



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- Preproposal Statement of Inquiry was filed as WSR 08-19-012 ; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

WAC 246-780-001, 010, 020, 022, 025, 028, 030, 040, 060 and new section 026 Farmers' Market Nutrition Program

Hearing location(s): Department of Health
111 Israel Road SE Bldg 2 RM 158
Tumwater, WA 98504-7886

Date: July 29, 2010

Time: 10:00AM

Submit written comments to:

Name: Janice K. Boden
Address: Department of Health
PO Box 47886
111 Israel Road SE
Tumwater, WA 98504-7886
Website: <http://www3.doh.wa.gov/policyreview/>
fax (360) 236-2345 by (date) 07/16/2010

Assistance for persons with disabilities: Contact

Janice K. Boden by 07/16/2010

TTY (800) 833-6388 or () 711

Date of intended adoption: 08/02/2010

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposal adds farm stores to the Women, Infants and Children Farmers' Market Nutrition Program. Adding farm stores gives WIC clients the opportunity to purchase locally grown fresh fruits and vegetables directly from the farmer at the farm. The proposal tells farmers how to apply for authorization and what will be expected of them after authorization. The proposal also updates and clarifies language throughout the existing rule.

Reasons supporting proposal:

This proposal will benefit WIC clients by authorizing additional locations where they may purchase fresh local fruits and vegetables with their WIC Farmers' Market checks. Small local farmers will benefit from having an additional source of revenue.

Statutory authority for adoption:

RCW 43.70.700

Statute being implemented:

RCW 43.70.700

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

DATE
06/22/2010

NAME (type or print)
Mary C. Selecky

SIGNATURE

TITLE
Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **June 23, 2010**

TIME: **9:31 AM**

WSR 10-13-172

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Health

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Janice K. Boden	111 Israel Rd SE Tumwater, WA	(360)236-3610
Implementation.....Janet Charles, WIC Director	111 Israel Rd SE Tumwater, WA	(360)236-3697
Enforcement.....Janet Charles, WIC Director	111 Israel Rd SE Tumwater, WA	(360)236-3697

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:
Address:
phone
fax
e-mail

No. Explain why no statement was prepared.

A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Janice K. Boden
Address: PO Box 47886
Tumwater, WA 98504-7886

phone (360)236-3610
fax (360)236-2345
e-mail janice.boden@doh.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

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

(a) Provide 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 ((~~WIC~~)); and

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

(2) The ((~~WIC farmers' market nutrition program~~)) FMNP is administered by the Washington state department((~~s~~)) of health ((~~and agriculture~~)).

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

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 ((~~eligible grower and/or farmers' market~~)) applicant has met the selection criteria and has been issued a signed ((~~an agreement~~) contract with the department allowing participation in the ((~~WIC farmers' market nutrition program~~)) 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 sharecropped 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 ((~~a~~)) an authorized

grower (~~((who is qualified to participate in the WIC farmers' market nutrition program or is employed by a))~~ or nonprofit organization to sell produce on behalf of (~~(qualified))~~ authorized growers.

~~((3))~~ (6) "Check" means a negotiable financial instrument issued by the FMNP to WIC clients to purchase eligible foods.

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

~~((4) "Contractor" means a farmers' market who has a signed contract with the department to participate in the WIC farmers' market nutrition program.~~

~~(5))~~ (8) "Cut herbs" means fresh herbs with no medicinal value that are not potted (~~(or bagged))~~.

~~((6))~~ (9) "Department" means the Washington state department(~~s~~) of health (~~(and agriculture))~~.

~~((7))~~ (10) "Disqualification" means (~~(the act of))~~ terminating the (~~(agreement and/or))~~ contract of an authorized farmers' market, authorized grower (~~(and/))~~ or (~~(farmers' market from the WIC farmers' market nutrition program))~~ authorized farm store for noncompliance with (~~(program))~~ FMNP requirements.

~~((8))~~ (11) "Eligible foods" means locally grown, unprocessed (except for washing), fresh, nutritious fruits, vegetables, and cut herbs.

~~((9) "Eligible grower" means an individual or business who grows a portion of the produce that they sell at Washington state authorized farmers' markets.~~

~~(10))~~ (12) "Farmers' market" means a (~~(membership of))~~ farmers' market authorized by the department that has at least five or more authorized growers who assemble at a defined location for the purpose of selling their produce directly to consumers.

~~((11))~~ (13) "FMNP" (~~(or "program"))~~ means the WIC farmers' market nutrition program.

~~((12) "Locally grown" means Washington grown or grown in an adjacent county of Idaho or Oregon.~~

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

~~(14) "Program coordinator"))~~ (14) "Local WIC agency" means the contracted agency or clinic where a client receives WIC services and farmers' market checks.

