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Data Collection and Maintenance

The Colorado Department of Public Health and Environment (CDPHE) continues to meet the responsibilities of compliance and enforcement contained in Title VI of the Civil Rights Act of 1964 and USDA Regulations 7 CFR 15. The Colorado WIC Civil Rights Compliance Program includes the following:

Data Collection and Maintenance

Racial and ethnic participation in the WIC Program is collected via Compass, the WIC computer system. Information is maintained on file at both the state and local level for three and a half years. The following designations are used for the collection of racial/ethnic categories:

Ethnicity		Required field to classify participant as either Hispanic (or Latino) or Non-Hispanic (or Non-Latino). The USDA definition is: "Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture of origin regardless of race. The term "Spanish origin" can be used in addition to "Hispanic or Latino."
Race		Required field consisting of 5 racial categories. One or more of the five racial categories can be selected.
	White	USDA: "White. A person having origins in any of the original peoples of Europe, Middle East, or North Africa."
	Black	USDA: "Black or African American. A person having origins in any of the Black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."
	Asian	USDA: "Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam."
	American Indian or Alaskan	USDA: "American Indian or Alaskan Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment."
	Native Hawaiian or Other Pacific Islander	USDA: "Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands."

Self-identification by the participant is the preferred method of obtaining data. Participants should be asked to self-identify their racial and ethnic categories, after it has been explained and they understand that the collection of this information is to produce data on characteristics of populations served and to monitor compliance with Federal Civil Rights Laws. Participants should also be informed that this data collection has no effect on the determination of their eligibility to participate in the WIC Program. If a participant does not provide racial and ethnic information, the staff may obtain the information through visual observation and record it as observed. When performing a visual identification, selection of one or more races is acceptable.

Compliance Reviews

Pre-award reviews will be conducted on all applicant agencies to determine if they are in compliance with the Title VI Civil Rights Act of 1964. Biennially, each local WIC agency will be reviewed for Civil Rights Compliance. This review will be accomplished during Program monitoring visits and will include determination of the following items:

- Do all persons have an equal opportunity to participate in the Program regardless of race, color, national origin, sex, age, or disability?
- Have case records been coded by racial/ethnic origin?
- Has the local agency conducted civil rights training for its staff?
- Do project areas display the USDA WIC nondiscrimination poster or an FNS WIC-approved poster?
- Is program information being provided to applicants, participants, grassroots organizations or similar minority groups?
- Is the nondiscrimination statement being included on all printed materials such as applications, pamphlets (other than nutrition education), forms, or any other materials distributed to the public?
- Are civil rights complaints being handled in accordance with complaint processing procedures? (see Complaint Processing section)
- Has the local agency corrected all past substantiated civil rights problems or noncompliance situations?
- Are appropriate staff members, volunteers, or other translation resources available in areas where a significant proportion of non-English or limited English speaking people reside?

In addition, local agencies are required to maintain a civil rights file containing the following:

- Any civil rights correspondence from the State WIC Office (including policy changes).
- Documentation of any civil rights training obtained through the local agency.
- Documentation of all civil rights complaints and actions.
- UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) Office of Assistant Secretary for Civil Rights USDA Program Discrimination Complaint Form Instructions.
- UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) Office of the Assistant Secretary for Civil Rights Program Discrimination Complaint Form.

Local agency staff members are required to understand the procedures for processing civil rights complaints, which are described in this section, and also the USDA Civil Rights Compliance and Enforcement information, found in FNS Instruction 113-1, which is posted on the [Colorado WIC website](#).

Review of Procedures to Protect Against Disability and Sex Discrimination

Local agency contracts with the CDPHE WIC Program require compliance with the Americans with Disabilities Act (ADA), Public Acts 42USC 6101 et seq, 42USC 2000 d, and 29 USC 794, and the Colorado Antidiscrimination Act. This ensures that no contracted local agency can discriminate on the basis of disability, and program services must be available and accessible for individuals with disabilities. In addition, the CDPHE Equal Employment Opportunity/ Affirmative Action officer requires that every county health department and nursing service has a designated ADA Coordinator to oversee the fulfillment of these acts and to see that any grievances filed are handled properly.

Program Accessibility for Applicants and Participants with Disabilities

The State agency shall ensure that local agencies make reasonable accommodations for the known physical or mental limitations of an otherwise qualified applicant or participant with a disability. When structural changes are not viable, local agencies may achieve program accessibility through other methods. These methods include:

- Referring participants to an alternate site that is accessible and within reasonable traveling distance if a particular clinic site may not be readily accessible for disabled individuals.
- Obtaining medical data (height, weight, and hemoglobin/hematocrit) from other sources, such as a private physician, and using it as eligibility criteria (see *Certification, Eligibility and Coordination, Section 8 of the Program Manual*, Physical Presence at Certification and Recertification Visits and Certification Procedures Required Medical/Nutritional Data).
- Providing home visits by WIC staff or coordinating services with a public health nurse who can make a home visit.
- Allowing a proxy designated by the participant to pick up food benefits at the clinic site (if procedure is followed as outlined in the *Certification, Eligibility and Coordination, Section 8 of the Program Manual*).
- Offering benefits remotely to a participant (following criteria and procedure outlined in the *Remote Issuance of WIC food benefits* section in the Program Manual, Section 6, Food Funds).

