

Chapter 246-790 WAC

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 246-790-020 | Rules—Applicability. [Statutory Authority: RCW 43.17.060, 43.21C.120 and 43.20A.550. WSR 91-01-098 (Order 3118), § 246-790-020, filed 12/18/90, effective 1/18/91.] Repealed by WSR 92-22-036 (Order 314), filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.70.120. | 246-790-080 | What do I need to know about WIC retailer contracts? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-080, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-080, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-080, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-080, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-080, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-080, filed 12/18/90, effective 1/18/91; WSR 90-12-112 (Order 2960), § 388-19-020, filed 6/6/90, effective 7/7/90; WSR 88-18-022 (Order 2681), § 388-19-020, filed 8/30/88; WSR 88-14-037 (Order 2638), § 388-19-020, filed 6/30/88.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120. |
| 246-790-050 | What is the WIC program? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-050, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-050, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-050, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-050, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-050, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-050, filed 12/18/90, effective 1/18/91; WSR 90-12-112 (Order 2960), § 388-19-005, filed 6/6/90, effective 7/7/90; WSR 88-14-037 (Order 2638), § 388-19-005, filed 6/30/88.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70-120. | 246-790-085 | What is expected of WIC retailers? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-085, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-085, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-085, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-085, filed 8/6/97, effective 9/6/97.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120. |
| 246-790-055 | Adoption by reference. [Statutory Authority: RCW 43.70.120. WSR 11-23-125, § 246-790-055, filed 11/21/11, effective 12/22/11.] Repealed by WSR 14-21-110, filed 10/16/14, effective 11/16/14. Statutory Authority: RCW 43.70.120. | 246-790-090 | How are WIC retailer contracts monitored? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-090, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-090, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-090, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-090, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-090, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-090, filed 12/18/90, effective 1/18/91; WSR 90-12-112 (Order 2960), § 388-19-030, filed 6/6/90, effective 7/7/90; WSR 88-14-037 (Order 2638), § 388-19-030, filed 6/30/88.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70-120. |
| 246-790-060 | What are WIC authorized foods? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-060, filed 2/13/06, effective 3/16/06. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-060, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-060, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-060, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-060, filed 12/18/90, effective 1/18/91; WSR 90-12-112 (Order 2960), § 388-19-015, filed 6/6/90, effective 7/7/90; WSR 88-14-037 (Order 2638), § 388-19-015, filed 6/30/88.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120. | 246-790-100 | What happens if I don't comply with the WIC retailer contract or requirements? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-100, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-100, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-100, |
| 246-790-065 | What is the process for getting a food WIC authorized? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-065, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-065, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-065, filed 6/9/00, effective 7/10/00.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120. | | |
| 246-790-070 | How do I become a WIC retailer? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-070, filed 2/13/06, effective 3/16/06; WSR 02- | | |

filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-100, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-100, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-100, filed 12/18/90, effective 1/18/91; WSR 90-12-112 (Order 2960), § 388-19-035, filed 6/6/90, effective 7/7/90; WSR 88-14-037 (Order 2638), § 388-19-035, filed 6/30/88.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.-120.

246-790-110 Notice of adverse action to WIC food vendor—Denial of food vendor application, contract nonrenewal. [Statutory Authority: RCW 43.70.120. WSR 92-22-036 (Order 314), § 246-790-110, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-110, filed 12/18/90, effective 1/18/91; WSR 88-14-037 (Order 2638), § 388-19-040, filed 6/30/88.] Repealed by WSR 97-16-117, filed 8/6/97, effective 9/6/97. Statutory Authority: RCW 43.70.120.

