

WSR 25-08-094

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 2, 2025, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-061.

Title of Rule and Other Identifying Information: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children (WIC)—Vendor requirements.

Hearing Location(s): On May 6, 2025, at 11:00 a.m. Register in advance for this webinar at https://us02web.zoom.us/webinar/register/WN_stXAXugaSTOMQXU1zfJSug. After registering, you will receive a confirmation email containing information about joining the webinar. This rules hearing will be held virtually only. Written comments will also be accepted.

Date of Intended Adoption: May 13, 2025.

Submit Written Comments to: Dax Tate, P.O. Box 47886, Olympia, WA 98504-7886, email dax.tate@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview/>, beginning the date and time of this filing, by May 6, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Dax Tate, phone 564-999-1579, TTY 711, email dax.tate@doh.wa.gov, by April 21, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of health (DOH) administers WIC, which allows qualifying individuals to access nutritious foods through participating vendors, as well as nutrition education. The purpose of the proposed rule changes is to encourage more vendors to participate in the Washington (WA) WIC program.

The proposal includes removing restrictions against A-50 vendors (vendors who make 50 percent or more of their annual food sales revenue from WIC transactions). The anticipated effect of this change is that A-50 stores would be eligible to join the WA WIC program, potentially increasing the vendor pool.

The proposed rule also removes certain requirements from WAC which are addressed or will be reproduced in the WIC vendor agreement, with the anticipated effect being increased flexibility for WIC vendors and for the WA WIC program to quickly respond to changes in United States Department of Agriculture (USDA) requirements. These changes include:

- Removal of the "full line grocery" requirement. This is largely duplicative of the existing WIC minimum inventory requirements.
- Removal of pricing requirements which are already included in the vendor agreement.
- Removal of minimum operating hours requirement which will be replaced in the vendor agreement.

Other proposed changes ensure that rule language is accurate and equitable, with no anticipated effects on program activities.

Reasons Supporting Proposal: Recent innovations in the WIC program, including electronic transactions, have reduced the need for certain requirements intended to safeguard against fraudulent activity. Removing these restrictions, especially the prohibition against A-50 vendors, will expand the pool of potential vendors and increase local options for WIC participants.

Shifting other requirements, such as the minimum inventory requirements, from WAC to the vendor agreement form, will enable the WA

WIC program to respond more quickly to changes made at the federal level, including anticipated changes to make the minimum inventory requirements more culturally responsive.

Statutory Authority for Adoption: RCW 43.70.120.

Statute Being Implemented: RCW 43.70.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Dax Tate, 101 Israel Road S.E., Tumwater, WA 98501, 564-999-1579; Implementation and Enforcement: Allen Esparza, 101 Israel Road S.E., Tumwater, WA 98501, 564-669-0605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dax Tate, P.O. Box 47886, Olympia, WA 98504-7886, phone 564-999-1579, TTY 711, email dax.tate@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Portions of this proposal are intended to comply with 7 C.F.R. 246.12 (u) (2) (i). The consequences of not adopting these changes would be that the WA WIC program would be out of compliance with USDA rules, which could lead to findings in the future, requiring program to draft corrective action reports with plans to bring program into compliance.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections and Title	This Proposed Rule Section is Not Exempt - Analysis is Required.	This Proposed Rule Section is Exempt. Provide RCW to Support this Exemption.
1.	WAC 246-790-001 Purpose.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
2.	WAC 246-790-010 Definitions.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
3.	WAC 246-790-061 Vendor agreement procedure.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.

