

Chapter 246-780 WAC

FARMERS' MARKET NUTRITION PROGRAM

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

246-780-050	Notice of adverse action to a FMNP contractor and/or grower. [Statutory Authority: RCW 43.70.120, WSR 96-01-085, § 246-780-050, filed 12/18/95, effective 1/18/96.] Repealed by WSR 00-07-129, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248.
246-780-070	Contractor/grower-continued participation pending dispute resolution. [Statutory Authority: RCW 43.70.120, WSR 96-01-085, § 246-780-070, filed 12/18/95, effective 1/18/96.] Repealed by WSR 00-07-129, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248.

WAC 246-780-001 What is the purpose of the farmers' market nutrition program? (1) The purpose of the farmers' market nutrition program (FMNP) is to:

(a) Provide access to locally grown, fresh, nutritious, unprepared fruits and vegetables to women, infants over five months of age, and children, who participate in the special supplemental nutrition program for women, infants, and children; and

(b) Expand the awareness and use of farmers' markets where consumers can buy directly from the grower.

(2) The FMNP is administered by the Washington state department of health.

[Statutory Authority: RCW 43.70.700, WSR 10-21-068, § 246-780-001, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-001, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120, WSR 96-01-085, § 246-780-001, filed 12/18/95, effective 1/18/96.]

WAC 246-780-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly implies otherwise.

(1) "Authorized" or "authorization" means an applicant has met the selection criteria and has been issued a signed

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contract with the department allowing participation in the FMNP.

(2) "Authorized farm store" means a store or stand authorized by the department which is located at the site of agricultural production and is owned, leased, rented, or share-cropped and operated by an authorized grower where produce is sold directly to consumers.

(3) "Authorized farmers' market" means a farmers' market authorized by the department that has a minimum of five or more authorized growers who assemble at a defined location for the purpose of selling their produce directly to consumers.

(4) "Authorized grower" means an individual authorized by the department who grows a portion of the produce that they sell at a Washington state authorized farmers' market or authorized farm store.

(5) "Broker" or "wholesale distributor" means an individual or business who exclusively sells produce grown by others. There is an exception for an individual employed by an authorized grower or nonprofit organization to sell produce on behalf of authorized growers.

(6) "Check" means a negotiable financial instrument issued by the FMNP to clients to purchase eligible foods.

(7) "Contract" means a written legal document binding the contractor and the department to designated terms and conditions.

(8) "Cut herbs" means fresh herbs with no medicinal value that are not potted.

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

(10) "Disqualification" means terminating the contract of an authorized farmers' market, authorized grower or authorized farm store for noncompliance with FMNP requirements.

(11) "Eligible foods" means locally grown, unprocessed (except for washing), fresh, nutritious fruits, vegetables, and cut herbs.

(12) "FMNP" means the farmers' market nutrition program.

(13) "Local WIC agency" means the contracted agency or clinic where a client receives WIC services and farmers' market checks.

(14) "Locally grown" means Washington grown or grown in an adjacent county of Idaho or Oregon.

(15) "Market manager" means an individual designated by the farmers' market management or board member who is responsible for overseeing the market's participation in the FMNP.

(16) "Trafficking" means the buying or exchanging of farmers' market checks for cash, drugs, or alcohol.

(17) "WIC" or "WIC nutrition program" means the federally funded special supplemental nutrition program for

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women, infants, and children administered in Washington state by the department of health.

(18) "Client" means a woman, infant, or child receiving FMNP benefits.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-010, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-010, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120. WSR 96-01-085, § 246-780-010, filed 12/18/95, effective 1/18/96.]

WAC 246-780-020 How does an applicant farmers' market become authorized to participate in the farmer's market nutrition program? (1) To become authorized to participate in the FMNP, an applicant must:

(a) Apply as a farmers' market on a form provided by the department;

(b) Meet the selection criteria in subsection (2) of this section;

(c) Complete training on FMNP requirements; and

(d) Receive a contract from the department signed by both the department and the applicant.