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

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

~~((15))~~ (17) "Trafficking" means the buying or exchanging of ((WIC)) farmers' market checks for cash, drugs, or alcohol.

~~((16) "Validating" means stamping the WIC farmers' market check in the designated box with appropriate market and grower identification numbers using the stamper provided by the~~

department.

~~((17))~~ (18) "WIC" or "WIC nutrition program" means the federally funded special supplemental nutrition program for women, infants, and children administered in Washington state by the department of health.

~~((18))~~ (19) "WIC client" (~~(or "client")~~) means a pregnant, breast feeding, or postpartum woman, infant, or child receiving WIC benefits.

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

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

(a) Apply for authorization~~((7))~~ on a form provided by the department;

(b) Meet the selection criteria~~((7))~~ in subsection (2) of this section;

(c) Complete training on FMNP requirements; and ~~((sign))~~

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

~~(2) The selection ((is based on the following)) criteria are:~~

~~(a) ((The local WIC agency in the farmers' market service area must participate in the WIC farmers' market nutrition program.~~

~~(b)) The farmers' market must have a designated market manager on-site during operating hours~~((7))~~;~~

~~((c)) (b) The farmers' market must have been in operation a minimum of one year. ((If there is a market currently participating in the program in an area where a new market has applied to participate,)) The one-year requirement may be waived~~((7))~~.~~

~~(d) The farmers' market must keep a current list of eligible growers, including the farmer's name, business address, telephone number, and crops to be sold July through October. The farmers' market must agree to provide this list to the state WIC office on request.~~

~~((e))~~ by the department based on capacity and need;

(c) The farmers' market must be located within twenty miles of the local WIC agency~~((7))~~;

~~((f) A minimum of five eligible))~~ (d) At least five authorized growers must participate in the farmers' market each year~~((7))~~;

~~((g))~~ (e) The ~~((farmers' market))~~ applicant must agree to comply with training sessions and monitor visits~~((7))~~; and

~~((h))~~ (f) The ~~((farmers' market))~~ applicant must agree to comply with all terms and conditions specified in the contract.

~~(3) ((The WIC farmers' market nutrition program is not required to authorize all applicants.))~~ The FMNP 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.

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

WAC 246-780-022 What is expected of ~~((a contractor))~~ an authorized farmers' market? ~~((1))~~ The ~~((contractor shall))~~ authorized farmers' market must:

~~((a))~~ (1) Comply with the ~~((WIC farmers' market nutrition program))~~ FMNP requirements and the terms and conditions of ~~((the farmers' market))~~ their contract;

~~((b))~~ (2) Accept training and technical assistance on ~~((WIC farmers' market nutrition program))~~ FMNP requirements from department staff;

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

~~((d))~~ (4) Be accountable for the actions of ~~((market))~~ employees ~~((involved in the WIC farmers' market nutrition program))~~ and volunteers;

~~((e))~~ Obtain signed grower agreements from eligible growers before they accept WIC farmers' market checks;

~~((f))~~ (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 ~~((WIC farmers' market))~~ FMNP checks are ~~((redeemed))~~ accepted only by ~~((eligible))~~ authorized growers for locally grown eligible foods;

~~((g))~~ Allow only growers selling locally grown produce to accept WIC farmers' market checks;

~~((h))~~ Ensure that WIC farmers' market checks are redeemed only for eligible foods;

~~((i))~~ Ensure eligible growers redeem WIC farmers' market checks within valid dates;

~~((j))~~ Ensure eligible growers have and display the "WIC Farmers' Market Checks Welcome Here" sign each market day when at authorized markets;

~~((k))~~ (7) Report to the department anyone that accepts FMNP

checks without authorization from the department;

(8) Refuse to ((validate)) process any ((WIC farmers' market)) FMNP checks ((from ineligible growers;

(l) Agree to designate a program coordinator to validate WIC farmers' market checks with the appropriate market and grower identification numbers;

(m) Comply with federal and state nondiscrimination laws;

(n) Ensure that WIC farmers' market nutrition program clients receive the same courtesies as other customers;

(o) Agree to provide the department with any information it has available regarding its participation in the WIC farmers' market nutrition program;

(p) Agree to keep WIC farmers' market client information confidential;

(q) Agree to allow the department to monitor the farmers' market for compliance with program requirements;

(r) Notify the department immediately if and when market operations cease; and

(s) Report any suspected noncompliance with WIC farmers' market nutrition program requirements to the department.

