

**PART VIII. SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS AND CHILDREN
(WIC PROGRAM)**

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Authority

The provisions of this Part VIII issued under the Child Nutrition Act of 1966 (42 U.S.C.A. §§ 1171—1791), unless otherwise noted.

Source

The provisions of this Part VIII adopted July 23, 1999, effective July 24, 1999, 29 Pa.B. 3841, unless otherwise noted.

CHAPTER 1101. GENERAL PROVISIONS

Sec.	
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§ 1101.1. Background and scope.

(a) *Background.* Through an amendment to section 17 of the Child Nutrition Act of 1966 (42 U.S.C.A. § 1786), Congress has authorized the USDA-FNS to contract with state agencies for the establishment of the WIC Program. The USDA-FNS contracts with and makes funds available to the Department to administer the WIC Program in this Commonwealth.

(1) The purpose of the WIC Program is to provide allowable foods to income eligible pregnant, breast-feeding or postpartum women, infants and children up to 5 years of age, who are at nutritional risk because of medical problems or poor diets. The WIC Program provides these individuals with nutritious foods to supplement their diets during critical stages of growth and development. These foods are chosen to correct, prevent or minimize health and nutritional problems. The foods are not intended to be a complete diet, but, rather, to supplement other foods available to the participants.

(2) In addition to providing supplemental foods, the WIC Program refers applicants and participants to health services and offers nutrition education so

that the food will be properly used and will improve the dietary and health habits of the entire family. The Department uses a retail purchase system to provide the majority of food benefits to participants.

(b) *Scope*. This part establishes design and operational requirements for the food delivery system for the WIC Program, and prescribes procedures to be used by applicants, participants and stores to appeal actions of the Department and local agencies that may adversely impact upon them.

Authority

The provisions of this § 1101.1 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1101.1 amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900. Immediately preceding text appears at serial pages (272421) to (272422).

§ 1101.2. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Above-50-percent-store—A store that derives more than 50% of its annual food sales revenue from WIC checks, and a new store applicant expected to meet this criterion under guidelines approved by USDA-FNS.

Allowable foods—Foods and infant formula on the WIC food list. These products meet nutritional standards established by the USDA-FNS and are authorized by the Department for purchase with WIC checks.

Applicant—An individual applying to become a participant.

Authorization—The grant of authority to a store to serve as a WIC authorized store.

Authorized representative—

(i) For an applicant or participant, a parent or guardian of an applicant or participant who is an infant or child, a proxy or endorser, or an individual designated to represent the applicant or participant in administrative proceedings involving the WIC Program.

(ii) For a store, an individual designated by the store to represent it in administrative proceedings involving the WIC Program.

(iii) For a compliance buy or WIC transaction review, the person conducting the compliance buy or WIC transaction review.

Breastfeeding woman—A woman, during 1 year postpartum, who is breastfeeding her infant.

Certification—The Department's acceptance of an applicant to participate in the WIC Program as a participant.

Child—A person 1 year of age or older but under 5 years of age.

Claim—A demand for reimbursement of an overcharge or other improper charge to the WIC Program as a result of a store violation.

Clinic—A facility where applicants apply for and participants receive WIC Program services other than food benefits.

Competitive price—The price established by the Department, at or below which a store shall maintain the required minimum inventory.

Compliance buy—A covert purchase at a WIC authorized store, with a WIC check, conducted to enable the Department to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

Compliance investigation—A series of at least two compliance buys conducted at the same WIC authorized store.

Competent professional authority—

(i) An individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the Department will authorize to serve as a competent professional authority: physicians, nutritionists (Bachelor's or Master's Degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis on nutrition), dietitians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials.

(ii) The term also applies to an individual who is not on staff at the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on staff of the local agency.

Contract brand—The specific manufacturer brand of an allowable food that the Department is contractually bound to prescribe for participants.

Department—The Department of Health of the Commonwealth.

Disqualification—

(i) For the purposes of this chapter and 1103, 1105, 1107, 1109 and 1113, the term means the action by the Department to end participation of a WIC authorized store in the WIC Program for reasons of fraud, abuse or other violations of this part governing the store's participation in the WIC Program.

(ii) For purposes of Chapter 1111 (relating to applicant and participant appeals), the term means action by the Department or local agency to end participation of a participant who no longer meets the qualifications necessary to participate in the WIC Program or for reasons of fraud, abuse or violation of standards governing the participant's enrollment in the WIC Program.

Division of WIC—Division of WIC in the Department.

Endorser—The parent or guardian of an infant or child participant who is authorized to use and sign the WIC checks of the infant or child for purchase of allowable foods.

Filing date—The date on which the local agency or the Department receives an appeal.

