

Chapter 246-790 WAC

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

WAC

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ified as § 246-790-070, filed 12/18/90, effective 1/18/91; 90-12-112 (Order 2960), § 388-19-020, filed 6/6/90, effective 7/7/90; 88-18-022 (Order 2681), § 388-19-020, filed 8/30/88; 88-14-037 (Order 2638), § 388-19-020, filed 6/30/88.] Repealed by 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

What do I need to know about WIC retailer contracts? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.06-05-051, § 246-790-080, filed 2/13/06, effective 3/16/06; 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 18.00-13-009, § 246-790-080, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. 97-16-117, § 246-790-080, filed 8/6/97, effective 9/6/97; 92-22-036 (Order 314), § 246-790-080, filed 10/27/92, effective 11/27/92; 91-23-078 (Order 215), § 246-790-080, filed 11/19/91, effective 12/20/91. Statutory Authority: RCW 43.20A.550. 91-01-097 (Order 3117), recodified as § 246-790-080, filed 12/18/90, effective 1/18/91; 90-12-112 (Order 2960), § 388-19-025, filed 6/6/90, effective 7/7/90; 88-14-037 (Order 2638), § 388-19-025, filed 6/30/88.] Repealed by 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

What is expected of WIC retailers? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.06-05-051, § 246-790-085, filed 2/13/06, effective 3/16/06; 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 18.00-13-009, § 246-790-085, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. 97-16-117, § 246-790-085, filed 8/6/97, effective 9/6/97.] Repealed by 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

How are WIC retailer contracts monitored? [Statutory Authority: RCW 43.70.120 and 7 C.F.R. 246.06-05-051, § 246-790-090, filed 2/13/06, effective 3/16/06; 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 18.00-13-009, § 246-790-090, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. 97-16-117, § 246-790-090, filed 8/6/97, effective 9/6/97; 92-22-036 (Order 314), § 246-790-090, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. 91-01-097 (Order 3117), recodified as § 246-790-090, filed 12/18/90, effective 1/18/91; 90-12-112 (Order 2960), § 388-19-030, filed 6/6/90, effective 7/7/90; 88-14-037 (Order 2638), § 388-19-030, filed 6/30/88.] Repealed by 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

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. 246.06-05-051, § 246-790-100, filed 2/13/06, effective 3/16/06; 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 18.00-13-009, § 246-790-100, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. 97-16-117, § 246-790-100, filed 8/6/97, effective 9/6/97; 92-22-036 (Order 314), § 246-790-100, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. 91-01-097 (Order 3117), recodified as § 246-790-100, filed 12/18/90, effective 1/18/91; 90-12-112 (Order 2960), § 388-19-035, filed 6/6/90, effective 7/7/90; 88-14-037 (Order 2638), § 388-19-035, filed 6/30/88.] Repealed by 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

Notice of adverse action to WIC food vendor—Denial of food vendor application, contract nonrenewal. [Statu-

tory Authority: RCW 43.70.120. 92-22-036 (Order 314), § 246-790-110, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. 91-01-097 (Order 3117), recodified as § 246-790-110, filed 12/18/90, effective 1/18/91; 88-14-037 (Order 2638), § 388-19-040, filed 6/30/88.] Repealed by 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. 246.06-05-051, § 246-790-120, filed 2/13/06, effective 3/16/06; 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 18.00-13-009, § 246-790-120, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. 97-16-117, § 246-790-120, filed 8/6/97, effective 9/6/97; 92-22-036 (Order 314), § 246-790-120, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. 91-01-097 (Order 3117), recodified as § 246-790-120, filed 12/18/90, effective 1/18/91; 90-12-112 (Order 2960), § 388-19-045, filed 6/6/90, effective 7/7/90; 88-18-022 (Order 2681), § 388-19-045, filed 8/30/88; 88-14-037 (Order 2638), § 388-19-045, filed 6/30/88.] Repealed by 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. 246.06-05-051, § 246-790-130, filed 2/13/06, effective 3/16/06; 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 18.00-13-009, § 246-790-130, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. 97-16-117, § 246-790-130, filed 8/6/97, effective 9/6/97; 92-22-036 (Order 314), § 246-790-130, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 43.20A.550. 91-01-097 (Order 3117), recodified as § 246-790-130, filed 12/18/90, effective 1/18/91; 88-18-022 (Order 2681), § 388-19-050, filed 8/30/88; 88-14-037 (Order 2638), § 388-19-050, filed 6/30/88.] Repealed by 11-23-125, filed 11/21/11, effective 12/22/11. Statutory Authority: RCW 43.70.120.

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

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

(2) "Contract" means a written legal document binding the contractor and the department to designated terms and conditions. Terms and conditions include those stated in 7 C.F.R. 246.12 (h)(3) under "*Retail food delivery systems: Vendor agreements, Vendor agreement provisions.*"

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

(4) "Retailer" means "vendor" as defined in 7 C.F.R. 246.2.