	Proposed WAC Sections and Title	This Proposed Rule Section is <i>Not Exempt</i> - Analysis is Required.	This Proposed Rule Section is <i>Exempt</i>. Provide RCW to Support this Exemption.
4.	WAC 246-790-075 Vendor application.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
5.	WAC 246-790-077 Vendor selection criteria.	<input checked="" type="checkbox"/>	Not exempt.
6.	WAC 246-790-086 Requirements of an authorized vendor.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
7.	WAC 246-790-095 Vendor compliance activities.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
8.	WAC 246-790-105 Failure to meet WIC program requirements.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
9.	WAC 246-790-125 Vendor appeal process.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d) and (g). The changes correct typographical errors, make address or name changes, or clarify language of the rule without changing its effect; The changes also adopt, amend, or repeal procedures, practices, or requirements relating to agency hearings.
10.	WAC 246-790-127 Vendor advisory committee.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(b). This change relates only to internal government operations that are not subject to violation by a nongovernment party.
11.	WAC 246-790-500 Definitions related to participant compliance.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
12.	WAC 246-790-501 Participant purpose.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
13.	WAC 246-790-510 Participant certification requirements.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
14.	WAC 246-790-530 WIC participant violations and sanctions.	<input type="checkbox"/>	This section only impacts individuals and therefore is exempt under RCW 19.85.025(4). (Does not affect small businesses.)
15.	WAC 246-790-550 Participant claims.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). This change corrects typographical errors, makes address or name changes, or clarifies language of the rule without changing its effect.
16.	WAC 246-790-560 Participant disqualification.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The changes correct typographical errors, make address or name changes, or clarify language of the rule without changing its effect; Other changes are exempt under RCW 19.85.061 because the proposed rules are being adopted solely to conform and/or comply with federal statute or regulations as noted above (7 C.F.R. 246.12 (u)(2)(i)).
17.	WAC 246-790-570 Participant appeal process.	<input type="checkbox"/>	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d) and (g). The changes correct typographical errors, make address or name changes, or clarify language of the rule without changing its effect. The changes also adopt, amend, or repeal procedures, practices, or requirements relating to agency hearings.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed changes remove certain application and program requirements for businesses intending to be vendors in the WA WIC program, which DOH anticipates will not incur additional costs to existing or potential future vendors; therefore, the rule does not impose more-than-minor costs to businesses.

April 1, 2025
Kristin Peterson, JD
Chief of Policy

for Jessica Todorvich, MS
Acting Secretary of Health

RDS-6115.1

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

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~~) people, infants and young children from qualifying 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~~) an agreement 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.

(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.

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

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 proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the department prior to the entry of an order under this chapter.

(2) "Applicant" means any vendor, or person representing a vendor, or vendors reapplying for authorization, 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~~) an agreement with the department.

(5) "Business integrity" means a 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) "Business and financial documentation" means all documents required to own and operate a business as a retailer which may include, but not be limited to, banking and financial records; property sales, leases and rental agreements; insurance records; affiliate arrangements; inventory records; accounting, sales, and tax records; records of ownership; or articles of incorporation, bylaws and operating agreements.

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

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

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

(10) (~~("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.~~)

~~(11))~~ "Cost containment" means the process of controlling expenses required to operate the WIC program.

~~(12))~~ (11) "Department" means the Washington state department of health.

~~(13))~~ (12) "Disqualification" means the act of revoking the authorization and terminating the (~~(contract of)~~) agreement with an authorized vendor for a specific period of time or permanently for noncompliance with WIC program requirements.

~~(14))~~ (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.

~~(15))~~ (14) "Food instrument" means a WIC program (~~(voucher, check, coupon,~~) electronic benefit transfer (eWIC card) (~~(r)~~) or other document which is used to obtain authorized foods.

~~(16))~~ (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.

~~(17))~~ (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 (~~(a contract)~~) an agreement.

~~(18))~~ (17) "Participant" means a woman, infant (~~(or)~~) child, or other qualifying individual receiving WIC benefits.

~~(19))~~ (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.

~~(20))~~ (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.

~~((21))~~ (20) "SNAP" means the federal supplemental nutrition assistance program, also referred to as basic food in Washington state. SNAP was previously known as the food stamp program.

~~((22))~~ (21) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any organization, association, or business entity. Evidence of substantial interest may include, but not be limited to:

(a) Directly or indirectly owning, operating, managing, or controlling an entity or any part of any entity;

(b) Directly or indirectly profiting from an entity or assuming liability for debts or expenditures of the entity; or

(c) Being an officer or director or managing member of an entity.

~~((23))~~ (22) "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.

~~((24))~~ (23) "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.

(24) "Vendor agreement" (agreement) means the department's standard WIC written document that, once completed and signed by both parties, becomes the agreement between a vendor and the department designating terms and conditions and authorizing the vendor to transact food instruments.

(25) "Vendor compliance activities" means on-site ~~((contract))~~ agreement monitoring, covert compliance buys, and inventory audits.

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

(27) "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.