246-790-120 How do I appeal a WIC decision I don't agree with? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-120, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-120, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-120, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-120, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-120, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-120, filed 12/18/90, effective 1/18/91; WSR 90-12-112 (Order 2960), § 388-19-045, filed 6/6/90, effective 7/7/90; WSR 88-18-022 (Order 2681), § 388-19-045, filed 8/30/88; WSR 88-14-037 (Order 2638), § 388-19-045, filed 6/30/88.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

246-790-130 How does the WIC program get input from the food industry? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246. WSR 06-05-051, § 246-790-130, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-130, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-130, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. WSR 97-16-117, § 246-790-130, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-130, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. WSR 91-01-097 (Order 3117), recodified as § 246-790-130, filed 12/18/90, effective 1/18/91; WSR 88-18-022 (Order 2681), § 388-19-050, filed 8/30/88; WSR 88-14-037 (Order 2638), § 388-19-050, filed 6/30/88.] Repealed by WSR 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

WAC 246-790-001 Purpose. (1) The federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income through payment of cash grants to states that operate WIC food delivery systems. The department operates a WIC retail food delivery system in which WIC participants obtain authorized supplemental foods by submitting a food instrument to a retail business that has entered into a contract with the department to provide such service. The department's WIC operations comply with the most current version of 7 C.F.R. 246. Copies are available from the Department of Health, P.O. Box 47886, Olympia, WA 98504-7886, or by calling the WIC nutrition program at 800-841-1410.

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(2) The purpose of this chapter is to establish:

- (a) Qualifications a store must meet before the department will consider its application to be a WIC authorized vendor;
- (b) Requirements of all WIC authorized vendors;
- (c) Administrative appeal processes; and
- (d) An advisory committee.

[Statutory Authority: RCW 43.70.120. WSR 14-21-110, § 246-790-001, filed 10/16/14, effective 11/16/14.]

WAC 246-790-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Administrative appeal" means a formal proceeding where a vendor who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.

(2) "Applicant" means any vendor, or person representing a vendor, requesting authorization to participate in the WIC program by submitting a completed application for authorization and all corresponding documentation.

(3) "Approved infant formula wholesaler" means a supplier or manufacturer listed in the document titled "*Washington WIC Approved Infant Formula Suppliers.*"

(4) "Authorized vendor" means a vendor who has met the vendor selection criteria as required by the United States Department of Agriculture (USDA) and the department, received training on WIC program requirements, and entered into a fully executed contract with the department.

(5) "Business integrity" means the store's uncompromising commitment and adherence to honesty, truthfulness, and accuracy in interactions with the department, customers, creditors, suppliers, associates, and the public at large.

(6) "C.F.R." means Code of Federal Regulations.

(7) "Cash value voucher" means a WIC food instrument used by a participant to obtain fresh fruits and vegetables.

(8) "Civil monetary penalty" means a sum of money imposed by the WIC program for noncompliance with program requirements.

(9) "Contract" means the department's standard WIC contract form that, once completed and signed by both parties, becomes the written legal document binding a vendor and the department to designated terms and conditions and authorizes the vendor to transact food instruments.

(10) "Cost containment" means the process of controlling expenses required to operate the WIC program.

(11) "Department" means the Washington state department of health.

(12) "Disqualification" means the act of revoking the authorization and terminating the contract of an authorized vendor for a specific period of time or permanently for non-compliance with WIC program requirements.

(13) "EBT (electronic benefits transfer)" means the electronic system that allows a participant to authorize transfer of their government food benefits from a federal account to a vendor account to pay for products they buy.

(14) "Food instrument" means the method of payment used by a participant to obtain WIC approved foods. This method may include WIC checks, cash value vouchers, or EBT payment.

(10/16/14)

(15) "*Minimum Inventory Requirements*" means the document created, maintained and supplied by the department that lists the required minimum stock levels of department authorized foods a store must maintain on premises at all times.

(16) "Notice of violation" means a written document given to a vendor when the department determines the vendor has not complied with program requirements, federal WIC regulations, this chapter, or the contract.

(17) "Participant" means a woman, infant or child receiving WIC benefits.

(18) "Participant access" means the ability of WIC participants to purchase authorized WIC foods, with consideration made to factors including, but not limited to, geography, population density and participant dietary needs, as determined by the department.

