRATIVE REVIEW PROCEDURES FOR RETAILER APPEALS (Pg 4)

- e. If the decision is in favor of the retailer, and authorization was denied or disqualification occurred, the retailer will be authorized on as soon as administratively feasible after receipt of the administrative review decision.
 - f. If the decision is in favor of the Program and the disqualified retailer was permitted to continue accepting WIC checks the retailer will be terminated as soon as administratively feasible. Retailers will be allowed to continue accepting WIC checks during an appeal only if an inadequate participant access was determined.
 - g. If the decision regarding a civil money penalty is in favor of the Program, efforts to collect the penalty will resume immediately.
 - h. Upon receipt of notice of the initial decision, the Program shall comply with the decision unless an appeal is filed pursuant to §24-4-105 C.R.S.
 - i. After an unsuccessful appeal, the retailer and/or Program shall comply with the decision.
 - j. The effective date of the action is the date the retailer receives the decision.
5. Withdrawal or Default of an Appeal
- a. A withdrawal of an appeal occurs when the retailer states, in writing, that he or she no longer wishes a hearing.
 - b. A default occurs when the retailer fails to appear at the hearing without good cause as determined by the hearing officer, or the retailer cannot be located through his or her last address of record.

F. Judicial Review

If the Department's final decision is rendered against the retailer, judicial review may be pursued in accordance with §24-4-106 C.R.S.

G. Civil Rights

The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at <http://www.ascr.usda.gov/complaintfilingcust.html>, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish).

USDA is an equal opportunity provider and employer.

As stated above, all protected bases do not apply to all programs. The first six protected bases of race, color, national origin, age, disability and sex are the six protected bases for applicants and recipients of the WIC Program.