(2) Neither the department nor the contractor have an obligation to renew a contract.)) 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 WIC 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 WIC client information confidential;

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

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

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

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

WAC 246-780-025 How does an ((eligible)) applicant grower become authorized ((by a farmers' market)) to ((accept WIC)) participate in the farmers' market ((checks)) nutrition program?

~~((Eligible growers must:~~

~~(1) Grow a portion of the produce they have for sale. Any individual who purchases all the produce they plan to resell is considered a broker and is not allowed to participate in the program;~~

~~(2) Sell at an authorized farmers' market;~~

~~(3) Agree to follow the terms and conditions of the grower agreement; and~~

~~(4) Sign the grower agreement and return it to the department for signature and to be assigned a grower identification number.))~~

(1) To become authorized to participate in the FMNP an applicant must:

(a) Apply for authorization 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 are:

(a) The applicant must grow a portion of the produce they have for sale;

(b) The applicant must sell locally grown produce at either or both the authorized farmers' market or the authorized farm store as identified on the completed application;

(c) The applicant must agree to follow the terms and conditions of the grower contract.

(3) The FMNP 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.

NEW SECTION

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 for authorization 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 are:

(a) The farm store must be located at the site of agricultural production and grow, at that location, a portion of the produce they have for sale;

(b) The farm store must sell locally grown produce;

(c) The applicant must 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.

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

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

(1) Comply with the ((WIC farmers' market nutrition program)) FMNP requirements and the terms and conditions of the ((grower agreement)) contract;

(2) Accept training ((on WIC farmers' market nutrition program)) and technical assistance on FMNP requirements and assure that all persons working ((in the authorized grower's stall)) 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 FMNP 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 ((in the authorized grower's stall regarding WIC farmers' market nutrition program purchases)) or volunteering with the authorized grower or at the authorized farm store at the location(s) specified in the contract;

(4) Accept ((WIC farmers' market)) FMNP checks only for eligible foods;

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

(6) Accept ((WIC farmers' market checks within the valid dates of the program;

(7) Redeem WIC farmers' market checks by the date imprinted on the check;

(8)) FMNP checks within the valid dates of the FMNP and

redeem checks by the date imprinted on the check;

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

~~((9))~~ (8) Provide ((the)) WIC ((farmers' market nutrition program)) clients with the full amount of product for the value of each ((WIC farmers' market)) FMNP check;

~~((10))~~ (9) Charge WIC ((farmers' market nutrition program)) clients the same prices as other customers;

~~((11) Have the WIC farmers' market checks validated by the program coordinator at the farmers' market where the checks were accepted before cashing or depositing them;~~

~~((12))~~ (10) Make produce available to WIC clients that is the same quality as that offered to other customers;

~~((13))~~ (11) Comply with federal and state nondiscrimination laws;

~~((14))~~ (12) Treat WIC ((farmers' market customers)) clients as courteously as other customers;

~~((15))~~ (13) Cooperate with department staff in monitoring for compliance with ((program)) FMNP requirements and provide information on request;

~~((16))~~ (14) Reimburse the ((department)) FMNP for ((WIC farmers' market)) mishandled FMNP checks ((taken improperly));

~~((17))~~ (15) Not collect sales tax on ((WIC farmers' market)) FMNP check purchases;

~~((18))~~ (16) Not seek ((payment)) reimbursement from WIC ((farmers' market nutrition program)) clients for checks not paid by the ((department)) FMNP;

~~((19))~~ (17) Not give cash back for purchases less than the value of the FMNP checks; and

~~((20))~~ (18) Not trade, barter or otherwise use ((WIC)) farmers' market checks to purchase foods from other growers or pay for market fees or other business costs.

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

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

(2) ~~((Ineligible items include, but are not limited to, baked goods, cheeses, cider, crafts, dairy products, dried fruits, dried herbs, dried vegetables, eggs, flowers, fruit juices, honey, jams, jellies, meats, nuts, potted herbs, seafood, seeds, and syrups.))~~ Federal regulations do not allow WIC 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.

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

WAC 246-780-040 What happens if ((a)) an authorized farmers' market ((or a)), authorized grower or authorized farm store does not comply with ((WIC farmers' market nutrition program)) FMNP requirements? (1) Authorized farmers' markets ((and)), authorized growers or authorized farm stores who do not comply with ((WIC farmers' market nutrition program)) FMNP requirements are subject to sanctions, such as monetary penalties, ((in addition to, or in lieu of,)) or disqualification. Prior to ((disqualifying a farmers' market or grower)) disqualification, the department ((shall)) must consider whether the disqualification would create undue hardships for WIC ((farmers' market nutrition program)) clients.