(19) "Peer group" means a group of authorized vendors that share certain characteristics and can be expected to have similar business practices and prices. Peer group criteria and assignments are determined by the department. Vendors in the same peer group are subject to the same WIC maximum reimbursement levels. Peer group criteria include, but are not limited to, characteristics such as geography or size.

(20) "SNAP" means the federal supplemental nutrition assistance program. SNAP was previously known as the food stamp program.

(21) "Variety" means a collection of similar, but not identical, foods and products. This may include different brands, sizes or flavors of similar foods and products.

(22) "Vendor," also known as "retailer," means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC approved foods to WIC participants.

(23) "Vendor selection criteria" means the federally approved standards the department uses to select vendors for WIC authorization.

(24) "Wholesale supplier" means a business licensed to sell food and other goods at prices lower than retail to a retail vendor for resale to customers.

(25) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246.

[Statutory Authority: RCW 43.70.120, WSR 14-21-110, § 246-790-010, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-010, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246, WSR 06-05-051, § 246-790-010, filed 2/13/06, effective 3/16/06; WSR 02-11-107, § 246-790-010, filed 5/20/02, effective 6/20/02. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.12, 15, and 18. WSR 00-13-009, § 246-790-010, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120, WSR 97-16-117, § 246-790-010, filed 8/6/97, effective 9/6/97; WSR 92-22-036 (Order 314), § 246-790-010, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.17.060, 43.21C.120 and 43.20A.550, WSR 91-01-098 (Order 3118), § 246-790-010, filed 12/18/90, effective 1/18/91.]

WAC 246-790-061 Contract procedure. (1) To become an authorized vendor and receive a contract, a retail business must apply to the department as provided under WAC 246-790-075.

(2) The department shall make available to the applicant copies of the contract and all applicable regulations, policies, and guidelines current at the time of application.

(3) The department will consider an application only if the applicant complies with WAC 246-790-075 and 246-790-077.

(4) If the applicant meets the qualifications or the department has determined that including the applicant's store in the program is necessary to assure participant access, the department may offer a contract to the applicant. An applicant that has an application declined may appeal the department's decision as provided in WAC 246-790-125.

(5) The authorized vendor will be assigned to the department's vendor peer group system as appropriate. The peer group assignment establishes the vendor's maximum allowable reimbursement level.

(6) If authorized, the applicant will become an authorized vendor for the term of the contract, provided the authorized vendor continues to comply with requirements in WAC 246-790-086.

(7) Vendors can request an administrative appeal for certain adverse actions by the department in connection with the contract as specified in the contract and provided in WAC 246-790-125.

(8) The department may temporarily suspend acceptance of applications when in the best interest of program administration.

[Statutory Authority: RCW 43.70.120, WSR 14-21-110, § 246-790-061, filed 10/16/14, effective 11/16/14.]

WAC 246-790-075 Vendor application. (1) To be considered for WIC vendor authorization an applicant must:

(a) Be a food vendor that meets or exceeds all selection criteria listed in WAC 246-790-077;

(b) Apply to the department using department forms;

(c) Provide complete and truthful information in the application;

(d) Allow the department to inspect the store; and

(e) Participate in training on WIC program requirements.

(2) If the department declines an application, the applicant may reapply no sooner than six months afterwards.

(3) Before declining an application for the first time, the department shall give an applicant thirty days notice to submit missing materials or information, if such is the basis for denial.

(4) An applicant may request an exemption to the vendor selection criteria in WAC 246-790-077.

(a) The request must:

(i) Be in writing, dated, and signed by the applicant;

(ii) Explain the reasons for the request in detail;

(iii) Demonstrate how the requested exemption is consistent with the requirements, purpose and objectives of the program; and

(iv) List, in the body of the request, the physical address of the applicant.

(b) The department may grant the requested exemption if the applicant's request conforms to (a) of this subsection and the department determines that allowing the exemption is consistent with the requirements, purpose, and objectives of the program and is necessary to assure participant access.

(c) The department shall respond in writing to a request for exemption with its decision to grant or deny the request.

[Statutory Authority: RCW 43.70.120. WSR 14-21-110, § 246-790-075, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-075, filed 11/21/11, effective 12/22/11.]