Bilingual/Non-English Provision

In several areas of Colorado and among the migrant farm worker population, Spanish is a dominant language. All outreach and screening materials and most nutrition education materials generated through the State WIC Office are available in both English and Spanish. For materials and resources needed to serve other non-English speaking populations, contact the agency's assigned State Office Nutrition Consultant.

Local agencies must ensure that interpretative services are available for participants with limited English proficiency.

Records and Reports

Racial and ethnic participation in the program is collected via the WIC computer system. The participant characteristics from the minimum data set are sent to USDA biennially. Records are kept for a period of three and a half years. This information is compared to state and county racial/ethnic breakdown percentages to determine the effectiveness of WIC to reach potentially eligible populations, identify areas where additional outreach may be needed, and assess cultural diversity and sensitivity of the WIC staff.

Public Notification

At least annually, state and local agencies must publish information about the WIC Program. This information can be communicated by methods such as, but not limited to, Internet, newspaper articles, radio and television announcements, letters, leaflets, brochures, computer-based applications, bulletins, and grassroots organizations.

The purpose of the notification system is to inform applicants, participants, and potentially eligible people of program availability, program rights and responsibilities, policy of nondiscrimination, and the procedure for filing a complaint.

Public service announcements must include the following elements:

- Program availability including hours of operation and location of clinics.
- Information on how to file a complaint.
- The WIC nondiscrimination statement (since public service announcements are short in nature, the abbreviated nondiscrimination statement may be used).

Outreach conducted by both state and local agencies informs all eligible people, particularly minorities and women, of their program rights and responsibilities, their protection against discrimination, and the procedure for filing a complaint. Local WIC agencies should work closely with community representatives from minority

groups, including farm workers' health programs. In addition, during biennial monitoring, state staff members ensure that local agencies and clinics:

- Display the nondiscrimination poster, *And Justice for All*, or an FNS WIC-approved substitute in a prominent place, and that Spanish translations are posted in clinics where applicable.
- Provide appropriate staff, volunteers, or other interpretation resources to serve participants or applicants.
- Make program regulations and guidelines available to the public upon request.
- Provide participants and applicants access to civil rights information, including procedures for filing complaints, program specifics, and rights and responsibilities of participants and applicants.

In the event that a participant alleges discrimination on the basis of race, color, national origin, sex, age, or disability to WIC staff, the complaint should be forwarded to one of two offices:

U.S. Department of Agriculture Office of Assistant Secretary for Civil Rights 1400 Independence Ave. SW Washington, D.C. 20250-9410 Or call 866-632-9992 voice 800-877-8339 English* 800-845-6136 Spanish* Fax: (202) 690-7442 Email: program.intake@usda.gov	Civil Rights Coordinator Colorado WIC Program 4300 Cherry Creek Dr. South Denver, CO 80246-1530 Or call 303-692-2400
<i>*Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service</i>	

Should a participant request to file a discrimination complaint directly, instruct him or her to complete the [USDA Program Discrimination Complaint Form](http://www.ascr.usda.gov/complaint_filing_cust.html) found online at http://www.ascr.usda.gov/complaint_filing_cust.html.

Civil Rights Complaint Filing

AD-3027(1/19/12)

OMB Control Number 0508-0002

UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) Office of the Assistant Secretary for Civil Rights USDA Program Discrimination Complaint Form Instructions
(The complaint form follows the instructions.)

PURPOSE:

The purpose of this form is to assist you in filing a USDA program discrimination complaint. For help filling out the form, you may call any of the telephone numbers listed at the bottom of the complaint form. You are not required to use the complaint form. You may write a letter instead. If you write a letter it must contain all of the information requested in the form and be signed by you or your authorized representative. Incomplete information will delay the processing of your complaint. You may also send a complaint by FAX or e-mail. We must have a signed copy of your complaint, so if you send your complaint by e-mail, be sure to attach the signed copy to your email. Incomplete information or an unsigned form will delay the processing of your complaint.

FILING DEADLINE:

A program discrimination complaint must be filed not later than 180 days of the date you knew or should have known of the alleged discrimination, unless the time for filing is extended by USDA. Complaints sent by mail are considered filed on the date the complaint was signed, unless the date on the complaint letter differs by seven days or more from the postmark date, in which case the postmark date will be used as the filing date. Complaints sent by fax or email will be considered filed on the day the complaint is faxed or emailed. Complaints filed after the 180-day deadline must include a 'good cause' explanation for the delay. For example, you may have "good cause" if:

1. You could not reasonably have been expected to know of the discriminatory act within the 180-day period;
2. You were seriously ill or incapacitated; and/or
3. The same complaint was filed with another Federal, state, or local agency and that agency failed to act on your complaint.