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

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

WAC 246-790-061 ~~((Contract))~~ Vendor agreement procedure. (1) To become an authorized vendor and receive a ~~((contract))~~ vendor agreement, 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))~~ agreement 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))~~ vendor agreement 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~~) agreement, 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~~) agreement as specified in the (~~contract~~) agreement and provided in WAC 246-790-125.

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

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

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 the required format;

(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~~) 30 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.

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

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) Maintain in store, warehouse, or distribution center at all times the minimum quantities and varieties of WIC approved foods, including infant formula, as required by the "WIC minimum inventory requirements" document for each vendor type. Expired or spoiled foods do not count as inventory.

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

(4) ~~((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 of dairy products).~~

~~(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) Fruit and vegetables: At least twenty total varieties of fresh or frozen fruits or fresh or frozen 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, or baby lotion (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.~~

~~(5) Maintain prices for WIC-approved foods that are at or below the limits established by the WIC nutrition program's current price management system.~~

~~(6)) Be currently authorized and participating as a vendor in ((the supplemental nutrition assistance program (SNAP))) SNAP.~~

~~((7) Receive or expect to receive less than fifty percent in annual food sales revenue from WIC transactions.~~

~~(8) Be open for business at least eight hours per day, six days per week.~~

~~(9)) (5) Submit to the department, upon request, sales information including gross sales and tax exempt food sales.~~

~~((10)) (6) Be current with state, federal and local taxes.~~

~~((11)) (7) Have electronic cash registers capable of producing receipts that include:~~

~~(a) The store name;~~

~~(b) Food product name and description;~~

~~(c) Quantity sold and price of each item;~~

~~(d) Total actual purchase price; and~~

~~(e) The date of sale.~~

~~((12)) (8) Post food prices for all foods, including fresh fruits and vegetables, on each item, or on the shelf next to the item.~~

~~((13)) (9) Maintain a business model that promotes business integrity. The department may investigate the business integrity of a WIC vendor or applicant at any time. In its determination of business integrity, the department's considerations will include, but are not limited to, the following:~~

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

~~(b) Cooperating with department requests to complete WIC authorization or compliance activities ((, including granting access to WIC food instruments)).~~

~~(c) Providing business and financial documentation to the department upon request.~~

~~(d) 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, or obstruction of justice.~~

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

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

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

~~(h) 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, or limited liability company.~~

(iv) Failing to cooperate with WIC authorization of compliance activities.

~~((14))~~ (10) The department may verify the identity of an applicant at any time.

~~((15))~~ (11) 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.

~~((16))~~ (12) Not own or be a substantial interest holder, have previously owned or been a substantial interest holder, 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.

~~((17))~~ (13) 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.

~~((18))~~ (14) 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.

~~((19))~~ (15) Comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336.

~~((20))~~ (16) Comply with all other federal, state, county, and city required licenses, permits and certifications.

~~((21))~~ (17) Exemption~~((s))~~.

~~((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.))~~

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

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

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

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

(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))~~ participant-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))~~ agreement expiration; however, neither the department nor the vendor has an obligation to enter into a subsequent ~~((contract))~~ agreement.

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

WAC 246-790-095 Vendor compliance activities. There are three primary types of vendor compliance activities:

(1) On-site (~~(contract)~~) agreement monitoring is an overt compliance inspection conducted by department staff to confirm a vendor's compliance with state vendor agreement requirements, and state and federal WIC regulations.

(2) A compliance buy is a covert shopping experience conducted by department staff at WIC-authorized vendors. The compliance buy activity is used to test vendor staff's knowledge of compliance rules.

(3) An inventory audit is an examination of food invoices or other proof of purchase to determine whether a vendor has purchased sufficient quantities of authorized food to support the vendor's claim(s) for reimbursement for such foods from the department during a specific point in time.

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

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)~~) vendor agreement, 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)~~) agreement.

(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)~~) agreement is terminated on the effective date of a disqualification. A multistore vendor's (~~(contract)~~) agreement shall be amended to remove only the disqualified store on the effective date of disqualification.