WAC 246-790-077 Vendor selection criteria. At the time of application, applicants must meet the following criteria; all authorized vendors must continue to meet the following criteria throughout the period of authorization:

(1) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the "WIC approved infant formula suppliers" document.

(2) Purchase WIC approved foods directly from a wholesale supplier or other nonretail supplier, such as a food manufacturer, wholesaler, dairy, or fresh produce supplier.

(3) Maintain in store at all times the minimum quantities and varieties of WIC approved foods, including infant formula, as required by the "WIC minimum inventory requirements" document. Expired or spoiled foods do not count as inventory.

(4) Maintain an active electronic mailing address to be used for department communications.

(5) Be primarily engaged in the retail sale of food products and general merchandise as a full line grocery store. A full line grocery store carries the designated products in the following categories on a continuous basis. These requirements are separate from the "minimum inventory requirements."

(a) Canned foods: At least twenty total varieties of canned foods such as fruit, vegetables, beans, meat, poultry, chili, soup, stew, broth or sauce (excluding canned infant formula, fish, juice or other beverages).

(b) Frozen foods: At least ten total varieties of frozen foods such as dinners, pizza, fruit, or vegetables (excluding frozen juice, meat, seafood, poultry, desserts, snacks or novelties).

(c) Dairy products: At least ten total varieties of refrigerated dairy products such as butter, yogurt, cottage cheese, string cheese, cream cheese, whipped cream, sour cream or ice cream (excluding milk, WIC approved cheeses, infant formula or individual serving size packages).

(d) Frozen and unfrozen meat, seafood, and poultry: At least six total varieties (all unbreaded) of frozen meat, unfrozen meat, frozen seafood, unfrozen seafood, frozen poultry, or unfrozen poultry including at least two varieties of meat and at least two varieties of poultry (excluding precooked and deli style products).

(e) Fresh fruit and vegetables: At least twenty total varieties of fresh fruits or fresh vegetables including at least five varieties of fruits and at least five varieties of vegetables. The store must have a minimum of five linear feet of refrigerated display space for its produce.

(f) Bread and tortillas: At least ten total varieties of bread products such as bread, rolls, bagels, and tortillas. Breads and tortillas exclude muffins, pastries, cookies, cakes, crackers, or other snack foods.

(g) Grains, pasta, and dried beans: At least ten total varieties of grains, pasta, or beans such as oatmeal, rice, bulgur, pasta, beans, peas, or lentils (excluding bread, canned products or other breakfast cereals).

(h) Baby products: At least ten total varieties of baby products such as diapers, baby bottles, baby wipes, baby

shampoo, baby lotion, or baby bottles (excluding infant formula).

(i) Household cleaners and laundry products: At least ten total varieties of household cleaning or laundry products used for cleaning kitchens, dishes, bathrooms, windows, floors, furniture, clothes, or fabrics.

(j) Health care products: At least twenty total varieties of health care products such as pain relievers, cold/cough/allergy products, digestive aids, dental care products, feminine hygiene products, or toilet paper.

(6) Maintain prices for WIC approved foods that are at or below the limits established by the WIC nutrition program's current price management system.

(7) Be currently authorized and participating as a vendor in the supplemental nutrition assistance program (SNAP).

(8) Receive or expect to receive less than fifty percent in annual food sales revenue from WIC transactions.

(9) Be open for business at least eight hours per day, six days per week.

(10) Submit to the department, upon request, sales information including gross sales and tax exempt food sales.

(11) Have electronic cash registers capable of producing receipts that include:

- (a) The store name;
- (b) Food product name and description;
- (c) Quantity sold, price of each item;
- (d) Total actual purchase price; and
- (e) The date of sale.

(12) Post food prices for all foods, including fresh fruits and vegetables, on each item, or on the shelf next to the item.

(13) Maintain a business model that promotes business integrity. In its determination of business integrity, the department's consideration will include, but is not limited to, the following:

(a) Providing complete and truthful information in the application, correspondence, and other documents requested by the department.