USDA POLICY:

Federal law and policy prohibits discrimination against you based on the following: race, color, national origin, religion, sex, disability, age, marital status, sexual orientation, family/parental status, income derived from a public assistance program, and political beliefs (not all bases apply to all programs).

USDA will determine if it has jurisdiction under the law to process the complaint on the bases identified and in the programs involved. Reprisal that is based on prior civil rights activity is prohibited.

PROPERTY ADDRESS:

If this complaint involves a farm or other real estate property that is not your current address, write in the address for that farm or real estate property. Otherwise, this part of the form can be left blank.

PLEASE READ IMPORTANT LEGAL INFORMATION BELOW CONSENT

This USDA Program Discrimination Complaint Form is provided in accordance with the Privacy Act of 1974, 5 U.S.C. §552a, and concerns the information requested in this form to which this Notice is attached. The United States Department of Agriculture's Office of the Assistant Secretary for Civil Rights (USDA) requests this information pursuant to 7 CFR Part 15. If the completed form is accepted as a complaint case, the information collected during the investigation will be used to process your program discrimination complaint. Disclosure is voluntary. However, failure to supply the requested information or to sign the form may result in dismissal of your complaint. If your complaint is dismissed, you will be notified. The information you provide in this complaint may be disclosed to outside parties where USDA determines that disclosure is: 1) Relevant and necessary to the Department of Justice, the court or other tribunal, or the other party before such tribunal for purposes of litigation; 2) Necessary for enforcement proceedings against a program that USDA finds to have violated laws or regulations; 3) In response to a Congressional office if you have requested that the Congressional office inquire about your complaint or; 4) To the United States Civil Rights Commission in response to its request for information.

REPRISAL (RETALIATION) PROHIBITED:

No Agency, officer, employee, or agent of the USDA, including persons representing the USDA and its programs, shall intimidate, threaten, harass, coerce, discriminate against, or otherwise retaliate against anyone who has filed a complaint of alleged discrimination or who participates in any manner in an investigation or other proceeding raising claims of discrimination.

Civil Rights Complaints Processing

Specific procedures for local agency handling of all civil rights complaints follow:

- **Right to File a Complaint:** Any person alleging discrimination based on race, color, national origin, sex, age, or disability has a right to file a complaint within 180 days of the alleged discriminatory action. (Under special circumstances this 180-day time limit may be extended by the Office of Adjudication and Compliance.) Complaints received after 180 days should also be investigated and resolved.
- **Acceptance:** Local and State WIC staff must accept all written and verbal Civil Rights complaints and instruct complainants on how to file a complaint. In addition, Civil Rights complaints must be documented in the Customer Service Log in Compass. Staff must check the "Civil Rights" check box and complete the "Referred To" drop-down box within the screen, noting whether the complaint was forwarded to the director/supervisor, state office, or USDA. A copy of the civil rights complaint must be forwarded to the Colorado WIC Program Civil Rights Coordinator within 2 days of initial report and to the USDA within 5 days of initial report. Complainants may choose to submit complaint forms themselves. All of the required information must be collected so that USDA is able to determine validity of the complaint, and to contact the person with a reply. Note that all forms or letters must be signed by the complainant or authorized representative.
- **Complaint Filing:** Complainants or their authorized representative should be directed to complete the [USDA Program Discrimination Complaint Form](#) found online at http://www.ascr.usda.gov/complaint_filing_cust.html or at any USDA office, or call (866) 632-9992 to request the form. They may also write a letter containing all of the information requested in the form (see copy of form in this section). The completed, signed complaint form or letter may be mailed, faxed, or emailed to USDA at the addresses below:

Mail

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax

(202) 690-7442

E-mail

program.intake@usda.gov

For help filling out the form, instruct the complainant to call any of these telephone numbers:

(202) 260-1026 Local area

(866) 632-9992 Toll-free Customer Service

(800) 877-8339 Local or Federal relay

(800) 845-6136 Spanish relay

(866) 377-8642 Relay voice users

- **Verbal Complaints:** In the event a complainant makes verbal allegations, such as through a phone conversation, and is not inclined to place the allegations in writing, the person's name to which the allegations are made and the details of the complaint shall be documented in the *Compass Customer Service Log Description* text box. Every effort must be made to collect sufficient information and to reread the statement back to the complainant to verify completeness and accuracy of the information recorded. The complainant is instructed on how to file a complaint with USDA.
- **Tracking Complaints:** Once a complaint is documented, immediate and appropriate follow up is required. Staff member documents the follow up plan in the *Compass Customer Service Log Resolution* text box. Follow up can include any of the following actions:
 - ✓ Local agency WIC Director is notified of the complaint.
 - ✓ Local agency WIC Director meets with local staff to develop a plan for corrective action as needed.
 - ✓ Local agency WIC Director consults with State Nutrition Consultant, Retailer Coordinator, and/or Civil

Rights Coordinator to develop a plan for corrective action (e.g., staff training on customer service, policy clarification, staff monitoring).

