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## POLICY

1. Vendor management agencies or the Bureau of Special Investigations must provide written notification to the applicant, or authorized vendor of their right to request a fair hearing if they are deemed ineligible for program authorization.
2. Vendor management agencies or the Bureau of Special Investigations must refer an applicant or authorized vendor's request for fair hearing to the New York State Department of Health.

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## REGULATIONS

- Program referral and access, [7CFR246.18](#)  
 Program referral and access, [10 NYCRR Section 60-1.8](#)  
 Program referral and access, [10 NYCRR Section 60-1.10](#)  
 Program referral and access, [10 NYCRR Section 60-1.11](#)  
 Program referral and access, [10 NYCRR Section 60-1.12](#)  
 Program referral and access, [10 NYCRR Section 60-1.13](#)

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## DEFINITIONS

Refer to Acronyms and Definitions in Section 1011.


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## PROCEDURE

LA Policy Required     Yes     No

1. Because the Bureau of Adjudication opts not to provide abbreviated administrative reviews, the vendor management agency or Bureau of Special Investigations must notify an applicant or authorized vendor of their right to a fair hearing with full administrative review in all of the following circumstances:

- Denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods (246.12(g)(3)(i)), or on a determination that the vendor is attempting to circumvent a sanction (246.12(g)(6))
- Termination of an agreement for cause
- Disqualification
- Imposition of a fine or a civil money penalty in lieu of disqualification
- Denial of authorization based on the vendor selection criteria for business integrity or for a current SNAP disqualification or civil monetary penalty for hardship
- Denial of authorization based on the application of the vendor selection criteria for competitive price
- 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

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- 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
- Denial of authorization based on the State agency's vendor limiting criteria
- 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
- Termination of an agreement because of a change in ownership or location or cessation of operations
- Disqualification based on a trafficking conviction
- Disqualification based on the imposition of a SNAP civil money penalty for hardship
- Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another State agency
- A civil money penalty imposed in lieu of disqualification based on a SNAP disqualification under 246.12(l)91)(vii)
- Denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.


2. Actions not subject to administrative review are listed at 7CFR268.18(a)(1)(iii).

3. The vendor management agency or Bureau of Special Investigations must include the following information using the Department of Health developed written notice to the applicant or authorized vendor of the right to request an appeal:

- a description of the adverse action, the effective date and the reasons for it
- the 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." when the vendor is subject to disqualification.
- a reference to and explanation of the requirements for a vendor in the WIC program
- a statement that the vendor has the right to request a fair hearing either verbally or in writing
- an explanation of the purpose and procedures of a fair hearing
- a statement that the applicant or authorized vendor or a representative (including a relative, friend, legal counsel, or other spokesperson) may present positions or arguments at the Fair Hearing
- the Department of Health's office location and phone number to request a Fair Hearing.
- a notice that the request for Fair Hearing must be made within 15 days of the date the notice of adverse action is received and that failure to make the request within that timeframe will result in loss of the right to the Fair Hearing

4. The vendor management agency or Bureau of Special Investigations must properly document and keep on file the reasons for an applicant or authorized vendor's ineligibility.


## **Fair Hearing**

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1. If the applicant, authorized vendor, or representative requests a Fair Hearing within 15 days of receiving the notice of the right to request a Fair Hearing, the Department of Health must forward the Fair Hearing Request documentation to the Bureau of Adjudication within one business day.
2. The Bureau of Adjudication will send a written notice of the hearing by certified mail or encrypted email with read receipt, to the applicant or authorized vendor, their representative, and the vendor management agency at least 10 days before the date of the hearing.
3. The Notice of Hearing will:
  - give the date, time and place of the hearing
  - state briefly the issues that are the subject of the hearing
  - explain how the Fair Hearing will be conducted
  - advise the applicant or authorized vendor of the right to:
    - be represented by an attorney, relative, friend, or other spokesperson
    - testify, present evidence, offer arguments, produce witnesses, and question or disprove any testimony or evidence
    - cross-examine adverse witnesses
    - examine, before and during the hearing, the documents supporting the action under appeal
    - at least one opportunity to reschedule the administrative review date upon specific request
  - state that the failure of the applicant or authorized vendor or representative to appear at the hearing will forfeit the applicant or authorized vendor's right to a hearing
4. The role of the vendor management agency is to present evidence to support the agency's decision to deny authorization or reauthorization. The vendor management agency must work with the Department of Health's Bureau of Special Investigations to gather appropriate evidence.

#### **Notification of Fair Hearing Outcome**

1. A copy of the Fair Hearing Decision and Order must be sent to the applicant or authorized vendor, their representative, and the vendor management agency or Bureau of Special Investigations within 45 days of the date the hearing request was received by the Department, unless the hearing has been postponed by the Bureau of Adjudication.
2. The Fair Hearing Decision and Order issued by the Bureau of Adjudication must inform that vendor that it may be able to pursue judicial review of the decision in the New York State courts using an Article 78 proceeding.
3. When the Fair Hearing Decision and Order is that authorization or reauthorization was incorrectly denied or terminated, the vendor management agency must continue the application process or reinstate the vendor immediately.

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4. When the Fair Hearing Decision and Order is that authorization or reauthorization was correctly denied or terminated, the vendor management agency must ensure that the vendor record is appropriately documented.
5. When the Fair Hearing Decision and Order is that the civil money penalty was incorrectly imposed, the Bureau of Special Investigations must rescind the civil money penalty and issue repayment to the vendor immediately.
6. When the Fair Hearing Decision and Order is that the disqualification was incorrectly applied, the Bureau of Special Investigations must rescind the disqualification and reinstate the vendor immediately.
7. When the Fair Hearing Decision and Order is that the civil money penalty or disqualification was correctly applied, the Bureau of Special Investigations must ensure the vendor record is appropriately documented.
8. Records of the Fair Hearing must be kept at the vendor management agency or Bureau of Special Investigations for seven years from the date of the Decision and Order.

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## **GUIDANCE**


Policy Supplement Available     Yes     No

### **Dismissing a Fair Hearing request**

1. A request for a Fair Hearing will be denied or dismissed by the Department of Health if the:
  - request is not received by the Department of Health within 15 days of the date the vendor management agency notifies the applicant or authorized vendor in writing of the adverse action
  - applicant or authorized vendor or their representative fails, without good reason, to appear at the scheduled hearing
  - request is withdrawn in writing to the Bureau of Adjudication by the applicant or authorized vendor or is stated for the record at the hearing

### **Recording a Fair Hearing**

1. The vendor management agency or Bureau of Special Investigations must keep a log of all Fair Hearings which includes:
  - Name(s) of involved parties
  - Reason(s) for adverse action
  - Date of request for hearing
  - Date of schedule hearing
  - Decision and Order issued by the Bureau of Adjudication

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## **RESOURCES**

### **WIC Program Manual Sections:**

- #1038: WIC Program Integrity-Reporting Fraud and Abuse
- #1040: Civil Rights and Nondiscrimination Statement
- #2003: Vendor Authorization

### **WIC Library:**

- NYS WIC Vendor Handbook
- NYS WIC Vendor Fair Hearing Request Form
- NYS WIC Vendor Denial Letter
- NYS WIC Vendor Termination Letter