

Significant Legislative Rule Analysis (SA)  
Chapter 246-780 WAC  
A Rule Concerning Farmers' Market Nutrition Program

**Section 1. What is the scope of the rule?**

The proposed rule adds additional retail sites for farmers to provide locally grown nutritious, unprepared fruits and vegetables for eligible women, infant and children (WIC) at farm stores. Farmers, approved by the Washington WIC Nutrition Program, will be able to accept WIC Farmers' Market Nutrition Program (FMNP) checks from WIC clients in exchange for their fresh locally grown produce. These new authorized farm stores must be located at agricultural production sites.

The Department of Health is proposing this rule to comply with legislation passed in 2008 that required the department to adopt rules to add farm stores to the WIC Farmers' Market Nutrition Program.

The Department of Health is also proposing changes to the existing rule to comply with clear rule writing and plain talk principles.

**Section 2. What are the general goals and specific objectives of the proposed rule's authorizing statute?**

***RCW 43.70.700***

**Locally grown foods — Women, infant, and children farmers market nutrition program — Rules.**

(1) The department shall adopt rules authorizing retail operation farms stores, owned and operated by a farmer and collocated with a site of agricultural production, to participate in the women, infant, and children farmers market nutrition program to provide locally grown, nutritious, unprepared fruits and vegetables to eligible program participants.

(2) Such rules must meet the provisions of 7 C.F.R. part 3016, uniform administrative requirements for grants and cooperative agreements to state and local governments, as it existed on June 12, 2008, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

The general goal of RCW 43.70.700 is to establish a program to provide eligible women, infant and children (WIC) locally grown nutritious, unprepared fruits and vegetables.

The statute's objectives the rule implements:

Objective: Adopt rules to authorize retail operations at farm stores for WIC participants.

### **Section 3. What is the justification for the proposed rule package?**

The proposed rule will achieve the legislation's goals and objectives because it provides a process for farm stores to become authorized by the department to accept FMNP checks from WIC clients. This will add locations, in addition to the existing farmers' markets, where clients can purchase fresh local produce with their WIC FMNP checks.

Low income senior citizens receiving Senior Farmers' Market checks will also benefit. The Senior FMNP is administered by the Department Of Social and Health Services (DSHS). DSHS allows its' participants to use their checks at WIC authorized locations. Adding farm stores to the WIC FMNP will give seniors more places to spend their benefit checks. Increased access for at nutritionally at risk communities supports the DOH mission and objectives.

The inclusion of farm stores is complimentary to the dual purpose of both WIC and Senior Farmers' Market Nutrition Programs. The purpose is identified in regulation 7 CFR 248 and 7 CFR 249: not only providing food resources to the FMNP programs, but also "to expand the awareness, use of and sales at farmers' markets and farm stores."

The Department of Health has assessed and determined that there are no feasible alternatives to rulemaking as rulemaking was required by legislation.

If this rule is not adopted, the result would be the Department of Health would not be in compliance with the requirement to adopt rules as identified in the passed legislation.

### **Section 4. What are the costs and benefits of each rule included in the rules package? What is the total probable cost and total probable benefit of the rule package?**

1. Identification of total number of rules in package: 10 sections

WAC 246-780-001	What is the purpose of the farmers' market nutrition program?
WAC 246-780-010	Definitions.
WAC 246-780-020	How does an applicant farmers' market become authorized to participate in the farmer's market nutrition program?
WAC 246-780-022	What is expected of an authorized farmers' market?
WAC 246-780-025	How does an applicant grower become authorized to participate in the farmers' market nutrition program?

- WAC 246-780-026 How does an applicant farm store become authorized to participate in the farmer' market nutritious program?
- WAC 246-780-028 What is expected of an authorized grower or authorized farm store?
- WAC 246-780-030 What kind of foods can WIC clients buy with farmers' market nutrition program checks?
- WAC 246-780-040 What happens if an authorized farmers' market or authorized grower or authorized farm store does not comply with FMNP requirements?
- WAC 246-780-060 How does a farmers' market or grower appeal a department decision?