- ✓ When State Office staff receive the complaint, the CO WIC Nutrition Consultant and/or Civil Rights Coordinator contacts the local agency WIC Director to discuss the complaint and appropriate follow up.
- **Follow-up Plan:** Staff documents the follow-up plan in the *Compass Customer Service Log Resolution* text box. Additional follow-up or documentation may be entered by editing the original record. Once the complaint has been resolved, WIC staff should close the record by recording the date in the *Closed Date* field.

If USDA determines the local agency to be noncompliant, the plan for corrective action and follow-up activities should be tracked on a Civil Rights Complaint Tracking Log (WIC #81) and entered into the *Compass Customer Service Log Resolution* text box. Documenting follow up on the tracking form and in Compass enables WIC staff to track problems, as well as identify any repeated occurrences. The USDA will notify the state office within 90 days when an agency is found in non-compliance. Once 90 days has passed the *Compass Customer Service Log "Closed Date"* may be noted, however no earlier than 90 days from date the complaint was sent to USDA. State and local agencies must keep records of Civil Rights complaints in a Civil Rights file. Complaints against a retailer must also be kept in the retailer file at both the state and local level.

Customer Service Complaint Processing

Sometimes the complaints received by the local agency or state WIC offices are not civil rights complaints but instead are customer service-related. These complaints must be handled similarly, as they may lead to civil rights complaints and/or fair hearings.

The specific procedures for handling customer service complaints follow:

- **Right to File a Complaint:** Any person alleging mistreatment has a right to file a customer service complaint.
- **Acceptance:** All customer service complaints, written or verbal, shall be accepted and documented by local or state WIC staff. Complaints elevated to the WIC clinic supervisor and/or state office must be documented in the Compass Customer Service Log. When possible, signed written statements from the complainant should be scanned into Compass. For retailer-related complaints, collect information on the *WIC Retailer Problem Report Form* (WIC #43) located in the **Vendor and Farmer Management section 1** of the Program Manual.
- **Verbal Complaints:** In the event a complainant makes verbal allegations, such as through a phone conversation, and is not inclined to place the allegations in writing, the person receiving those allegations must document them in the Compass Customer Service Log. Every effort should be made to capture the full complaint; staff members are encouraged to reread the statement back to the complainant to verify the accuracy of the information recorded.
- **Tracking Complaints:** Once a complaint is documented, immediate and appropriate follow up is needed. Document the follow up plan in the *Compass Customer Service Log resolution* text box. Follow up may include any of the following items.
 - ✓ Agency WIC Director or staff supervisor clarifies the complaint with the complainant, if needed.
 - ✓ Local agency staff consults with the agency WIC Director to develop a plan to resolve the situation.
 - ✓ Local agency WIC Director consults with State Nutrition Consultant, Retailer Coordinator, and/or Civil Rights Coordinator to develop a plan for corrective action (e.g., staff training on customer service, policy clarification, staff monitoring).
 - ✓ State Nutrition Consultant and/or Civil Rights Coordinator contacts local agency WIC Director to discuss complaint, if complaint is received at State WIC Office.
 - ✓ Plan for follow up with the complainant and the staff, as appropriate.
- **Follow-up Plan:** Staff documents the follow-up plan in the *Compass Customer Service Log Resolution* text box. Local Agencies are encouraged, but not required, to keep a written tracking log of all customer service related complaints. This tracking log enables local agencies to track problem resolution, as well as identify any repeated occurrences. Copies of customer service complaints against specific retailers should be kept on file at both the state and local levels.

Training

Civil Rights training is a standard component of training new WIC employees. Employees will receive annual training in the following Civil Rights-related areas:

- Collection and use of civil rights data
- Effective public notification systems
- Complaint procedures
- Compliance review techniques
- Resolution of noncompliance
- Requirements of reasonable accommodations of persons with disabilities
- Requirements for language assistance
- Conflict resolution
- Customer service

Remedial and Affirmative Action

Corrective action shall be taken as necessary to overcome the effects of past discrimination.

English Non-Discrimination Statement

Federal regulations require that the following non-discrimination statement be used on all materials used to inform the public about or describe the WIC Program (such as outreach and referral materials), denial and termination letters, missed appointment policies, reminder materials, eligibility standards, and program applications.

English nondiscrimination statement:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) Mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) Fax: (202) 690-7442; or (3) Email: program.intake@usda.gov . This institution is an equal opportunity provider.
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Spanish Non-Discrimination Statement

De conformidad con la Ley Federal de Derechos Civiles y los reglamentos y políticas de derechos civiles del Departamento de Agricultura de los EE. UU. (USDA, por sus siglas en inglés), se prohíbe que el USDA, sus agencias, oficinas, empleados e instituciones que participan o administran programas del USDA discriminen sobre la base de raza, color, nacionalidad, sexo, discapacidad, edad, o en represalia o venganza por actividades previas de derechos civiles en algún programa o actividad realizados o financiados por el USDA.