(2) Farmers' market selection criteria. The applicant must:

(a) Have a designated market manager on-site during operating hours;

(b) Have been in operation at least one year. The one-year requirement may be waived by the department based on capacity and need;

(c) Be located within twenty miles of the local WIC agency;

(d) Have at least five authorized growers participating in the farmers' market each year;

(e) Agree to comply with training sessions and monitor visits; and

(f) Agree to comply with all terms and conditions specified in the contract.

(3) The department is not required to authorize all applications. Selection is also based on community need.

(4) An authorized farmers' market must reapply at the end of the current contract; however, neither the department nor the participant has an obligation to renew a contract.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-020, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-020, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120. WSR 96-01-085, § 246-780-020, filed 12/18/95, effective 1/18/96.]

WAC 246-780-022 What is expected of an authorized farmers' market? The authorized farmers' market must:

(1) Comply with the FMNP requirements and the terms and conditions of their contract;

(2) Accept training and technical assistance on FMNP requirements from department staff;

(3) Provide in person training to authorized growers, market employees and volunteers on FMNP requirements including, but not limited to: Eligible foods, check redemption procedures, civil rights requirements and the complaint process;

(4) Be accountable for the actions of employees and volunteers;

(5) Keep a current list of authorized growers, including the authorized grower's name, business address, telephone

number, and crops to be sold during the farmers' market season. The authorized farmers' market must provide this list to the department on request;

(6) Ensure that FMNP checks are accepted only by authorized growers for locally grown eligible foods;

(7) Report to the department anyone that accepts FMNP checks without authorization from the department;

(8) Refuse to process any FMNP checks taken by unauthorized individuals;

(9) Ensure FMNP checks are stamped with the appropriate market and authorized grower identification numbers;

(10) Ensure authorized growers have and display the "WIC Farmers' Market Checks Welcome Here" sign each day;

(11) Comply with federal and state nondiscrimination laws;

(12) Ensure that clients receive the same courtesies as other customers;

(13) Provide the department, upon request, with any information it has available regarding its participation in the FMNP;

(14) Keep client information confidential;

(15) Allow the department to monitor the authorized farmers' market for compliance with FMNP requirements;

(16) Notify the department immediately if authorized farmers' market operations cease; and

(17) Notify the department immediately of any authorized farmers' market, authorized grower or authorized farm store suspected of noncompliance with FMNP requirements.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-022, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-022, filed 3/22/00, effective 4/22/00.]

WAC 246-780-025 How does an applicant grower become authorized to participate in the farmers' market nutrition program? (1) To become authorized to participate in the FMNP an applicant must:

(a) Apply as a grower on a form provided by the department;

(b) Meet the grower selection criteria in subsection (2) of this section;

(c) Complete training on FMNP requirements provided by either an authorized farmers' market manager or the department; and

(d) Receive a contract from the department signed by both the department and the applicant.

(2) Grower selection criteria. The applicant must:

(a) Grow a portion of the produce they have for sale;

(b) Sell locally grown produce at either the authorized farmers' market or the authorized farm store, or both as identified on the completed application; and

(c) Agree to follow the terms and conditions of the grower contract.

(3) The department is not required to authorize all applications. Selection is also based on community need.

(4) An authorized grower must reapply at the end of the current contract; however, neither the department nor the participant has an obligation to renew a contract.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-025, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and

7 C.F.R. 248. WSR 00-07-129, § 246-780-025, filed 3/22/00, effective 4/22/00.]

WAC 246-780-026 How does an applicant farm store become authorized to participate in the farmers' market nutrition program? (1) To become authorized to participate in the FMNP an applicant must:

(a) Apply as a farm store on a form provided by the department;

(b) Meet the farm store selection criteria in subsection (2) of this section;

(c) Complete training on FMNP requirements provided by either an authorized farmers' market manager or the FMNP; and

(d) Receive a contract from the department signed by both the department and the applicant.

(2) Farm store selection criteria. The applicant must:

(a) Be located at the site of agricultural production and grow, at that location, a portion of the produce they have for sale;

(b) Sell locally grown produce; and

(c) Agree to follow the terms and conditions of the contract.

(3) An authorized farm store must reapply at the end of the current contract; however, neither the department nor the participant has an obligation to renew a contract.