## 2. Non-Significant Rule Identification Table

**Table: Non-Significant Rule Identification**

#	WAC Section	Section Title/Subject	Reason
1	WAC 246-780-001	What is the WIC FMNP	Does not create or amend a policy or regulatory program
2	WAC 246-780-010	Definitions	Does not create or amend a policy or regulatory program
3	WAC-246-290-030	List of foods WIC clients can buy	Federal regulations specify eligible and ineligible foods.

## 3. Significant Rule Analysis

### A. WAC 246-780-020- How does a farmers' market become a contractor?

Rule Overview – This rule identifies how a farmers' market can become authorized to participate in the FMNP. The farmers' market must:

- 1) Apply
- 2) Have a designated manager on site
- 3) Have been in operation for at least one year (note: the department may waive this requirement if there is insufficient farmer market access in the area)
- 4) Be within 20 miles of a local WIC agency
- 5) Have at least five authorized growers
- 6) Agree to comply with training sessions and monitor visits
- 7) Agree to terms and conditions of contract
- 8) Complete training on FMNP requirements
- 9) Enter into and abide by the contract, and
- 10) Reapply at the end of the contract

#### Rule Cost/Benefit Analysis –

Farmer's markets that meet the required conditions above can submit applications to the department. The department assumes that there will be minimal cost for markets to prepare and submit the application. If a market does not currently meet any of the eligibility criteria, they can work towards satisfying the criteria, other than the 20 mile distance requirement to a local WIC agency.

#### B. WAC 246-780-022- What is expected of an authorized farmer's market?

Rule Overview – This section identifies what farmer's market must agree to fulfill. Farmer's markets must:

- 1) Comply with FMNP requirements
- 2) Accept training and technical assistance from department staff
- 3) Train growers, market employees, and volunteers of FMNP requirements
- 4) Be accountable for market employees, and volunteers, and
- 5) Keep a current list of growers (name, address, crops sold etc.)

#### Rule Cost/Benefit Analysis –

The changes in this section are largely editorial and makes "plain talk" changes to the existing rule. The requirement for farmers' markets to receive technical assistance is new. The training and technical assistance provided by the department will enable markets to understand and comply with the rules. The rule adds a new requirement to keep a current list of approved growers and the produce they sell. The department considers this standard practice and thus most farmers' markets will be able to provide this information with little to no extra cost.

#### C. WAC 246-780-025- How does an applicant grower become authorized to participate in the farmers' market nutrition program?

Rule Overview – This section identifies how growers can become authorized to participate in the FMNP program. Growers must:

- 1) Apply
- 2) Meet grower selection criteria (grow portion of food they sell, sell at either or both at their farmers' market or farm stores)
- 3) Complete training
- 4) Enter and abide by the contract, and
- 5) Reapply at the end of the contract

#### Rule Cost/Benefit Analysis –

Growers that meet the required criteria above can submit applications to the department. The department assumes that there will be minimal cost for growers to prepare and submit the application. If a grower does not currently meet any of the eligibility criteria, they can work towards satisfying the criteria.

D. WAC 246-780-026- How does an applicant farm store become authorized to participate in the farmers' market nutrition program?

Rule Overview – This section identifies how farm stores can become authorized to participate in the FMNP program. Farm stores must:

- 1) Apply
- 2) Meet grower selection criteria (grow portion of food they sell, sell at either or both at their farmers' market of farm stores)
- 3) Complete training offered by the FM manager or department
- 4) Enter and abide by the contract, and
- 5) Reapply at the end of the contract

Rule Cost/Benefit Analysis –

Growers that intend to participate in the FMNP at their farm store location must meet the required criteria that is identical to growers that want to become approved as a farmers' market grower. The department assumes that there will be minimal cost for growers to prepare and submit the application for their farm store. If a grower does not currently meet any of the eligibility criteria, they can work towards satisfying the criteria.

E. WAC 246-780-028- What is expected of an authorized grower or authorized farm store?

Rule Overview – This section identifies expectations for growers and farm stores to participate in the FMNP program. Growers and farm stores must:

- 1) Comply with FMNP requirements
- 2) Accept training and technical assistance from department staff
- 3) Be accountable for employees and volunteers of the grower or the farm store, and
- 4) Display the WIC FMNP sticker

Rule Cost/Benefit Analysis – This section is largely editorial and makes “plain talk” changes to the existing rule. The requirement for authorized growers and authorized farm stores to receive technical assistance is new. The training and technical assistance provided by the department will enable growers and farm store personnel to understand and comply with the rules. The department assumes the requirements in this section are standard practice and thus growers and farm stores will not incur new costs to comply with this section.