Las personas con discapacidades que necesiten medios alternativos para la comunicación de la información del programa (por ejemplo, sistema Braille, letras grandes, cintas de audio, lenguaje de señas americano, etc.), deben ponerse en contacto con la agencia (estatal o local) en la que solicitaron los beneficios. Las personas sordas, con dificultades de audición o discapacidades del habla pueden comunicarse con el USDA por medio del Federal Relay Service [Servicio Federal de Retransmisión] al (800) 877-8339. Además, la información del programa se puede proporcionar en otros idiomas.

Para presentar una denuncia de discriminación, complete el [Formulario de Denuncia de Discriminación del Programa del USDA](#), (AD-3027) que está disponible en línea en: http://www.ascr.usda.gov/complaint_filing_cust.html y en cualquier oficina del USDA, o bien escriba una carta dirigida al USDA e incluya en la carta toda la información solicitada en el formulario. Para solicitar una copia del formulario de denuncia, llame al (866) 632-9992. Haga llegar su formulario lleno o carta al USDA por:

(1) Correo postal: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
(2) Fax: (202) 690-7442; o
(3) Correo electrónico: program.intake@usda.gov.
Esta institución es un proveedor que ofrece igualdad de oportunidades.

The non-discrimination statement is not required to be imprinted on items such as cups, buttons, magnets, and pens that identify the WIC Program, when size or configuration make it impractical. In addition, recognizing that radio and television public service announcements are generally short in duration, the nondiscrimination statement does not have to be read in its entirety. Rather, a statement such as "**This institution is an equal opportunity provider**" is sufficient to meet the nondiscrimination requirement. Finally, nutrition education and breastfeeding promotion and support materials that strictly provide a nutrition message with no mention of the program are not required to contain the nondiscrimination statement.

If internal and interdepartmental newsletters, as well as those meant for participants and/or other outside agencies, convey WIC benefits and participation requirements, they most likely are a part of the notification process and should include the non-discrimination statement.

This requirement can be met by including appropriate inserts in existing materials and publications. Also, when current materials, publications, pamphlets, and brochures have been exhausted, the non-discrimination statement must be included on all reprints and new materials.

Find applicable forms at:

<https://www.colorado.gov/cdphe/wic-manuals-and-guides>

Availability of a Fair Hearing

A fair hearing shall be made available to any individual whose application for benefits or services has been denied, reduced, or terminated, or who is otherwise aggrieved by agency action. Participants must be advised of their right to a fair hearing and the procedure to follow to obtain a fair hearing.

Once requested, a fair hearing will be conducted in accordance with the Fair Hearing Procedures outlined in **this section**

Fair Hearings and Administrative Review Procedures

The Colorado WIC Program and its contracting agencies must adhere to the following Fair Hearing procedures:

COLORADO WIC PROGRAM FAIR HEARING PROCEDURES FOR APPLICANT/PARTICIPANT APPEALS

Definition of a Fair Hearing

A Fair Hearing (hearing) allows individuals, who file an appeal concerning one of the actions listed in Subsection B of this policy, an opportunity to have their case heard by an impartial Administrative Hearing Official (hearing officer). Hearings will be conducted at the State level in accordance with the Colorado Administrative Procedures Act, §24-4-105 and §24-4-106 C.R.S., Code of Federal Regulations 7 Part 246.9, and WIC policies and procedures.

These hearing procedures provide a mechanism to ensure that:

- Applicants/participants have an objective and impartial avenue of redress when they feel they have been denied benefits, treated unfairly, or have had an adverse action taken against them;
- Program standards, policies, procedures and regulations are being applied without prejudice;
- The services and benefits are being provided fairly;
- Certain services are retained pending the outcome of a hearing and;
- Certain services are restored based on the outcome of a hearing.

Actions Subject to Fair Hearing

Applicants/participants may file an appeal when the following actions occur:

- Denial of participation;
- Termination of benefits due to ineligibility;
- Disqualification based on intentional program abuse as defined in the Participant Sanction Policy and/or;
- Claims that are assessed against an individual who has been improperly issued benefits or has improperly obtained benefits.

Procedures for a Fair Hearing

- Notification of Action
Participants will be notified of an adverse action at least fifteen (15) days prior to the effective date of the action, unless the 15 days falls after the end of the participant's certification period. If this period is less than 15 days, participants should be given benefits for the remaining days of their certification period. Participants may not receive benefits after the end of their certification period. Nor may participants receive benefits if the adverse action is denial of certification on the Program.

Written notification of adverse actions will be provided stating the action, cause(s) for the action, the effective date of the action, the right to file an appeal, and the method by which a hearing may be requested.