(4) Where a sanction requires a pattern of violations, a "pattern" is established by three separate documented incidents of the same federal or state (~~(contract)~~) agreement violation identified during a single (~~(contract)~~) vendor agreement 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)~~) 28 days after an authorized vendor receives notice of the department's decision to impose sanctions, unless otherwise specified in this chapter, the (~~(contract)~~) agreement, or in the department's notice. The department, in its sole discretion, may temporarily suspend the (~~(contract)~~) vendor agreement in lieu of termination to resolve any uncertain matters, including appeals.

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

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~~) agreement;

(i) Disputes regarding (~~food instrument~~) WIC benefit 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~~) subsection (1) of this section, applicant or authorized vendor may file an appeal for the department's decision to decline an application, terminate a (~~contract~~) vendor agreement, 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~~) 28 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.

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

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.

AMENDATORY SECTION (Amending WSR 19-16-107, filed 8/2/19, effective 9/2/19)

WAC 246-790-500 Definitions related to participant compliance. The definitions in this section apply to this section through WAC 246-790-570 unless the context clearly indicates otherwise.

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

(2) "Applicant" means any pregnant ((woman)) person, postpartum ((woman)) person, infant, child, or caregiver of an infant or child who is applying to receive WIC program benefits, or a breastfeeding infant of an applicant breastfeeding ((woman)) person. Applicants include individuals who are currently participating in the program but are applying because their certification period is about to expire.

(3) "Authorized supplemental foods" means those supplemental foods authorized by the department for issuance to a particular participant.

(4) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.

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

(6) "Claim" means a type of sanction demanding repayment for misuse of WIC/farmers' market nutrition program (FMNP) benefits by a WIC participant.

(7) "Deliberate" means acting intentionally, knowingly and voluntarily.

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

(9) "Disqualification" means the act of ending the WIC program participation of a participant, whether as a punitive sanction or for administrative reasons.

(10) "Dual participation" means program participation in one or more than one WIC clinic.

(11) "Eligibility criteria" means the reasons people qualify for WIC program benefits as described in 7 C.F.R. Sec. 246.7(c).

(12) "Farmers' market nutrition program (FMNP)" means a program to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants, and to expand the awareness, use of, and sales at farmers' markets.

(13) "Food instrument" means ~~((the method of payment used by a participant to obtain WIC-approved foods. These methods may include WIC checks, WIC farmers' market nutrition program checks, cash value vouchers, or electronic benefit transfer (EBT) payments))~~ a WIC program electronic benefit transfer (eWIC card), or other document which is used to obtain authorized foods.

(14) "Local agency" means:

(a) A public or private nonprofit health or human services agency that provides health services either directly or through ~~((contract))~~ agreement with the department to provide services in accordance with 7 C.F.R. Sec. ~~((245.5))~~ 246.5;

(b) An Indian health services unit in ~~((contract))~~ agreement with the department to provide services;

(c) An Indian tribe, band or group recognized by the ~~((department))~~ United States Department of the Interior (DOI) which is in agreement with the department to provide services; and/or

(d) An intertribal council or group that is ~~((an))~~ a DOI-authorized representative of Indian tribes, bands, or groups, and is in agreement with the department to provide services.

(15) "Notice of violation" means a written document given to a participant, or caregiver of an infant or child participant, when the department determines a participant or caregiver of an infant or child participant, has not complied with WIC program requirements, federal WIC regulations, this chapter, or the participant rights and responsibilities form. This notice ~~((is a type of sanction which))~~ explains the violation and provides a warning about repercussions of subsequent violations.

(16) "Nutritional risk" means detrimental or abnormal nutritional conditions detectable by biochemical or anthropomorphic measurements; other documented nutritionally related medical conditions; dietary deficiencies that impair or endanger health; conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or conditions that predispose persons to inadequate nutri-

tional patterns or nutritionally related medical conditions including, but not limited to, homelessness and migrancy, as specified in 7 C.F.R. Sec. 246.2.

(17) "Participant" means a (~~woman~~) person, infant (~~or~~), child, or other qualifying individual receiving WIC benefits.

(18) "Participant violation" means any deliberate action of a participant, parent or (~~caretaker~~) caregiver of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program.

(19) "Proxy" means an individual who is designated by a participant or a child or infant participant's parent, guardian, or (~~care-taker~~) caregiver to receive and redeem food instruments for the participant and whose name is filed with the local agency.

(20) "Restitution" means reimbursement to the department of the cash value of WIC program benefits received by a participant as the result of a sanction imposed for a violation.