(4) The department is not required to authorize all applicants. Priority for authorization will be given to applicants located in areas without an authorized farmers' market.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-026, filed 10/15/10, effective 11/15/10.]

WAC 246-780-028 What is expected of an authorized grower or an authorized farm store? The authorized grower or authorized farm store must:

(1) Comply with the FMNP requirements and the terms and conditions of the contract;

(2) Accept training and technical assistance on FMNP requirements and ensure that all persons working or volunteering with the authorized grower or at the authorized farm store at the location(s) specified in the contract are trained as well. Training may be provided by either a farmers' market manager or the department and includes, but is not limited to: Eligible foods, check processing and redemption procedures, civil rights requirements and the complaint process;

(3) Be held accountable regarding FMNP purchases and requirements for the actions of all persons working or volunteering with the authorized grower or at the authorized farm store at the location(s) specified in the contract;

(4) Accept FMNP checks only for eligible foods;

(5) Accept FMNP checks only at authorized farmers' markets or at authorized farm stores at the location(s) specified in the contract;

(6) Accept FMNP checks within the valid dates of the FMNP and redeem checks by the date imprinted on the check;

(7) Display the "WIC Farmers' Market Checks Welcome Here" sign when selling eligible foods at authorized farmers' markets and authorized farm stores;

(8) Provide clients with the full amount of product for the value of each FMNP check;

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(9) Charge clients the same prices as other customers;

(10) Make produce available to clients that is the same quality as that offered to other customers;

(11) Comply with federal and state nondiscrimination laws;

(12) Treat clients as courteously as other customers;

(13) Cooperate with department staff in monitoring for compliance with FMNP requirements and provide information on request;

(14) Reimburse the department for mishandled FMNP checks;

(15) Not collect sales tax on FMNP check purchases;

(16) Not seek reimbursement from clients for checks not paid by the department;

(17) Not give cash back for purchases less than the value of the FMNP checks; and

(18) Not trade, barter or otherwise use farmers' market checks to purchase foods from other growers or pay for market fees or other business costs.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-028, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-028, filed 3/22/00, effective 4/22/00.]

WAC 246-780-030 What kind of foods can clients buy with farmers' market nutrition program checks? (1) Clients can use FMNP checks to buy locally grown, unprocessed (except for washing), fresh fruits, vegetables, and cut herbs.

(2) Federal regulations do not allow clients to buy the following items with FMNP checks:

(a) Baked goods;

(b) Cheeses;

(c) Cider;

(d) Crafts;

(e) Dairy products;

(f) Dried fruits;

(g) Dried herbs;

(h) Dried vegetables;

(i) Eggs;

(j) Flowers,

(k) Fruit juices;

(l) Honey;

(m) Jams;

(n) Jellies;

(o) Meats;

(p) Nuts;

(q) Potted herbs;

(r) Seafood;

(s) Seeds; and

(t) Syrups.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-030, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-030, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120. WSR 96-01-085, § 246-780-030, filed 12/18/95, effective 1/18/96.]

WAC 246-780-040 What happens if an authorized farmers' market, authorized grower or authorized farm store does not comply with FMNP requirements? (1) Authorized farmers' markets, authorized growers or authorized farm stores who do not comply with FMNP require-

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ments are subject to sanctions, such as monetary penalties, or disqualification. Prior to disqualification, the department must consider whether the disqualification would create undue hardships for clients.

(2) Noncompliance includes, but is not limited to:

(a) Failing to display the "WIC Farmers' Market Checks Welcome Here" sign each day when selling at authorized farmers' markets or authorized farm stores;

(b) Providing unauthorized food or nonfood items to clients in exchange for the FMNP check;

(c) Charging the department for foods not received by the client;

(d) Providing rain checks or credit to clients in an FMNP transaction;

(e) Giving change to clients if the purchase is less than the value of the FMNP check;

(f) Accepting FMNP checks without having a signed contract with the department;

(g) Accepting FMNP checks at unauthorized farmers' markets or unauthorized farm stores;

(h) Collecting sales tax on FMNP purchases;

(i) Seeking reimbursement from clients for checks not paid by the department; and

(j) Violating the rules of this chapter or the provisions of the contract.