- Appealing an Action
 - ✓ An appeal is any clear expression by the individual, the individual's parent, caregiver, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. A request for an appeal can be made to the State WIC Program or local WIC agency.
 - ✓ A disqualified or terminated participant must file an appeal within fifteen (15) calendar days of receiving the notice of action to continue receiving benefits until the hearing officer reaches a decision or the certification period expires, whichever occurs first. A participant whose certification period has expired cannot have benefits continue through the appeal.
 - ✓ An applicant/participant must file an appeal within sixty (60) calendar days of the date the notice of action is mailed or provided to the applicant/participant.
 - ✓ An appeal will be denied or dismissed if:
 - the appeal is not received within sixty (60) calendar days from the date the notice is mailed or provided;
 - the appeal is withdrawn in writing by the applicant/participant or representative; and/or
 - the applicant/participant or representative failed, without good cause (as determined by the hearing officer) to appear at the scheduled hearing.

The Hearing - General Rules and Procedures

- ✓ Upon receipt of an appeal, the State WIC Program shall notify the applicant/participant, in writing, that it has received the appeal. A copy of the hearing procedures and a confirmation notice will be sent to the applicant/ participant. This confirmation must be signed by the applicant/participant and accompanied by a list of the specific action (s) being appealed. The confirmation of appeal must be returned to the State WIC Program within seven (7) calendar days of receipt.
- ✓ The applicant/participant will receive a minimum of ten (10) calendar days' advance written notice of the time and place of the hearing. At the time of the written notice the State WIC Office will notify the applicant/participant of their right to:
 - examine, prior to or during the hearing, the documents and records presented to support the decision under appeal;
 - be assisted or represented by an attorney or other persons;
 - bring witnesses;
 - advance arguments without undue interference;
 - question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses
 - submit evidence to establish all pertinent facts and circumstances in the case.
- ✓ Hearing will be held within twenty-one (21) calendar days from the date the State WIC Program or local WIC agency received the appeal.
- ✓ 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, federal regulations and the Program's policies and procedures governing the Program.
- ✓ The applicant/participant shall have the opportunity to present their case and at least one opportunity to reschedule the hearing date upon request.
- ✓ The hearing shall be conducted at the State level in accordance with the provisions of §24-4-105 C.R.S.
- Fair Hearing Decision
 - ✓ Within forty-five (45) calendar days of the receipt of the appeal, the hearing officer must issue an initial Fair Hearing 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.
 - ✓ 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 Program and the applicant/participant.
 - ✓ The applicant/participant or Program may file a written appeal of the initial decision with the Department's Executive Director within fifteen (15) 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.
 - ✓ If an appeal is not received within fifteen (15) calendar days, the initial decision of the hearing officer will be adopted by the Executive Director and shall constitute the final action pursuant to §24-4-105 C.R.S.
 - ✓ If the final decision is in favor of the applicant/participant, and benefits were denied or discontinued, benefits shall begin immediately.
 - ✓ If the final decision concerns disqualification, and is in favor of the Program, the participant will be terminated as soon as administratively feasible.
 - ✓ If the final decision regarding repayment of benefits by the participant is in favor of the Program, efforts to collect the claim will resume immediately.
 - ✓ The effective date of the action is the date the decision is issued to the applicant/participant.
- Withdrawal or Default of an Appeal
 - ✓ A withdrawal of an appeal occurs when the applicant/participant states, in writing, that he or she no longer wishes a hearing.
 - ✓ A default occurs when the applicant/participant fails to appear at the hearing without good cause as determined by the hearing officer or the applicant/ participant cannot be located through his or her last address of record.

Judicial Review

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

COLORADO WIC PROGRAM

ADMINISTRATIVE REVIEW PROCEDURES FOR RETAILER APPEALS

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:

- 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
- Program standards, policies, procedures and regulations are being applied without prejudice.

Actions subject to Administrative Review

- 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;
- Termination of an agreement for cause;
- Disqualification; and
- Imposition of a fine or a civil money penalty in lieu of disqualification.

Actions subject to Abbreviated Administrative Review

- 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;
- Denial of authorization based on the application of the vendor selection criteria for competitive price;
- 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.
- 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 WIC State agency;
- A civil money penalty imposed in lieu of disqualification based on a SNAP disqualification;
- Denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.

Actions not subject to an Administrative Review

- 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;
- 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;
- The validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations;
- 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);

- 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;
- 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;
- 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;
- Denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency;
- The expiration of a vendor's agreement;
- 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
- Disqualification of a vendor as a result of disqualification from SNAP.

Procedures for an Administrative Review

- Notification of Action
 - ✓ 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.
 - ✓ 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.
 - ✓ 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.
- Appealing an Action
 - ✓ 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.
 - ✓ A request for a hearing will be denied or dismissed if:
 - the request is not received within thirty (30) calendar days from the date the notice is received by the retailer;
 - the request is withdrawn in writing by the retailer or representative; and/or
- a. the retailer or representative failed, without good cause as determined by the hearing officer, to appear at the scheduled hearing.
 - ✓ 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.
- Administrative Review Hearing - General Rules and Procedures
 - ✓ 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.
 - ✓ The retailer will receive a minimum of ten (10) calendar days' advance written notice of the time and place of the hearing.
 - ✓ 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.
 - ✓ The retailer shall have the opportunity to:
 - present its case and at least one opportunity to reschedule the hearing date upon request;
 - cross-examine adverse witnesses;
 - be represented by counsel; and
 - examine prior to the hearing the evidence upon which the adverse action is based.
 - ✓ The hearing shall be conducted in accordance with the provisions of §24-4-105 C.R.S.
- Administrative Review Decision
 - ✓ 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.
 - ✓ 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.