(5) "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.

(6) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246 and defined in 7 C.F.R. 246.2.

(7) "WIC check" means "food instrument" and "cash-value voucher" as defined in 7 C.F.R. 246.2.

[Statutory Authority: RCW 43.70.120. 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. 246.06-05-051, § 246-790-010, filed 2/13/06, effective 3/16/06; 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 18.00-13-009, § 246-790-010, filed 6/9/00, effective 7/10/00. Statutory Authority: RCW 43.70.120. 97-16-117, § 246-790-010, filed 8/6/97, effective 9/6/97; 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. 91-01-098 (Order 3118), § 246-790-010, filed 12/18/90, effective 1/18/91.]

WAC 246-790-055 Adoption by reference. Adopted by reference are 7 C.F.R. 246.2, 246.12, 246.18, 246.21, 246.23, and 246.26 special supplemental nutrition program for women, infants, and children revised as of January 1, 2011, and including all amendments and modifications effective as of the date of adoption of this chapter.

Copies of the incorporated sections of 7 C.F.R. 246 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.

[Statutory Authority: RCW 43.70.120. 11-23-125, § 246-790-055, filed 11/21/11, effective 12/22/11.]

WAC 246-790-075 Requirements to become an authorized retailer. (1) To become authorized in the WIC program an applicant must:

- (a) Be a food retailer;
- (b) Apply for authorization using department forms;
- (c) Provide complete and truthful information in the application;
- (d) Meet all the retailer selection criteria stated in WAC 246-790-077;
- (e) Allow the department to inspect the store;
- (f) Participate in training on WIC program requirements; and
- (g) Agree to follow WIC program requirements stated in the contract.

(2) The effective date of authorization is the date on which the last party to sign the contract signs it. The department and the retailer are the parties to the contract.

(3) The department shall give an applicant thirty days notice to correct their application when it is incomplete or insufficient in any manner before the department denies authorization.

(4) The department may not accept a new application sooner than six months after an applicant's denial.

(5) An applicant or an authorized retailer may request an exemption to the retailer selection criteria in WAC 246-790-077.

- (a) The request must:
 - (i) Be in writing;
 - (ii) Identify the specific retailer selection criterion or criteria for which the retailer is seeking an exemption and explain the reasons for the request in detail; and
 - (iii) Demonstrate how the requested exemption is consistent with the requirements, purpose and objectives of the program.

(b) The department may grant an exemption from retailer selection criteria if the applicant submits a request that satisfies (a) of this subsection.

(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. 11-23-125, § 246-790-075, filed 11/21/11, effective 12/22/11.]

WAC 246-790-077 Retailer selection criteria. An applicant and an authorized retailer shall meet all the following retailer selection criteria to be authorized.

(1) Business license, permit, and certification requirements.

(a) A current master business license and unified business identifier number issued by the Washington state department of revenue as required under chapter 19.02 RCW with a major operation category that includes the retail sale of foods, such as grocery store.

(b) A current reseller's permit issued by the Washington state department of revenue as required under chapter 82.32 RCW.

(c) A current food establishment permit issued by the local health jurisdiction as required by the Washington state board of health under chapter 246-215 WAC.

(d) A current weighing and measuring device registration issued by the Washington state department of agriculture as required under chapter 16-674 WAC.

(e) A current authorization as a vendor in the supplemental nutrition assistance program (SNAP).

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

(2) Business model requirements.

(a) Be primarily engaged in retail sales of a variety of food products and general merchandise as a full line grocery store. A full line grocery store stocks on a continuous basis, multiple varieties of the following product categories:

- (i) Canned foods;
- (ii) Frozen foods;
- (iii) Dairy products;
- (iv) Fresh and frozen meat, fish, and poultry;
- (v) Fresh fruits;
- (vi) Fresh vegetables;
- (vii) Juices;
- (viii) Bakery goods including, but not limited to, breads, pastries, and tortillas;

(ix) Dried grains and beans;

(x) Baby products;

(xi) Household cleaners;

(xii) Laundry products; and

(xiii) Health care products.

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

(c) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.

(d) Not use the WIC program name, acronym, or logo in the store name or advertisement, advertise primarily to WIC customers, offer incentives primarily to WIC customers, or otherwise focus primarily on serving WIC customers.

(e) Not receive or expect to receive more than fifty percent of annual food sales revenue from WIC transactions.

(f) Maintain on store shelves at all times the minimum quantities and varieties of WIC approved foods, including infant formula, required by the contract. Expired foods are not counted as inventory.

(g) Maintain shelf prices for WIC approved foods that are competitive with retailers in the same WIC retailer peer group. A "peer group" means a group of retailers who share similar characteristics established by the department.

(h) Operate from a fixed, permanent location where all WIC transactions take place in the store.

