

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
(Amended at ARRS Committee)

902 KAR 18:011. Definitions for 902 KAR Chapter 18.

RELATES TO: KRS 194A.050, 194A.505, 241.010~~[194A.990]~~, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.180~~[211.090(3)]~~, 7 C.F.R. Part 246, 42 U.S.C. 1786

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 ~~authorize~~~~provide~~~~for~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) ~~requires~~~~authorizes~~ the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 18.

Section 1. Definitions.

(1) "Above-50-percent vendor" is defined by 7 C.F.R. 246.2~~[means a vendor that receives or is expected to receive more than fifty (50) percent of its annual food sales revenue from WIC benefits].~~

(2) "Alcohol" is defined by KRS 241.010(1).

(3) "Alcoholic beverage" is defined by KRS 241.010(2).

(4) "Approved product listing" or "APL" means an electronic list or file identifying the food items approved by the state WIC agency pursuant to 902 KAR Chapter 18 for purchase with WIC food instruments by food category and subcategory.

(5) "Authorized supplemental food" is defined by 7 C.F.R. 246.2~~[means a supplemental food authorized by the state or a local agency for issuance to a particular participant].~~

(6) "~~Cash-value~~Cash-value voucher" is defined by 7 C.F.R. 246.2.

(7) "Competent~~[Certifying]~~ professional authority" means a person authorized to determine eligibility and certify persons for the WIC program.

(8) "Class" means food sale classification.

(9) "Compliance buy" is defined by 7 C.F.R. 246.2~~[means a covert, on-site investigation].~~

(10) "Contract price" means the price for a WIC food item negotiated between the state WIC agency and the vendor.

(11) "Dual participation" is defined by 7 C.F.R. 246.2.

(12) Electronic Benefit Transfer" (EBT) is defined by 7 C.F.R. 246.2 ~~[means simultaneous participation in the WIC Program and in:]~~

~~[(a)] [One (1) or more WIC clinics; or]~~

~~[(b)] [The Commodity Supplemental Food Program].~~

(13) [(12)] "Electronic WIC benefits" or "eWIC" means a ~~[Web-based]~~ technology that allows WIC participants to obtain food benefits by using a method that permits electronic access~~[plastic debit-type card with a personal identification number (PIN)]~~ at authorized participating WIC vendors~~[retailers].~~

(14) [(13)] "Exempt infant formula" is defined by 7 C.F.R. 246.2.

(15) [(14)] "FNS" means Food and Nutrition Services.

(16) [(15)] "Food instrument" is defined by 7 C.F.R. 246.2.

(17) [(16)] "Good letter with exceptions" means a written notification letter that:

(a) An investigation ~~[A compliance buy]~~ has been conducted ~~[in the store];~~

- (b) A violation occurred; and
- (c) No sanction was applied due to lack of pattern of incidence.
- (18) ~~[(17)]~~ "High risk vendor" means a vendor having a high probability of noncompliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.
- (19) ~~[(18)]~~ "Integrated" means a commercial system that fully incorporates eWIC functionality into an existing electronic cash register (ECR) system.
- (20) ~~[(19)]~~ "Inventory audit" is defined by 7 C.F.R. 246.2~~[means an examination of food invoices or other proof of purchase to determine if a vendor has purchased sufficient quantities of authorized supplemental food to provide to participants the quantities of food items redeemed by the vendor during a given period of time].~~
- (21) ~~[(20)]~~ "Investigation" means a method used by the state WIC agency to detect a WIC program violation.
- (22) ~~[(21)]~~ "Local agency" is defined by 7 C.F.R. 246.2~~[means an applying or participating WIC agency].~~
- (23) ~~[(22)]~~ "Low variance" means the redemption of the same type of food item at the same price or within a narrow price range.
- ~~[(23)]~~ ~~["Medical foods" means enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition when the use of conventional foods is precluded, restricted, or inadequate.]~~
- (24) "Not to exceed" or "NTE" means:
- (a) FNS-approved cost containment methodology ~~with/whereby~~ WIC authorized vendors ~~fare~~ subject to price limitations; and
 - (b) The maximum amount that Kentucky will pay for a specific food item identified by its UPC code.
- (25) "Participant" is defined by 7 C.F.R. 246.2~~[means:]~~
- ~~[(a)]~~ ~~[A pregnant, breastfeeding, or postpartum woman or an infant or child who is receiving supplemental food or food instruments;]~~
 - ~~[(b)]~~ ~~[The breastfed infant of a breastfeeding woman who is receiving WIC program benefits;]~~
 - ~~[(c)]~~ ~~[The parent or caretaker of an infant or child receiving a WIC benefit; and]~~
 - ~~[(d)]~~ ~~[The proxy for a person identified in paragraphs (a), (b), or (c) of this subsection].~~
- (26) "Participant violation" means an intentional, knowing act of a participant that violates KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.
- (27) ~~["Peer Groups" means categories into which vendors are assigned based upon sales volume and region.]~~
- ~~[(28)]~~ "PIN" means a unique four (4) digit personal identification number designated by the WIC participant.
- (28) ~~[(29)]~~ "Point of sale" or "POS" means the combination of hardware and software that enables a vendor to accept payment for~~[the system supporting] WIC~~~~[eWIC]~~ food transactions~~[in a store checkout lane].~~
- (29) ~~[(30)]~~ "POS device" means a ~~[physical electronic cash register or]~~ dedicated point of sale ~~[hardware or]~~ terminal that is used for eWIC food transactions~~[WIC processing].~~
- (30) ~~[(31)]~~ "Positive buy" means a compliance buy, onsite review, or online~~[on-site review, or on-line]~~ WIC transaction review that provides evidence that a violation of the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 has occurred.
- (31) ~~[(32)]~~ "Price look up" or "PLU" means a four (4) or five (5) digit identifier used to identify individual and bulk produce.
- (32) ~~[(33)]~~ "Proxy" is defined by 7 C.F.R. 246.2~~[means a person designated by a female participant or by a parent or caretaker of an infant or child participant to obtain and~~