- ✓ 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.
- ✓ 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.
- ✓ 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.
- ✓ 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.
- ✓ If the decision regarding a civil money penalty is in favor of the Program, efforts to collect the penalty will resume immediately.
- ✓ 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.
- ✓ After an unsuccessful appeal, the retailer and/or Program shall comply with the decision.
- ✓ The effective date of the action is the date the retailer receives the decision.
- **Withdrawal or Default of an Appeal**
 - ✓ A withdrawal of an appeal occurs when the retailer states, in writing, that he or she no longer wishes a hearing.
 - ✓ 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.

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.

COLORADO WIC PROGRAM ADMINISTRATIVE REVIEW PROCEDURES FOR LOCAL AGENCY APPEALS

Definition of an Administrative Review

Administrative Review Procedures allow affected local agencies, 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) at the State level. Hearings will be conducted 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 policy and procedures.

These procedures provide a mechanism to ensure that:

- Local WIC Agencies (agency) 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).
- Program standards, policies, procedures and regulations are being applied without prejudice.

Actions subject to Administrative Review

The following actions are subject to an Administrative Review:

- Denial of local agency's application;
- Disqualification of a local agency; and
- Any other adverse action that affects a local agency's participation.

Actions not subject to Administrative Review

The following actions are not subject to an Administrative Review:

- Expiration of an agreement;
- Denial of a local agency application if the State WIC Program's selection is subject to the procurement procedures applicable to the Colorado Department of Public Health and Environment (Department).

Procedures for an Administrative Review

- Notification of Action
 - ✓ When the adverse action is denial of a local agency's application, such denial is effective immediately, and no advance notice will be issued.
 - ✓ For all other adverse actions, the Program will provide the local agency with a written notice of the adverse action at least sixty (60) calendar days prior to the effective date of the action.
 - ✓ The notice of the adverse action shall include the action being taken, the cause(s) for the action, the effective date of the action, and the right to appeal the action. A copy of the Administrative Review Procedures will also be provided.

Appealing an Action

- ✓ Within thirty (30) calendar days of the receipt of the notice of action, the local agency must submit a written request for an Administrative Review to the State WIC Program. The written request should include the local agency name, action(s) being appealed, and the date of the request.
- ✓ A request for a hearing will be denied or dismissed if:
 - the request is not received within thirty (30) calendar days from the date the notice is received by the local agency;
 - the request is withdrawn in writing by the local agency or representative; and/or
 - the local agency or representative failed, without good cause as determined by the hearing officer, to appear at the scheduled hearing.
- ✓ Appealing an action does not relieve a local agency, permitted to continue in the Program while its appeal is in process, from the responsibility of continued compliance with the terms of the contract. The adverse action affecting a participating local agency shall be postponed until a hearing decision is reached.

- Administrative Review Hearing - General Rules and Procedures
 - ✓ Upon receipt of the appeal request, the Program shall notify the local agency, in writing, that it has received the request. An explanation of the hearing procedures will be sent with the notice.
 - ✓ The local agency will receive a minimum of ten (10) calendar days' advance written notice of the time and place of the hearing. At the time of the written notice the State WIC Office will notify the local agency of their right to:
 - examine, prior to or during the hearing, the documents and records presented to support the decision under appeal;
 - be assisted or represented by an attorney or other persons;
 - bring witnesses;
 - advance arguments without undue interference;
 - question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
 - submit evidence to establish all pertinent facts and circumstances in the case.
 - ✓ The 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. The local agency shall have the opportunity to present its case and at least one opportunity to reschedule the hearing date upon request.
 - ✓ The hearing shall be conducted in accordance with the provisions of §24-4-105 C.R.S.

Administrative Review Decision

- ✓ Within sixty (60) calendar days of the receipt of the request for a hearing, 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.
- ✓ 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 local agency.
- ✓ The local agency or Program may file a written appeal of the initial decision with the Department's Executive Director within fifteen (15) calendar days of receipt of the initial decision. The Executive Director may affirm, modify, or reverse the initial decision in accordance with C.R.S. 24-4-105.
- ✓ If an appeal is not received within fifteen (15) calendar days, the initial decision of the hearing officer will be adopted by the Executive Director and shall constitute the final action.
- ✓ If the decision is in favor of the local agency and authorization was denied the local agency will be authorized on receipt of the administrative review decision.
- ✓ If the decision regarding repayment of funds by the local agency is in favor of the Program, efforts to collect the funds will resume immediately.
- ✓ Immediately 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.
- ✓ After an unsuccessful appeal, the local agency and/or Program shall comply with the decision.
- ✓ The effective date of the action is the date the local agency receives the decision.
- Withdrawal or Default of an Appeal
 - ✓ A withdrawal of an appeal occurs when the local agency states, in writing, that it no longer wishes a hearing.
 - ✓ A default occurs when the local agency fails to appear at the hearing without good cause, or the local agency cannot be located through the last address of record.