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

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

(b) Providing unauthorized food, nonfood items, or other items to WIC ((farmers' market nutrition program)) clients in ((lieu of, or in addition to, eligible foods)) exchange for the FMNP check;

(c) Charging the ((program)) FMNP for foods not received by the WIC client;

(d) Providing rain checks or credit to WIC clients in ((a WIC farmers' market nutrition program)) an FMNP transaction;

(e) Giving change to WIC (~~((farmers' market nutrition program))~~) clients if the purchase is less than the value of the (~~((WIC farmers' market))~~) FMNP check;

(f) (~~((Validating WIC farmers' market checks without having authorization from the department;~~

~~((g))~~) ~~((WIC farmers' market))~~ FMNP checks without having a signed (~~((agreement))~~) contract with the department;

~~((h))~~) (g) ~~((WIC farmers' market))~~ FMNP checks at unauthorized farmers' markets or unauthorized farm stores;

~~((i))~~ ~~((Failing to get the WIC farmers' market checks validated with the market and grower identification numbers by the farmers' market program coordinator where the checks were accepted;~~

~~((j))~~) (h) Collecting sales tax on (~~((WIC farmers' market))~~) FMNP purchases;

~~((k))~~) (i) Seeking (~~((restitution))~~) reimbursement from (~~((program))~~) WIC clients for checks not paid by the department; and

~~((l))~~ ~~((Accepting and/or validating checks outside of the program dates; and~~

~~((m))~~) (j) Violating the rules of this chapter or the provisions of the contract (~~((and/or agreement))~~).

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

(4) If (~~((a farmers' market or grower))~~) an authorized market 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 (~~((a))~~) an authorized farmers' market (~~((or))~~), authorized grower or authorized farm store of (~~((anything))~~) a pending adverse action that affects their (~~((participation))~~) authorization status in the (~~((program))~~) FMNP, the department (~~((shall give))~~) must mail written notice (~~((not less than))~~) at least fifteen days before the effective date of the action. The notice (~~((shall))~~) 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 (~~((a))~~) an authorized grower or an authorized farm store for mishandling (~~((WIC farmers' market))~~) FMNP checks.

(7) The department may seek reimbursement from (~~((a))~~) an authorized grower or authorized farm store for payments made on (~~((improperly handled WIC farmers' market))~~) mishandled FMNP checks.

(8) Monetary penalties (~~((shall))~~) must be paid to the department within the time period specified in the notice. The department (~~((shall))~~) may refer (~~((farmers' markets and/or growers))~~) an authorized grower or authorized farm store who fails to pay within the specified time period to a commercial collection agency. (~~((In addition, the department may disqualify a farmers' market or grower.))~~)

(9) (~~((A))~~) An authorized farmers' market (~~((or))~~), authorized

grower or authorized farm store that has been disqualified from the ((~~WIC farmers' market nutrition program must~~)) FMNP may reapply at the end of the disqualification period to be considered for authorization.

(10) Any trafficking in ((~~WIC farmers' market~~)) FMNP checks ((~~exchanging checks for cash, drugs, or alcohol~~)) in any amount ((~~shall~~)) must result in disqualification.

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

AMENDATORY SECTION (Amending WSR 00-07-129, filed 3/22/00, effective 4/22/00)

WAC 246-780-060 How does ((~~a~~)) an authorized farmers' market ((~~or~~)), authorized grower, an authorized farm store or an applicant appeal a department decision? (1) ((~~Farmers' markets and growers have~~)) 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 ((~~WIC farmers' market nutrition program~~)) FMNP. Expiration or nonrenewal of a contract ((~~or agreement~~)) is not subject to appeal.

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

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

(4) The department may, at its discretion, permit the authorized farmers' market ((~~or~~)), authorized grower or authorized farm store to continue participating in the ((~~program~~)) 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 ((~~shall~~)) must be in writing and ((~~shall~~)) must:

(a) State the issue raised;

(b) Contain a summary of the authorized farmers' market's

~~((or))~~, 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 ~~((or))~~, 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 ~~((or))~~, authorized grower, authorized farm store or applicant if any;

(e) State the ~~((farmers' market or grower's))~~ 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 ~~((shall))~~ must be filed at the Department of Health, Adjudicative Clerk's Office, ~~((1107 Eastside,))~~ P.O. Box 47879, Olympia, WA 98504-7879. The request ~~((shall))~~ must be made within twenty-eight days of the date the farmers' market or grower received the ~~((department))~~ department's notice.

(7) The decision concerning the appeal ~~((shall))~~ 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 ~~((shall be extended by as many days as))~~ may be extended if all parties agree ~~((to with good cause))~~.