(i) Maintain business hours of at least eight hours per day, six days per week.

(j) Accept various types of tender including cash and SNAP electronic benefit transfer (EBT).

(k) Post WIC food price on the item, on the shelf next to the item, or other means that is clearly visible to customers.

(l) Maintain sanitary conditions that meet food service rules in chapter 246-215 WAC.

(m) Keep fresh fruit and vegetable display areas free of spoiled produce.

(3) Recordkeeping.

(a) Maintain a recordkeeping system that meets the Washington state department of revenue requirements in WAC 458-20-254 including the following:

(i) The recordkeeping system must have original documents and records organized in a logical way that conforms to acceptable accounting methods and procedures.

(ii) Documents and records must be retrievable and in a readable format.

(b) The recordkeeping system must include original, dated documents and records that contain enough detail to prove the purchase, inventory, and sale of WIC approved foods, including infant formula, by brand name, container size and quantity. These documents and records must be kept for a period of six years following the date of final payment.

(c) Submit to the department upon request documents and records showing food is purchased from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier.

(d) Submit to the department upon request documents and records showing infant formula is purchased from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.

(e) Submit to the department upon request itemized sales receipts for WIC purchases using an electronic cash register or a manual system. Sales receipts must include the store name, food product name, quantity sold, price of each item, and the date of sale.

(f) Submit to the department upon request annual sales information including gross sales and tax exempt food sales by payment type including cash, SNAP EBT, WIC and credit/debit card.

(g) Submit to the department upon request shelf price and stock level information.

(4) Additional requirements.

(a) Allow access to facilities, including nonpublic storage areas, by the department during normal business hours.

(b) Maintain an active e-mail account that is capable of receiving WIC contract and program information.

(c) Comply with WIC training requirements stated in the contract.

(d) Maintain in-store records documenting employee training on WIC requirements.

(e) Demonstrate business integrity.

(f) Comply with all applicable federal and state laws.

(5) Exemptions.

(a) Oregon and Idaho retailers 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) A retailer authorized as an "infant formula only provider" is exempt from the full line grocery store requirement. "Infant formula only provider" means a retailer for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.

[Statutory Authority: RCW 43.70.120. 11-23-125, § 246-790-077, filed 11/21/11, effective 12/22/11.]

WAC 246-790-086 Requirements of an authorized retailer. (1) An authorized retailer shall:

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

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

(c) Notify the department prior to ownership changes; and

(d) Notify the department prior to store closures.

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

[Statutory Authority: RCW 43.70.120. 11-23-125, § 246-790-086, filed 11/21/11, effective 12/22/11.]

WAC 246-790-105 Failure to meet WIC program requirements. (1) When a retailer is out of compliance with the requirements of 7 C.F.R. 246.12, this chapter, or the contract, the department may initiate appropriate enforcement action which may include notices of violation, unless the department determines that notifying the retailer would compromise the investigation; claims for reimbursement; and disqualification.

(2) The department shall disqualify an authorized retailer for violations stated in 7 C.F.R. 246.12(1).

(3) For violations of the requirements of this chapter, not specified in 7 C.F.R. 246.12(1), the department may take enforcement action based on a pattern of violations. Department actions may include:

(a) Notice of violation and offer of technical assistance for the first incident;

(b) Notice of violation and warning of disqualification for the second incident of the same type of violation;

(c) One year disqualification for the third incident of the same type of violation.

(4) A "pattern" of violations means more than one documented incident of the same type of violation within a thirty-six month period.

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

(6) An authorized retailer who has been disqualified may reapply at the end of the disqualification period.

[Statutory Authority: RCW 43.70.120. 11-23-125, § 246-790-105, filed 11/21/11, effective 12/22/11.]

WAC 246-790-125 Retailer appeal process. (1) The retailer may request an administrative appeal of certain adverse actions as provided in 7 C.F.R. 246.18. Actions that the retailer may not appeal are described in 7 C.F.R. 246.18 (a)(1)(iii).

(2) A request for appeal must:

(a) Be in writing, state the issue, and contain a summary of the retailer's position on the issue;

(b) Be filed with the Department of Health, Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886; and

(c) Be received by the department of health, adjudicative services unit within twenty-eight days of the date the retailer receives the notice unless otherwise specified in the program's notification of adverse action.

(3) The administrative hearing procedures of chapter 246-10 WAC apply to retailer administrative appeals. 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. 11-23-125, § 246-790-125, filed 11/21/11, effective 12/22/11.]

WAC 246-790-127 Retailer advisory committee. (1) The department shall facilitate a WIC retailer 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 retailers, retail grocer associations, food manufacturers, wholesale suppliers, and retail checker labor unions.

[Statutory Authority: RCW 43.70.120. 11-23-125, § 246-790-127, filed 11/21/11, effective 12/22/11.]