

## **Alaska WIC Administrative Review Process**

Authorized WIC vendors have the responsibility to comply with WIC program regulations, policies and procedures. As indicated in the Vendor Agreement, the State Agency may impose sanctions on vendors for non-compliance. These sanctions range from a warning letter to permanent disqualification from participation in the WIC program. Refer to Section 3.0 of the Vendor Agreement and Chapter 6 of the Vendor Manual for a full description of the sanctions. Vendor's Right to Administrative Review.

The Local Agency and/or State Agency must provide written notice of any adverse action taken against a vendor. The notice must specify the action being taken, the effective date of the action, the reasons for the actions, and explain the vendor's right to an administrative review and the procedures to follow to obtain an administrative review. Notice must be given prior to an adverse action being taken; with the exception of disqualification due to conviction of trafficking WIC food instruments.

### **A. Effective Date of Adverse Actions against Vendor.**

The State Agency must make adverse actions effective no earlier than 15 days after the date of the notice of adverse action and no later than 45 days after the date of notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the vendor receives the review decision.

Decisions rendered under the administrative review procedures are the final state agency action. If a decision is rendered as a result of a hearing and the vendor expressed an interest in pursuing a higher review of the decision, the State Agency shall explain the right to pursue the judicial review of the decision. Alaska statutes allow individuals to file suit against the State of Alaska in District Courts.

### **B. Requesting an Administrative Review**

A vendor wishing to appeal an adverse action must submit a written request for a review of the action. The request must be made within fifteen (15) days of receipt of the notice of adverse action. The request for review must state the reason(s) for the request and include any supporting information or documentation. The requestor should also specify the level of review sought, as described in Section C, Parts 1 and 2, below. Requests for administrative review should be addressed to:

Director  
Division of Public Assistance  
P.O. Box 110640  
Juneau, AK. 99811-0640

Appealing an action does not relieve the food vendor of responsibility for continued compliance with the terms of any written agreement or contract with the State Agency or Local Agency.

Participating vendors who are disqualified from the program must reapply for authorization to participate. Vendor applicants who are denied participation at application may appeal the denial, but shall **not** participate in the program while awaiting decision.

The State Agency shall not deny or dismiss a request for an administrative review unless:

- The request is not received in writing by the State within the time limit of 15 days from receipt of the notice of adverse action.
- The request is withdrawn in writing by the appellant or representative.
- The appellant or a representative fails, without good cause, to appear at any scheduled hearing.
- The request for review is regarding an adverse action that is not subject to administrative review.

When a vendor is disqualified due in whole or in part to violation in 7 CFR 246.12(I) (1), such notification must include the following statement: “This disqualification from WIC may result in disqualification as a retailer in the Supplemental Nutrition Assistance Program (SNAP). Such disqualification is not subject to administrative or judicial review under the Alaska WIC Program.”

### **C. Administrative Review Levels**

#### **1. Informal Review by Director, Division of Public Assistance**

The vendor submits a written request for an administrative review of the decision. The vendor may request an abbreviated review by the Director of the Division of Public Assistance or an administrative hearing. The request should include the requestor’s name, mailing address, telephone number, and email address, if any, and it should also:

- a. Identify the specific decision requested to be reviewed; and
- b. State in clear and concise terms the reason for the request and
- c. The reason(s) why the adverse action should be reversed, and include any supporting documentation.
- d. The State Agency replies in writing to the requesting party either denying the review and stating the reason for denial, or allowing the administrative review to proceed.

If the requesting party has requested an abbreviated review, the Director of the Division of Public Assistance notifies the requesting party of the schedule for the abbreviated review and when a decision will be made. Written notification of the review decision, including the basis for the decision will be provided to the vendor. The written notification need not amount to a full opinion or contain formal findings of fact and conclusions on law. The written notification should be provided within 90 days from the date of receipt of a vendor’s request for an administrative review. This time frame 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 time frame.

## 2. Administrative Hearing

If the requesting party requests an administrative hearing, the Director notifies the requestor at least 15 days in advance of the time and place of the pre-hearing conference or administrative hearing. The administrative hearing will be conducted according to the provisions of the Alaska Administrative Procedure Act, AS 44.62.330-630.

As part of the administrative hearing, the State Agency must provide the vendor with the following:

- a) The opportunity to appeal the adverse action within a time period specified by the State Agency in its notification of adverse action;
- b) Adequate advance notice of the time and place of the administrative hearing to provide all parties involved sufficient time to prepare for the hearing;
- c) The opportunity to present its case and at least one opportunity to reschedule the administrative hearing date upon specific request;
- d) The opportunity to cross examine adverse witnesses;
- e) The opportunity to be represented by counsel if desired;
- f) The opportunity to examine, prior to the hearing, the evidence upon which the State Agency's action is based;
- g) An impartial decision-maker whose determination is based solely on whether the State Agency has correctly applied federal and State statutes, regulations, policies, and procedures governing the program, according to the evidence presented at the administrative hearing; and
- h) Written notification of the hearing decision, including the basis for the decision. The written notification need not amount to a full opinion or contain formal findings of fact and conclusions on law. The written notification should be provided within 90 days from the date of receipt of a vendor's request for an administrative review. This time frame 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 time frame.

### D. Adverse Actions Subject to Administrative Review

Adverse Action	Administrative Review by DPA Director	Administrative Hearing
<p>The denial of authorization to become a WIC vendor based on:</p> <ul style="list-style-type: none"> <li>• The vendor selection criteria for competitive price;</li> <li>• The vendor selection criteria for minimum variety and quantity of authorized supplemental foods;</li> <li>• The determination that the vendor is attempting to circumvent a sanction;</li> <li>• A State Agency-established vendor</li> </ul>	Allowed	Allowed

Adverse Action	Administrative Review by DPA Director	Administrative Hearing
selection criteria if the basis of the denial is a WIC vendor sanction or the Alaska Supplemental Nutrition Assistance Program withdrawal of authorization or disqualification; <ul style="list-style-type: none"> <li>• The State Agency’s vendor limiting criteria.</li> </ul>		
The denial of authorization to become a WIC vendor based on the vendor selection for criteria for a current Alaska Supplemental Nutrition Assistance Program disqualification or CMP* for hardship.	Allowed	Not Allowed
The termination of a current WIC Vendor contract for cause.	Allowed	Allowed
The termination of a current WIC Vendor contract because of a change in ownership or location or cessation of operations.	Allowed	Not Allowed
The disqualification of a current WIC vendor based on the imposition of a CMP in lieu of disqualification based on a Alaska Supplemental Nutrition Assistance program disqualification.	Allowed	Not Allowed
The disqualification of a current WIC vendor based on the disqualification or CMP in lieu of disqualification based on a mandatory sanction imposed by another WIC State Agency.	Allowed	Not Allowed
Application of peer group criteria.	Allowed	Not Allowed
The imposition of a fine or CMP in lieu of disqualification.	Allowed	Not Allowed
Above 50% status determination.	Allowed	Not Allowed
The disqualification of a current WIC vendor for cause.	Allowed	Not Allowed

\*CMP = Civil Money Penalty, similar to a fine.

**E. Adverse Actions Not Subject to Administrative Review**

- The vendor selection criteria for business integrity;
- The validity or appropriateness of the State Agency's vendor limiting or selection criteria;
- The validity or appropriateness of the State Agency's client access criteria and client access determinations;
- 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;
- The disqualification of a current WIC vendor based on a trafficking conviction;
- The expiration of a vendor's contract;
- Disputes regarding food instrument payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR 246.12(k)(3));
- The State Agency's determination whether to notify a vendor when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction; and
- The State Agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor or retailer from their list.