(b) Ensuring all current owners, officers, managers, or representatives have had no criminal convictions or civil judgments entered against them in the last six years for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice.

(c) Having no uncorrected violation(s) from a previous contracting period, current disqualification, or outstanding claims owed to the department.

(d) Not being currently disqualified from the SNAP or having a civil money penalty levied instead of SNAP disqualification.

(e) Disclosure of any third party, agent or broker involved in any part of the application process.

(f) Where a store has an outstanding WIC or SNAP sanction or claim, not attempting to avoid sanction or claim by reapplying after:

(i) Conveying any legal interest in a store to a relative or other person with whom the owner or owners have a financial relationship.

(ii) Accepting any legal interest in a store from a relative by blood or marriage or other person with whom the owner or owners have a financial relationship.

(iii) Reorganizing the business to another form, such as, but not limited to, corporation, general partnership, limited partnership, sole proprietorship, and limited liability company.

(14) When evaluating business integrity, the department may take into account whether a store subject to a sanction or claim has been sold for less than fair market value.

(15) Not own, have previously owned, or have a legal interest in a business that has a WIC sanction currently in effect. This includes any business for which a vendor may be applying.

(16) Use a recordkeeping system that complies with the Washington state department of revenue requirements in WAC 458-20-254, maintains inventory records for Federal tax reporting, preserves original documents and records organized in a logical way that conforms to acceptable accounting methods and procedures.

(17) Comply with all federal and state nondiscrimination laws, regulations, and policies. This includes, but is not limited to, 7 C.F.R. Parts 15, 15a, and 15b and RCW 49.60.030.

(18) Comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336.

(19) Comply with all other federal, state, county, and city required licenses, permits and certifications.

(20) Exemptions.

(a) Oregon and Idaho vendors located on the Washington border and that serve Washington residents are exempt from Washington state business license, permit, and certification requirements. They shall meet all applicable business license, permit and certification requirements for their respective state.

(b) An "infant formula only provider" is exempt from the full line grocery store requirement. Infant formula only provider means an authorized vendor or pharmacy for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.

[Statutory Authority: RCW 43.70.120, WSR 14-21-110, § 246-790-077, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-077, filed 11/21/11, effective 12/22/11.]

WAC 246-790-086 Requirements of an authorized vendor. (1) Authorized vendors shall:

(a) Comply with the terms and conditions of their contracts;

(b) Continue to meet the vendor selection criteria in WAC 246-790-077 throughout the term of the contract;

(c) Notify the department prior to ownership changes;

(d) Notify the department prior to store closures;

(e) Notify the department prior to changing telephone numbers or electronic mailing addresses;

(f) Safeguard WIC client-related data; and

(g) Comply with corrective action requested by the department or the United States Department of Agriculture (USDA).

(2) An authorized vendor may reapply at the time of contract expiration; however, neither the department nor the vendor has an obligation to enter into a subsequent contract.

[Statutory Authority: RCW 43.70.120, WSR 14-21-110, § 246-790-086, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-086, filed 11/21/11, effective 12/22/11.]

(10/16/14)

WAC 246-790-105 Failure to meet WIC program requirements. (1) When an authorized vendor is out of compliance with the requirements of 7 C.F.R. 246.12, this chapter, or the contract, the department will initiate appropriate enforcement action which may include notices of violation, unless the department determines that notification would compromise the investigation; claims for reimbursement; and sanctions as set forth in the applicable federal regulations or the contract.

(2) Where a violation requires disqualification, the department may impose a civil penalty in lieu of disqualification if the department determines, in its sole discretion and in accordance with the department's participant access criteria, that the continued operation of the store is necessary to assure adequate participant access.

(3) An authorized vendor's contract is terminated on the effective date of a disqualification.

(4) Where a sanction requires a pattern of violations, a "pattern" is established by more than one documented incident of the same type of violation within a contract period.

(5) A disqualified vendor may reapply at the end of the disqualification period.

(6) The department will document complaints against authorized vendors and any resulting corrective action.