Food items—Items sold for human consumption that are eligible for purchase under the Food Stamp Program.

Food prescription—A designation by a competent professional authority of allowable foods in specified quantities to meet a participant's nutritional needs based upon a determination of nutritional risk.

Food sales—

(i) Sales of all Food Stamp Program eligible foods intended for home preparation and consumption, including meat, fish, and poultry; bread and cereal products; dairy products; fruits and vegetables.

(ii) Food items such as condiments and spices, coffee, tea, cocoa and carbonated and noncarbonated drinks may be included in food sales when offered for sale along with foods in the categories identified in this definition.

(iii) The term does not include the sale of any item that cannot be purchased with food stamp benefits, such as hot foods or food that will be eaten in the store.

Food Stamp Program—The government benefits program operated under the authority of the Food Stamp Act of 1964 (7 U.S.C. Chapter 51) and 55 Pa. Code Part II, Subpart L (relating to Food Stamp Program), and administered by the USDA-FNS and the Department of Public Welfare.

Full line grocery store—A store that:

(1) Offers for sale, in addition to WIC authorized foods, food items from each of the following four food categories on a continuous basis:

(i) Meat, poultry or fish.

(ii) Bread or cereal.

(iii) Vegetables or fruits.

(iv) Dairy.

(2) Has available for sale at all times of operation and displays in a public area of the store, a minimum of three different varieties of food items in each of the four above listed food categories.

Health services—Routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

High risk store—A store identified as a possible perpetrator of fraud or abuse through analysis of redemption patterns of WIC checks or WIC sales, or by complaints of participants or WIC Program staff.

Infant—A person under 1 year of age.

Inventory audit—A comparison of a WIC authorized store's inventory levels of a particular allowable food over a specific period of time, to purchases of

the allowable food with WIC checks during the same period of time, to determine if the store had a quantity of the allowable food available for sale during that time sufficient to support its claim for reimbursement for the sale of the allowable food.

Local agency—A public or private nonprofit health or human service agency with which the Department contracts to provide WIC Program services for a specific geographic area.

Maximum allowable price—The maximum price the Department will pay for an allowable food.

Nutritional risk—A determination that one of the following exists:

- (i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements.
- (ii) Other documented nutritionally related medical conditions.
- (iii) Dietary deficiencies that impair or endanger health.
- (iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

Onsite review—A visit to a store by Federal, Department or local agency personnel to determine if the store meets the selection criteria necessary to be a WIC authorized store, or a visit to a WIC authorized store to determine whether the store is complying with this part governing the store's participation in the WIC Program. An onsite review may be announced or unannounced.

Overcharge—A charge by a WIC authorized store to the WIC Program through redemption of a WIC check for an allowable food in excess of the store's shelf price for that food or in excess of the price charged a non-WIC participant for that food.

Overpayment—Payment to a WIC authorized store of a WIC check redeemed by the store in an amount in excess of the amount to which the store was entitled based upon the maximum allowable price applicable to the store's peer group for each allowable food authorized for purchase on the WIC check.

Participant—A pregnant woman, breast-feeding woman, postpartum woman, infant or child enrolled in the WIC Program.

Participant certification period—The period of time during which an individual is authorized to participate in the WIC Program.

Peer group—The classification of an authorized store under the store peer group system, as determined by the criteria selected by the Department, including size of a store sales floor, number of cash registers in the store, number of stores owned, and county where the store is located.

Periodic review—Contemporaneous announced onsite reviews of stores in a trade area conducted not less than once every 3 years to select stores for reauthorization.

Postpartum woman—A woman, during 6 months after termination of pregnancy.

Pregnant woman—A woman determined to have one or more embryos or fetuses in utero.

Premises—The sales floor and storage areas within the building housing the WIC authorized store.

Price adjustment—The retroactive reduction in the amount paid for a redeemed check as a result of a determination of overpayment.

Probationary authorization—The Department’s probationary authorization of a WIC authorized store when inadequate participant access would occur if the store were not authorized or reauthorized or when the store is reviewed prior to opening to the public and has not yet stocked its dairy section or its frozen juice section.

Proxy—A person authorized by the local agency and the participant, or by the participant’s parent or guardian if the participant is an infant or child, to pick up or use WIC checks to make purchases for that participant.

Reauthorization—The Department’s renewal of authorization.

Redemption—Submission of a WIC check by a WIC authorized store to its bank for the purpose of securing a money payment for the amount appearing in the “Pay Exactly” box on the WIC check.

Routine review—An unannounced onsite review of a WIC authorized store to evaluate adherence by the store with the requirements in this part governing the store’s participation in the WIC Program.

Sales floor—The display shelving, the floor in the area normally used for retail trade and the area behind the customer service desk, excluding other areas not accessible to the general public.