(3) Authorized farmers' markets, authorized growers, and authorized farm stores found in noncompliance will be notified by the department in writing.

(4) If an authorized farmers' market, authorized grower or authorized farm store is subsequently found in noncompliance for the same or a similar reason, the department may impose sanctions, such as monetary penalties or disqualification, without giving the opportunity to correct the problem.

(5) When the department notifies an authorized farmers' market, authorized grower or authorized farm store of a pending adverse action that affects their authorization status in the FMNP, the department must mail written notice at least fifteen days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting an appeal hearing.

(6) The department may deny payment to an authorized grower or an authorized farm store for mishandling FMNP checks.

(7) The department may seek reimbursement from an authorized grower or authorized farm store for payments made on mishandled FMNP checks.

(8) Monetary penalties must be paid to the department within the time period specified in the notice. The department may refer an authorized grower or authorized farm store who fails to pay within the specified time period to a commercial collection agency.

(9) An authorized farmers' market, authorized grower or authorized farm store that has been disqualified from the FMNP may reapply at the end of the disqualification period.

(10) Any trafficking in FMNP checks in any amount must result in disqualification.

(11) An authorized farmers' market, authorized grower or authorized farm store who commits fraud or other unlawful activities are liable for prosecution according to FMNP regulations. (7 C.F.R. 248.10(k).)

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-040, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-040, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120. WSR 96-01-085, § 246-780-040, filed 12/18/95, effective 1/18/96.]

WAC 246-780-060 How does an authorized farmers' market, authorized grower, an authorized farm store or an applicant appeal a department decision? (1) An authorized farmers' market, authorized grower, authorized farm store or an applicant has a right to appeal denial of payment, denial of an application, monetary penalty or disqualification from the FMNP. Expiration or nonrenewal of a contract is not subject to appeal.

(2) If the action being appealed is a disqualification of an authorized farmers' market, the authorized farmers' market must cease processing farmers' market checks for all authorized growers effective the date specified in the sanction notice.

(3) If the action being appealed is a disqualification of an authorized grower or authorized farm store, the authorized grower or authorized farm store must cease accepting FMNP checks effective the date specified in the sanction notice. In addition, the authorized farmers' market must cease processing checks for the affected authorized grower. Payments must not be made for any FMNP checks submitted for payment during a period of disqualification.

(4) The department may, at its discretion, permit the authorized farmers' market, authorized grower or authorized farm store to continue participating in the FMNP pending the appeal hearing outcome. The authorized farmers' market, authorized grower or authorized farm store may be required to repay funds for FMNP checks redeemed while waiting for the outcome of the hearing, depending on the hearing outcome.

(5) A request for an appeal hearing must be in writing and must:

(a) State the issue raised;

(b) Contain a summary of the authorized farmers' market's, authorized grower's, authorized farm store's or applicant's position on the issue, indicating whether each charge is admitted, denied, or not contested;

(c) State the name and address of the authorized farmers' market, authorized grower, authorized farm store or applicant requesting an appeal hearing;

(d) State the name and address of the attorney representing the authorized farmers' market, authorized grower, authorized farm store or applicant if any;

(e) State the need for an interpreter or other special accommodations, if necessary; and

(f) Have a copy of the notice from the department attached.

(6) A request for an appeal must be filed at the Department of Health, Adjudicative Clerk's Office, P.O. Box 47879, Olympia, WA 98504-7879. The request must be made within twenty-eight days of the date the authorized farmers' market, authorized grower, authorized farm store or applicant received the department's notice.

(7) The decision concerning the appeal must be made within sixty days from the date the request for an appeal hearing was received by the adjudicative clerk's office. The time may be extended if all parties agree.

[Statutory Authority: RCW 43.70.700. WSR 10-21-068, § 246-780-060, filed 10/15/10, effective 11/15/10. Statutory Authority: RCW 43.70.120 and 7 C.F.R. 248. WSR 00-07-129, § 246-780-060, filed 3/22/00, effective 4/22/00. Statutory Authority: RCW 43.70.120. WSR 96-01-085, § 246-780-060, filed 12/18/95, effective 1/18/96.]