(7) The effective date of all sanctions is twenty-eight days after authorized vendor receives notice of the department's decision to impose sanctions, unless otherwise specified in this chapter, the contract, or in the department's notice. The department, in its sole discretion, may temporarily suspend the contract in lieu of termination to resolve any uncertain matters including appeals.

[Statutory Authority: RCW 43.70.120, WSR 14-21-110, § 246-790-105, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-105, filed 11/21/11, effective 12/22/11.]

WAC 246-790-125 Vendor appeal process. (1) The following department actions may not be appealed:

(a) The validity or appropriateness of the department's limiting criteria or the vendor selection criteria for minimum variety and quantity of WIC approved foods, business integrity, and current SNAP disqualification or civil monetary penalty instead of disqualification;

(b) The validity or appropriateness of the department's selection criteria for competitive price including, but not limited to, the peer group criteria and the criteria used to identify above fifty percent vendors;

(c) The validity or appropriateness of the department's participant access criteria and the department's participant access determinations;

(d) The department's determination whether or not to include an infant formula manufacturer, wholesaler, or distributor on the approved infant formula provider list;

(e) The validity or appropriateness of the department's prohibition of incentive items;

(f) The department's determination whether to notify an authorized vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established;

(g) The department's determination whether the authorized vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the authorized

vendor was not aware of, did not approve of, and was not involved in the violation;

(h) The expiration of the authorized vendor contract;

(i) Disputes regarding food instrument payments and claims (other than the opportunity to justify or correct an overcharge or other error);

(j) Disqualification as a result of a disqualification from SNAP.

(2) Except as provided in WAC 246-790-125(1), applicant or authorized vendor may file an appeal for the department's decision to decline an application, terminate a contract, impose a sanction, or other adverse action.

(3) The request for appeal must be filed in conformance with the following:

(a) A request for appeal must be filed with the Department of Health, Adjudicative Service Unit (ASU), P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the department's WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886;

(b) The request must be in writing, state the issue, contain a summary of the applicant or authorized vendor's position on the issue, and include a copy of the department's notice of adverse action;

(c) If applicable, a notice of appearance by the applicant or authorized vendor's attorney;

(d) The request must be filed no later than twenty-eight days from the date the applicant or authorized vendor receives the notice unless otherwise specified in the department's notification of adverse action.

(4) Proceedings under this chapter shall be in accordance with chapter 246-10 WAC as modified by the following:

(a) Within thirty days from the date ASU receives the request for appeal, the ASU or other designee of the secretary shall approve or deny the request. The notice of approval shall include a scheduling order setting forth a date, time, and place for a prehearing conference and the hearing.

(b) Without discovery request by the appellant, the department shall deliver its record of the decision to the appellant within thirty days from the issuance of the scheduling order.

(c) At the time provided in the scheduling order, the presiding officer shall conduct a telephonic prehearing conference. Following the prehearing conference, the presiding officer will issue a prehearing order defining conduct at hearing, which will establish the procedure for the hearing.

(d) At the time provided in the scheduling order, the presiding officer will conduct an in-person hearing in which the appellant and program will each have an opportunity to present its case and cross-examine adverse witnesses.

(e) The presiding officer shall decide the case based solely on whether the program has correctly applied federal and state statutes, regulations, policies, and procedures governing the WIC program, according to the evidence presented at the review.

(5) If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.

[Statutory Authority: RCW 43.70.120, WSR 14-21-110, § 246-790-125, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-125, filed 11/21/11, effective 12/22/11.]

WAC 246-790-127 Vendor advisory committee. (1)

The department shall facilitate a WIC vendor advisory committee.

(2) The committee shall function in an advisory capacity.

(3) Participation is voluntary and there is no compensation.

(4) Invitations for participation may include authorized WIC vendors, retail grocer associations, food manufacturers, wholesale suppliers, and retail checker labor unions.

[Statutory Authority: RCW 43.70.120, WSR 14-21-110, § 246-790-127, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-127, filed 11/21/11, effective 12/22/11.]