~~transact a food instrument or cash value voucher to obtain a supplemental food or foods on behalf of a participant].~~

~~(33) [(34)] "Routine monitoring" is defined by 7 C.F.R. 246.2[means overt, on-site monitoring during which representatives of the WIC program identify themselves to vendor personnel].~~

~~(34) [(35)] "Rural" means any area not defined as urban.~~

~~(35) [(36)] "Shelf price" means the price displayed on the food item, shelf, or display case where the food item is available for purchase[stored].~~

~~(36) [(37)] "SNAP" means the Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program.~~

~~(37) [(38)] ["Standard bar code" means a printed series of lines of varying width on a container or product that can be read by an optical scanner to determine product classification and price.]~~

~~[(39)] "Staple food items" means meat, poultry, fish, bread, breadstuff, cereals, vegetables, fruit, vegetable and fruit juices, and dairy products, excluding items, such as coffee, tea, cocoa, carbonated and uncarbonated beverages, condiments, and spices.~~

~~(38) [(40)] "State WIC agency" means the Cabinet for Health and Family Services or its designated representative.~~

~~(39) [(41)] "Systematic review" means a review of electronic WIC transactions by the state WIC agency or its representatives to monitor systematic violations of the program.~~

~~(40) [(42)] "Trafficking" means the redemption or exchange of WIC food instruments for cash, firearms, ammunition, explosives, or controlled substances as defined by 21 U.S.C. 802(6)[a firearm, ammunition, an explosive, or a controlled substance as defined in 21 U.S.C. 802].~~

~~(41) [(43)] "Unauthorized food" means foods not authorized by the state or local agency for issuance to a particular participant.~~

~~(42) [(44)] "Unique customer" means the number of unduplicated WIC households[individuals] that have one (1) or more transactions at a specific authorized WIC[the sanctioned] vendor during a[the] specified time period.~~

~~(43) [(45)] "UPC" or "Universal product code" means a unique barcode consisting of numerical-[twelve (12)] digits used for tracking inventory[trade items] in retail stores.~~

~~(44) [(46)] "Urban" means a metropolitan area as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 23-01 available at <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf>[13-01].~~

~~(45) [(47)] "Vendor" is defined by 7 C.F.R. 246.2[means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one (1) or more stores by providing authorized supplemental foods to participants under a retail food delivery system].~~

~~(46) [(48)] "Vendor authorization" is defined by 7 C.F.R. 246.2[means the process by which the state WIC agency assesses, selects, and enters into an agreement or contract with a store that applies or subsequently reapplies to be authorized as a vendor].~~

~~(47) [(49)] "Vendor overcharge" is defined by 7 C.F.R. 246.2.~~

~~(48) "Vendor peer group system" is defined by 7 C.F.R. 246.2.~~

~~(49) [(50)] "Vendor violation" is defined by 7 C.F.R. 246.2[means an intentional or unintentional act of a vendor's current owner, officers, agent, or employee, with or without the][knowledge of management, that violates the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18].~~

~~(50) [(51)] "WIC agency" means a local health department or agency contracted with the state to deliver WIC services.~~

(51) ~~((52))~~ "WIC benefits" means a voucher, check, Electronic Benefits Transfer card (EBT), coupon, or document that is used by a participant to obtain supplemental foods.

(52) "WIC-eligible nutritionals" is defined by 7 C.F.R. 246.2.

(53) "WIC program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants~~;~~ and Children authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786, and administered pursuant to 42 U.S.C. 1786 and 7 C.F.R. Part 246.

(54) "Written communication" means a letter or email correspondence that can be retrieved and tracked for timeline compliance.

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