

3701-42-09 Administrative review of adverse action affecting vendor and applicant participation.

- (A) This rule prescribes the rights to administrative review of an applicant, or vendor that is subject to adverse action under this chapter of the Administrative Code.
 - (1) Except as provided under paragraphs (A)(2) and (A)(3) of this rule, a vendor or applicant may request an administrative review of the following:
 - (a) Denial of a vendor application pursuant to rule 3701-42-03 of the Administrative Code;
 - (b) Assessment of a civil money penalty pursuant to rule 3701-42-08 of the Administrative Code; and
 - (c) Termination of a vendor contract pursuant to rule 3701-42-08 of the Administrative Code unless otherwise prohibited by this chapter.
 - (2) A vendor or applicant may request an abbreviated review of the following:
 - (a) Denial of an application based on a finding that vendor or applicant lacks business integrity as required by paragraph (D)(11) of rule 3701-42-03 of the Administrative Code;
 - (b) Denial of an application based on a finding that vendor or applicant is not authorized to participate in the food assistance program;
 - (c) Denial of an application because the approval would exceed the maximum number of locations for the state, as determined in accordance with paragraph (E) of rule 3701-42-03 of the Administrative Code;
 - (d) Denial of an application that was submitted outside of the time frames during which applications are to be submitted as set forth in paragraph (B) of rule 3701-42-03 of the Administrative Code;
 - (e) Denial of an application based on a finding that the applicant or vendor had gross food sales of which fifty per cent or greater were derived from WIC sales.
 - (f) Termination of a contract based on a finding that there was a sale, assignment, or transfer of the contract or a change of ownership or operation under paragraphs (D) and (E) of rule 3701-42-04 of the Administrative Code;
 - (g) Disqualification based on a finding that the vendor or applicant was disqualified from the food assistance program for a trafficking conviction under paragraph (J) of rule 3701-42-08 of the Administrative Code;
 - (h) Disqualification based on a finding that the vendor or applicant was assessed a civil money penalty for hardship by the food assistance program; and
 - (i) Disqualification based on a finding that the vendor or applicant was assessed a civil money penalty for a mandatory sanction imposed by another state's

WIC agency.

- (3) There is no right to administrative, abbreviated or judicial review for the following:
 - (a) Expiration of a contract;
 - (b) Amendments to the contract made pursuant to paragraph (C) of rule 3701-42-04 of the Administrative Code ;
 - (c) The director's determination regarding participant access; and
 - (d) Termination of a contract pursuant to paragraph (J) of rule 3701-42-04 of the Administrative Code.
- (B) As used in this rule, "affected party" means anyone entitled to an administrative or abbreviated review under this rule. For any adverse action taken against a vendor or applicant, the director shall provide the affected party with written notification of the adverse action, the causes for the action, and the effective date of the action. Except as otherwise provided in this chapter of the Administrative Code, notification shall be provided at least fifteen days prior to the effective date of the action. For any action in which the vendor or applicant may request an administrative or abbreviated review under paragraphs (A)(1) and (A)(2) of this rule, the written notification shall be mailed in accordance with the following requirements:
 - (1) The notification required by paragraph (B) of this rule shall be provided by certified mail, return receipt requested, by hand-delivery or other delivery method that verifies receipt. If the notification is sent by certified mail return receipt requested, and is returned because of failure of delivery, the director shall send the notification by regular mail to the primary location listed on the application for WIC program authorization. In such a case, the notification shall be deemed to have been received on the third day after it is mailed.
 - (2) The notification shall state that the affected party may obtain administrative review or abbreviated review, whichever is applicable, under this rule if the request is received by the department within fifteen days after the affected party receives or is deemed to have received the notification. The notification also shall list the address to which a request for administrative or abbreviated review shall be sent or delivered.
- (C) A disqualification from the WIC program shall take effect on the effective date specified by the director in the notification issued under paragraph (B) of this rule regardless of the pendency of an administrative or abbreviated review under this rule. If a contract expires before the completion of the administrative or abbreviated review or the issuance of the decision under this rule, the decision shall apply to any contract that has been executed since the date of the notification issued under paragraph (B) of this rule.
- (D) The affected party may request an administrative review on an adverse action by sending a written request for review to the address specified in the notification required under paragraph (B)(2) of this rule. The request for administrative review must be received by the department within fifteen days after the affected party receives or is deemed to have received the notification of the adverse action. Upon receiving a timely request for administrative review, the director shall schedule the administrative review to be held before an impartial decision maker selected by the

director.

- (1) The impartial decision maker shall be licensed to practice law in Ohio and shall not have participated in any manner in the decision to take the adverse action against the affected party.
 - (2) The director shall mail or deliver notice of the date, time, and place of the administrative review to the affected party not less than ten days before the scheduled date.
 - (3) The affected party and the director each shall have one opportunity to reschedule the hearing date upon specific request to the impartial decision maker. Any other postponements shall be by agreement of the director, the affected party, and the impartial decision maker. If the postponement will prevent the decision from being issued within the ninety-day period required by paragraph (H) of this rule, the impartial decision maker shall deny the postponement unless the affected party waives its right to a decision within that period.
- (E) The director may issue subpoenas to compel the attendance of witnesses or the production of documents at the administrative review. Any such subpoenas shall be served in the manner prescribed by the "Ohio Rules of Civil Procedure." The director shall issue subpoenas upon request by the affected party if the request is received by the director no fewer than fourteen days before the date set for the hearing.
- (F) At an administrative review, the affected party shall have the opportunity to present its case orally or in writing and to confront and cross-examine adverse witnesses. The affected party shall have the opportunity to be represented by counsel, , and shall have the opportunity to review the case record before the administrative review. If the affected party is a corporation or a limited liability company, it must be represented by an attorney licensed to practice law in Ohio at the administrative review .
- (G) The affected party may request an abbreviated review by submitting a written request for review along with a response to the director's notification of adverse action. The written response along with any evidence the affected party would like considered during the review must be received by the department within fifteen days after the affected party receives or is deemed to have received the notification. The written response shall be reviewed by an individual designated by the director, who shall not have rendered the initial decision on the action, and whose determination is based solely on whether the director correctly applied federal or state statutes, regulations, rules, policies and procedures governing the WIC program, according to information provided to the vendor concerning the causes for the adverse action and the affected party's response.
- (H) The impartial decision maker of an administrative review or the director's designee of an abbreviated review shall prepare a written decision as to the validity of the director's action. The decision shall:
- (1) Rest solely on the evidence presented for the review and the statutory and regulatory provisions governing the WIC program;
 - (2) Describe the basis for the decision, but need not contain a full opinion or formal findings of fact and conclusions of law;

- (3) Be sent to the affected party by certified mail, return receipt requested, or hand delivery no more than ninety days after the date on which the department received the request for the review, unless the affected party has waived the right to receive a decision within ninety days as provided in paragraph (D)(3) of this rule. A copy of the decision must be provided to the director; and
- (4) Shall be final and not subject to further administrative proceedings.
- (I) The ninety day time frame provided in paragraph (H) of this rule is only for administrative purposes and does not provide a basis for overturning the decision if a decision is not made within the specified time frame.

Effective: 09/16/2016

Five Year Review (FYR) Dates: 06/30/2016 and 09/15/2021

CERTIFIED ELECTRONICALLY

09/06/2016

Date

Promulgated Under: 119.03
Statutory Authority: 3701.132
Rule Amplifies: 3701.132
Prior Effective Dates: 1/10/1992 (Emer.), 4/12/92, 4/1/94, 1/26/96, 6/7/99, 6/21/04, 10/1/09, 6/20/10, 4/1/11