Sanction—

(i) A penalty imposed by the Department upon a WIC authorized store for violation of this part governing the store’s participation in the WIC Program.

(ii) The term does not include a decision to deny authorization or reauthorization following an announced onsite review.

Secretary—The Secretary of the Department.

Selection criteria—Criteria in § 1103.4 (relating to selection criteria for authorization and reauthorization) which the Department has established which a store seeking to be authorized or reauthorized is required to satisfy.

Stale-dated—After the date imprinted on the product as the recommended last date for sale or use.

Standard formula—Infant formula products that do the following:

(i) Meet the Federal WIC regulatory definition of an iron-fortified formula (7 CFR 246.10(c)(1)(I) (relating to supplemental foods)).

(ii) Comply with the Infant Formula Act of 1980, the act of September 26, 1980 (Pub. L. No. 96-359, 94 Stat. 1190), which amended the Food and Drug Act.

(iii) Meet the requirements of an “infant formula” as opposed to an “exempt infant formula” or “medical food” as determined by the Food and Drug Administration (FDA), United States Department of Health and Human Services.

Store peer group system—A classification of authorized stores into groups based on common characteristics or criteria including size of a store sales floor, number of cash registers in the store, number of stores owned, and a measure of geography, such as metropolitan or other statistical areas that form distinct labor and product markets that affect food prices, for the purposes of applying appropriate competitive pricing criteria to stores at authorization and reauthorization and limiting payment for foods to competitive levels.

Store violation—Intentional or unintentional action by the owners, officers, managers, agents or employees of a WIC authorized store that violates the requirements in this part governing the store’s participation in the WIC Program and that may result in a claim.

Temporary authorization—The Department’s temporary and conditional authorization of a WIC authorized store that fails to meet specified selection criteria during the initial onsite review for purpose of reauthorization.

Trade area—A designated geographic area within the geographical area assigned to a local agency, which is organized to serve the participant populations in that designated area.

USDA-FNS—The United States Department of Agriculture, Food and Nutrition Service.

WIC authorized store—A retail food store which is authorized or reauthorized in accordance with § 1103.1 (relating to authorization and reauthorization process and requirements) to provide allowable foods to participants by accepting WIC checks.

WIC check—A negotiable instrument issued to participants to purchase allowable foods at WIC authorized stores.

WIC food list—A list published by the Department in the *Pennsylvania Bulletin* of foods and infant formula which may be purchased with WIC checks.

WIC identification card—A document issued by the Department to a participant, which is used for identification purposes and verification of eligibility to purchase allowable foods with WIC checks at a WIC authorized store.

WIC Program—The Special Supplemental Nutrition Program for Women, Infants and Children.

WIC Program benefits—Supplemental foods, nutrition education and referral to health services.

WIC transaction—The presentation of a WIC check by a participant or authorized representative to a WIC authorized store resulting in the purchase of one or more of the allowable foods designated on the check.

WIC transaction review—The presentation of a WIC check by a Federal, Department or local agency representative to purchase foods at a WIC autho-

rized store, which does not result in the actual tender of the WIC check or the purchase of the foods, to evaluate adherence by a WIC authorized store with the requirements in this part governing the store's participation in the WIC Program.

Authority

The provisions of this § 1101.2 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1101.2 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (300324) to (300329).

§ 1101.3. Administration.

(a) *Department responsibilities.* The Department will develop policies and procedures for the operation of the WIC Program, distribute funds to local agencies to assist the Department in operating the WIC Program, authorize stores to participate in the WIC Program, monitor and evaluate WIC Program services provided by WIC authorized stores, maintain fiscal records, submit reports and carry out all other responsibilities delegated to it by the USDA-FNS for the operation of the WIC Program.

(b) *Vendor Advisory Workgroup.* The Department will form a Vendor Advisory Workgroup with representation from the retail store community, appropriate advocacy groups and associations for retail stores and participants, and from the State and local agencies. The Department will schedule at least two meetings of the Vendor Advisory Workgroup annually to review and discuss retail store and food delivery issues. The Vendor Advisory Workgroup shall function in an advisory capacity only; acceptance of Workgroup recommendations shall be at the discretion of the Department.

(c) *Local agency responsibilities.* Local agencies shall determine whether participants meet eligibility criteria developed by the Department, develop food prescriptions for participants, provide nutrition education to participants, provide referral information regarding ongoing health services, issue WIC checks to participants to purchase allowable foods and ensure that all participants are served without discrimination. Local agencies shall function as representatives of the Department in conducting onsite reviews, and in monitoring the activities of WIC authorized stores.

Authority

The provisions of this § 1101.3 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1101.3 amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900. Immediately preceding text appears at serial pages (272426).

[Next page is 1103-1.]