(21) "Sanction" means a penalty imposed by the department of health WIC program because of a violation. (~~The three types of sanctions are notice of violation, disqualification, and claim.~~)

(22) "SNAP" means the federal supplemental nutrition assistance program, also referred to as basic food in Washington state. SNAP was previously known as the food stamp program.

(23) "Vendor" 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.

(24) "Violation" means any deliberate action of a WIC participant or caregiver of an infant or child participant, including actions listed in WAC 246-790-520 that violate federal or state statutes, regulations, policies, or procedures governing the WIC program.

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

(26) "WIC benefits" means benefits a participant receives that include, but are not limited to, food and infant formula.

(27) "WIC Participant Rights and Responsibilities form" means a document (~~signed~~) reviewed by a WIC participant or proxy showing (~~she or he has~~) they have been advised of and agrees to WIC program rights and obligations.

AMENDATORY SECTION (Amending WSR 17-08-020, filed 3/27/17, effective 4/27/17)

WAC 246-790-501 Participant 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~~) people, infants and young children from qualifying 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~~) an agreement with the department to provide such service. The department's WIC operations comply with the most current version of 7 C.F.R. Sec. 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.

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

- (a) Requirements an applicant must meet to be certified as a WIC participant;
- (b) Circumstances and process for verifying and sharing WIC applicant information;
- (c) Participant violations and the sanctions that will be applied when violations occur;
- (d) The circumstances in which a monetary claim will be imposed, the process for establishing a claim, and the consequences for failing to pay, or make arrangements to pay, a claim;
- (e) The circumstances in which participants are disqualified; and
- (f) The participant appeal process.

AMENDATORY SECTION (Amending WSR 17-08-020, filed 3/27/17, effective 4/27/17)

WAC 246-790-510 Participant certification requirements. (1) To be eligible for the WIC program, at the time of application an applicant must:

- (a) Be a pregnant (~~woman~~) person, a breastfeeding (~~woman~~) person up to one year after delivery, postpartum (~~woman~~) person through six months after delivery, an infant up to one year of age, or a child from age one through the end of the month (~~he or she turns~~) they turn five years of age;
- (b) Reside within the state of Washington;
- (c) Meet the department's income eligibility criteria as described in 7 C.F.R. Sec. 246.7; and
- (d) Be at nutritional risk as defined by the department.

(2) At the time of enrolling in the WIC program, the applicant must:

- (a) Provide truthful and accurate information to WIC agency staff;
- (b) Present proof of residency, identity, and income; and
- (c) Review (~~and sign~~) the department's "Rights and (~~Responsibility~~) Responsibilities" form (~~acknowledging~~) and acknowledge that the applicant has read and agrees to the rules governing WIC participants.

(3) WIC participants may participate in only one WIC clinic at a time.

(4) The department may remove a participant from the WIC program if the WIC participant no longer meets the WIC eligibility requirements.

(5) A WIC participant is eligible to receive farmers(^L) market nutrition program (FMNP) food instruments if the participant meets all of the following eligibility criteria on the date the food instrument is issued:

(a) The WIC participant is currently receiving WIC pursuant to 7 C.F.R. Sec. 246 and this chapter.

(b) The WIC participant belongs to eligible WIC categories described in 7 C.F.R. Sec. 246.7 with the exception that the child must be one year of age or older.

(6) WIC participants must notify the department of any changes in status including, but not limited to, change in household income;

change in eligibility status in an adjunct eligibility program, including basic food program or SNAP, temporary assistance to needy families (TANF), food distribution program to Indian reservations (FDPIR), or medical assistance program; change of number in household; or change in breastfeeding status.

(7) The department will notify WIC participants of their program rights and responsibilities, program rules, and that there are sanctions should they deliberately violate a program rule.