Judicial Review

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

[§ 24-4-105. Hearings and determinations](#) & [§ 24-4-106. Judicial review](#)

Links are more effective using Google Chrome

**QUESTIONS AND ANSWERS ABOUT THE FAIR HEARING PROCEDURES
FOR APPLICANT/PARTICIPANT**

<p>1. Where can I request a fair hearing?</p>	<p>Requests for Fair Hearing may be made to the local agency administering the Program or directly to: Colorado Department of Public Health and Environment WIC Director 4300 Cherry Creek Drive South Denver, CO 80246-1530</p>
<p>2. Is there anything I should do prior to requesting a Fair Hearing?</p>	<p>You might find it helpful to discuss with your local or state program representative your feelings and any questions or concerns that you have before you make a decision to request a Fair Hearing. Questions or concerns can often be answered or addressed prior to a Fair Hearing.</p>
<p>3. Who pays for a Fair Hearing?</p>	<p>The Colorado Department of Public Health and Environment (CDPHE) will pay for the expenses of the hearing officer and, if necessary, the stenographer. The CDPHE will also pay for an interpreter if one is needed.</p>
<p>4. Where will the hearing be held?</p>	<p>The hearing must be held at a time and place convenient to the person making the request.</p>
<p>5. Who conducts the hearing?</p>	<p>A hearing officer who is not involved in the dispute will conduct the hearing. He or she will be designated and paid for by the CDPHE.</p>
<p>6. Who is to be at the hearing?</p>	<p>Besides the hearing officer and possibly a stenographer, the applicant or participant requesting the hearing or his or her representative, such as a relative, friend, legal counsel, or other spokesperson, witnesses, and State WIC staff. (Any person presenting material will be under oath or affirmation and all testimony will be recorded.)</p>
<p>7. How is the hearing conducted?</p>	<p>All hearings conducted in accordance with the provisions of Colorado Administrative Procedures Act §24-4-105 and the Code of Federal Regulations 7 Part 246.</p> <p>Both the individual requesting the hearing and the representative of the local WIC agency or State WIC Program shall have the right to examine and present evidence, present and cross-examine any witness, make arguments, and question or refute evidence. The person requesting the hearing also has the right to examine all documents and records presented to support the decision under appeal prior to the hearing, to be assisted or represented by an attorney or other persons, and bring witnesses.</p>

**QUESTIONS AND ANSWERS ABOUT THE FAIR HEARING PROCEDURES
FOR APPLICANT/PARTICIPANT *Continued***

<p>8. What are the responsibilities of an applicant/participant when requesting a Fair Hearing?</p>	<p>Applicants/participants are responsible for:</p> <ul style="list-style-type: none"> • Requesting assistance from CDPHE or the local agency in submitting a Fair Hearing request; • Requesting the Fair Hearing, verbally or in writing, within the sixty (60) day period; or • Requesting the Fair Hearing, verbally or in writing, within the fifteen (15) day period if services are to be considered for continuation; • Requesting a translator when it is necessary to understand the participant in the Fair Hearing. • Preparing for the Fair Hearing—examining all material, asking witnesses to be present, presenting testimony, etc.; • Attending the Fair Hearing; <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Sending a written notice stating that a Fair Hearing is no longer desired. <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Calling in or sending a written reason explaining why they were not at the scheduled hearing; • Keeping the CDPHE or the local agency informed of any address changes; • If desired, submitting a request for appeal no later than twenty (20) days after the Fair Hearing decision becomes effective.
<p>9. What are the responsibilities of the local agency when a participant/applicant requests fair hearing?</p>	<p>These responsibilities include:</p> <ul style="list-style-type: none"> • Informing individuals of their right to a fair hearing when application for Program • benefits or services is made and informing individuals of the availability of a Program representative to discuss questions, concerns, and to provide further information; • Informing individuals of denial, termination, suspension, or reduction in services, fifteen (15) days before the change in services occur, for the WIC Program; • Assisting individuals in filing a request for a fair hearing and in completing the Acknowledgement and Confirmation of a Fair Hearing Request (if assistance is requested). • Forwarding the request for a fair hearing to the CDPHE within twenty-four (24) hours; • Supplying CDPHE with a written statement describing the reason why the person is requesting a fair hearing, the reason why services have been denied, terminated, or reduced, and any other material relevant to the request including copies of participant notices and other materials relevant to the request. • Preparing and submitting background information on the request to the CDPHE; • Providing the person requesting information with any information that was used in determining eligibility or in changing benefits; • Assisting the CDPHE in finding a time and place convenient to the individual for a fair hearing; • Being present and giving testimony at the fair hearing; • Complying with the fair hearing decision.

Fair Hearing Procedures