F. WAC 246-780-040- What happens if an authorized farmers' market or authorized grower or authorized farm store does not comply with FMNP requirements?

Rule Overview – This section states that markets, growers or farm stores that do not comply with the requirements are subject to sanctions or disqualification. The section identifies what constitutes non-compliance. The sole significant change to this section is that it adds farm stores as entities that are subject to sanctions and disqualification for non-compliance.

Rule Cost/Benefit Analysis – This section is largely editorial and makes “plain talk” changes to the existing rule. The department’s assumption is that markets, growers and farm stores will comply with the requirements. Therefore there is no assumed cost. If the department does have to address non-compliance, it will follow the procedures identified in this section.

G. WAC 246-780-060- How does a authorized farmers' market, authorized grower, authorized farm store, or applicant appeal a department decision?

Rule Overview – This section identifies the process markets, growers, farm stores, or applicants must follow if they want to appeal a departmental decision. The sole significant change to this section is that it adds farm stores as entities that can appeal the decision, but the process itself is unchanged.

Rule Cost/Benefit Analysis –The department’s assumption is that farm stores will comply with the requirements. Therefore there is no assumed cost. If the department does have to address non-compliance, it will follow the procedures identified in this section.

#### 4. Rule Package Cost-Benefit Conclusion

Participating in the WIC FMNP is voluntary and there are no fees or other associated costs to participate.

There are many benefits of adding farm stores to the WIC FMNP. Adding farm stores to the WIC FMNP will give WIC clients increased access to locally grown fresh fruits and vegetables. Increasing access is a good way to increase consumption and improve the health of low income women, infants and children participating in WIC.

Farmers’ Markets, growers and farm stores benefit from increasing the consumers knowledge of local food production and availability, expansion of the marketplace and the ability to sell their produce without incurring transportation and marketing costs. WIC clients may also spend their own money at the farm store in addition to their WIC FMNP checks.

Growers that operate farm stores benefit by being able to expand points of sale of their produce. Participating farmers avoid the high costs associated with shipping their produce, by being able to sell it at the location where it was grown. In addition to these financial benefits, participating farmers integrate themselves into the community and develop relationships with their customers. Farm stores also play an important role in educating the consumer about how their food is grown. They can also be a source of information on how to cook and prepare fresh produce.

In conclusion, as described above, as there are only minor costs associated with this rule and several benefits, the total probable benefits of this rule exceeds the total probable costs.

**Section 5. What alternative versions of the rule did we consider? Is the proposed rule the least burdensome approach?**

Descriptions of alternatives considered

The department incorporated the federal requirements to authorize farm stores (called farm stands in the federal language). This rule language is based upon federal requirements and stakeholder input. The department, however, also developed several versions of the rule in its effort to “plain talk” (e.g., use lists instead of writing requirement in a paragraph) the existing and new requirements. The presented draft language represents the preferred version of the rule.

Least burdensome determination

The proposed amendments to the farmer’s market rule will have the least burden or impact on the participating farmers, while still meeting the purpose of the program and the intent of the proposed rule change.

**Section 6. Did you determine that the rule does not require anyone to take an action that violates another federal or state law?**

The rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

**Section 7. Did we determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless the difference is required in federal or state law?**

The Department of Health determined that the rule does not impose more stringent performance requirements on private entities than on public entities.

**Section 8. Did you determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, did we determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary?**

The rule does not differ from any applicable federal regulation or statute.

**Section 9. Did we demonstrate that the rule has been coordinated, to the maximum extent possible, with other federal, state, and local laws applicable to the same activity or subject matter?**

Yes, the rule is coordinated to the maximum extent practicable with other federal applicable laws, including:

Title 7--Agriculture

CHAPTER II--FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 248--WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP) This is the federal law that authorizes states to administer the federal program and to receive grant monies to do so.