AMENDATORY SECTION (Amending WSR 19-16-107, filed 8/2/19, effective 9/2/19)

WAC 246-790-530 WIC participant violations and sanctions. (1)

When any WIC participant or caregiver deliberately violates federal or state statutes, regulations, policies or procedures governing the WIC program, the department will initiate appropriate enforcement action, which may include establishment of claims under WAC 246-790-550 or disqualification under WAC 246-790-560. Violations and applicable sanctions are listed below:

Violations	1st Instance	2nd Instance	Subsequent Instances
Attempting to redeem a food instrument for unauthorized foods or formula.	Notice of violation	Notice of violation	6-month disqualification
Redeeming a food instrument for unauthorized foods or formula.	Notice of violation and claim 1-year disqualification and claim if claim is ((\$100) <u>\$1,000</u> or more	1-year disqualification and claim	1-year disqualification and claim
Attempting to return foods purchased with a food instrument to a WIC vendor in exchange for money, credit, a different food or food in excess of those on the food instrument.	Notice of violation	Notice of violation	6-month disqualification
Returning foods purchased with a food instrument to a WIC vendor in exchange for money, credit, a different food, or food in excess of those on the food instrument.	Notice of violation and claim 1-year disqualification and claim if claim is ((\$100) <u>\$1,000</u> or more	1-year disqualification and claim	1-year disqualification and claim
Redeeming a food instrument reported as lost or stolen, and then replaced.	Notice of violation and claim 1-year disqualification and claim if claim is ((\$100) <u>\$1,000</u> or more	1-year disqualification and claim	1-year disqualification and claim
Destruction of vendor, farmer or local agency property ((during a WIC transaction or visit)).	Notice of violation if replacement or repair cost is less than ((\$100) <u>\$1,000</u>) ((6-month) <u>1-year</u> disqualification if replacement or repair cost is ((\$100) <u>\$1,000</u> or more	1-year disqualification	1-year disqualification

Violations	1st Instance	2nd Instance	Subsequent Instances
	Note: Replacement or repair cost will be determined by affected vendor, farmer or local agency		
Destruction of state agency property (during a WIC visit).	Notice of violation and claim if claim is less than (((\$100)) <u>\$1,000</u> 1-year disqualification and claim if claim is (((\$100)) <u>\$1,000</u> or more	1-year disqualification	1-year disqualification
Altering a food instrument.	6-month disqualification and claim if claim is less than (((\$100)) <u>\$1,000</u> 1-year disqualification and claim if claim is (((\$100)) <u>\$1,000</u> or more	1-year disqualification and claim	1-year disqualification and claim
Making false or misleading statements or deliberately misrepresenting, concealing or withholding facts to obtain or increase benefits.	Notice of violation and claim if claim is less than (((\$100)) <u>\$1,000</u> 1-year disqualification and claim if claim is (((\$100)) <u>\$1,000</u> or more	1-year disqualification and claim	1-year disqualification and claim
Participating in and spending WIC food instruments from one or more than one WIC clinic during the same time period (dual participation).	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim
Threatening to harm or physically harming clinic, farmer or vendor staff (during a WIC visit).	((6-month)) <u>1-year</u> disqualification	1-year disqualification	1-year disqualification
Failure to comply with department or local agency request for information during an investigation.	1-year disqualification	1-year disqualification	1-year disqualification
Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell food instrument or exchange food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other nonfood items (trafficking) verbally, in print, or online through websites or social media.	Notice of violation and claim if claim is less than (((\$100)) <u>\$1,000</u> 1-year disqualification and claim if claim is (((\$100)) <u>\$1,000</u> or more	1-year disqualification and claim	1-year disqualification and claim
<u>Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell breast pumps obtained through the WIC program for cash, credit, merchandise, favors, or other nonfood items (trafficking) verbally, in print, or online through websites or social media.</u>	Notice of violation and claim if claim is less than <u>\$1,000</u> 1-year disqualification and claim if claim is <u>\$1,000 or more</u>	<u>1-year disqualification and claim</u>	<u>1-year disqualification and claim</u>
Theft of a food instrument by a WIC participant.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim

(2) During each certification visit, participants will be informed of their rights and responsibilities, program rules, and that there may be potential sanctions should they deliberately violate a program rule.

(3) Whenever the department assesses a claim of misappropriated WIC program benefits of (~~one hundred dollars~~) \$1,000 or more resulting from a participant violation, assesses a claim for dual participation, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year.

(4) The department may decide not to impose a disqualification if, within (~~thirty~~) 30 days of the date the letter was mailed demanding repayment, full restitution is made or a repayment schedule is agreed upon. In the case of a violation committed by the parent or caretaker of an infant or child participant, or by a participant under the age of (~~eighteen~~) 18, the department may approve the designation of a proxy in order to continue program benefits to these participants.

(5) Participants may reapply for benefits at any time after the disqualification period concludes.

(6) The department must consider designating a substitute caregiver instead of disqualification for (~~infants, children, and women~~) WIC participants under (~~eighteen~~) 18 years of age.

(7) Second and subsequent instances of violations are assessed based on a (~~twelve~~) 12-month period from the first notice that a violation has occurred.

AMENDATORY SECTION (Amending WSR 17-08-020, filed 3/27/17, effective 4/27/17)

WAC 246-790-550 Participant claims. (1) If the department determines that a WIC participant has committed a violation listed in WAC 246-790-530 which involves the misuse of WIC benefits, the department shall establish a claim against the participant for the full value of such benefits.

(2) The department shall provide a written notice to the WIC participant of the claim, describing the violation, and demanding a specific repayment amount.

(3) If the WIC participant does not appeal the claim as provided in WAC 246-790-570, make full restitution, or agree to a repayment schedule within (~~thirty~~) 30 days of receiving the letter, the department may take additional collection actions as authorized by law, unless the department determines that further collection actions would not be cost-effective.

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

WAC 246-790-560 Participant disqualification. (1) In addition to the disqualifications set forth in the table under WAC 246-790-530, whenever the department assesses a claim under WAC 246-790-550 of (~~one hundred dollars~~) \$1,000 or more, or assesses a second or subsequent claim of any amount resulting from a participant violation, the

department must disqualify the participant for one year. In addition, a claim may be assessed for misuse of WIC/FMNP benefits. Dual participation violations will result in disqualification regardless of claim amount.

(2) The department will count any violation occurring within the consecutive (~~twelve~~) 12-month period following the first notice of violation as a second or subsequent violation. Second or subsequent violations do not have to be for the same violation type.

(3) The department will count any second or subsequent violation as a second or subsequent violation even if:

(a) Another member of the WIC participant's household commits the violation; or

(b) The violation affects the WIC benefits of another WIC participant in the same household.

(4) The department shall provide a written notice to the WIC participant describing the violations and specifying the sanction.

(5) For a violation involving a claim, the department may decline to impose a disqualification if the WIC participant makes full restitution, or agrees to a repayment schedule, within (~~thirty~~) 30 days of the date the notice of disqualification was sent.

(6) Where a parent or caregiver of an infant or child participant or a WIC participant under the age of (~~eighteen~~) 18 has committed a violation, the department must consider designating a substitute caregiver to continue providing WIC benefits to the participant.

(7) Participants (~~my~~) may reapply for benefits at any time after the end of the disqualification period.

AMENDATORY SECTION (Amending WSR 17-08-020, filed 3/27/17, effective 4/27/17)

WAC 246-790-570 Participant appeal process. (1) An applicant or WIC participant may file an appeal of the department's decision to deny an (~~applicant~~) application, establish a claim, or disqualify a person from receiving WIC benefits.

(2) At the time the department determines an applicant ineligible, issues a disqualification, or establishes a claim, the department shall provide written notice of appeal rights informing the person of how to file the appeal and that the person may represent themselves personally or be represented by a spokesperson. The spokesperson does not need to be a member of the Washington state bar.

(3) The applicant or WIC participant must file the appeal within (~~sixty~~) 60 calendar days of service of the notice of adverse action. Proceedings under WAC 246-790-500 through this section must be in accordance with 7 C.F.R. Sec. 246.9 and chapter 246-10 WAC including, at a minimum:

(a) A hearing conducted by an impartial official within three weeks of the date the hearing request was received;

(b) A scheduling order that sets the time and dates of steps in the hearing process;

(c) A prehearing conference in which the hearing official explains the procedures and establishes the conduct at hearing;

(d) A hearing in which the appellant and the department's WIC program can present evidence and cross-examine witnesses.

(4) Participants who appeal the termination of benefits within (~~fifteen~~) 15 days of service of the adverse action notice must con-

tinue to receive program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible during a certification period may appeal the denial of WIC certification or disqualification within (~~sixty~~) 60 days, but must not receive benefits while awaiting the hearing or its results.

(5) If a provision of chapter 246-10 WAC conflicts with 7 C.F.R. Sec. 246.9, federal regulation prevails.