

**RULEMAKING NOTICE FORM**

Notice Number 2015-164

Rule Number He-P 3207.01 & He-P 3207.02

<p>1. Agency Name &amp; Address:  <b>NH Dept. of Health &amp; Human Services                  Division of Public Health Services                  Nutrition Services Section                  29 Hazen Drive                  Concord, NH 03301</b></p>	<p>2. RSA Authority: <u>RSA 130:10-b, I</u>                  3. Federal Authority: <u>PL 108-265, 7 CFR 246</u>                  4. Type of Action:                  Adoption _____                  Amendment _____                  Repeal _____                  Readoption <u>X</u>                  Readoption w/amendment <u>X</u></p>
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5. Short Title: **Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Participant Sanctions**

6. (a) Summary of what the rule says and of any proposed amendments:

**The NH Department of Health and Human Services (Department) proposes to readopt He-P 3207.01 which describes local agency disqualification pursuant to federal law, and readopt with amendment He-P 3207.02 which describes sanctions for participants found to have violated He-P 3200, The Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The readoption with amendment of He-P 3207.02 updates the rule consistent with federal law governing sanctions for participants in the WIC program. The existing rule was recently readopted, and expires on October 1, 2024.**

**Specific changes to the He-P 3207.02 include, adding the definition of “dual participation” as defined by 7 CFR 246.2, and amending He-P 3207.02(j) to eliminate the \$100 minimum threshold used before the Department makes a claim for, or recovers improperly obtained benefits from the participant. The proposed rule mirrors the federal law requiring the Department to make a claim or collect from the participant whenever there is a loss of funds. The proposed amendment of He-P 3207.02(k) creates an exception to the 3 month disqualification imposed for violations of He-P 3200 regardless of the amount of the loss, if the participant makes full restitution or agrees to a payment plan within 30 days.**

6. (b) Brief description of the groups affected:

**The readoption of He-P 3207.01 affects but does not change the federal requirements of local agencies pursuant to 7 CFR 246.5(e). The readoption with amendment of He-P 3207.02 affects participants in the WIC program who are found in violation of He-P 3200.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>Rule</b>	<b>State or Federal Regulation Implemented</b>
He-P 3207.01	7 CFR 246.2 and 7 CFR 246.7
He-P 3207.02	7 CFR 246.5, 246.12, 246.15 and 246.23(b), and 246.23(c)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard**

Title: **Rules Coordinator**

Address: **Dept. of Health and Human Services** Phone #: **271-9374**  
**Administrative Rules Unit** Fax#: **271-5590**  
**129 Pleasant St.** E-mail: [catherine.l.bernhard@dhhs.state.nh.us](mailto:catherine.l.bernhard@dhhs.state.nh.us)  
**Concord, NH 03301**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**  
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, November 12, 2015**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, November 5, 2015 at 11:00 AM**

Place: [\*\*DHHS Brown Bldg., Room 232, 129 Pleasant St., Concord, NH\*\*](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 15:173, dated 09/30/15

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rules, the proposed rules may result in additional costs to the Department and certain State citizens.

**2. Cite the Federal mandate. Identify the impact of state funds:**

7 CFR 246.12(c) requires the Department to make a claim for restitution, and to develop sanctions against any participant who obtains or disposes of benefits improperly. The proposed amendment also adds the federal definition of dual participation from 7 CFR 246.2. There is no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

The proposed rule eliminates the \$100 minimum threshold before the Department makes a claim for and collects improperly obtained benefits, and adds the federal definition of dual participation. There may be additional costs to the Department resulting from additional claims and collecting for all losses for improperly obtained benefits. The Department may benefit from receipt of additional restitution payments. The WIC program is funded by federal funds and WIC food rebate revenue. There is no cost associated with adopting the federal definition of "dual participation."

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

State citizens who participate in the WIC program may incur costs if they have improperly obtained benefits valued below \$100. There will be no impact on political subdivisions.

**C. To Independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

**Readopt He-P 3207.01, effective 10-1-14 (Document # 10583), cited and to read as follows:**

CHAPTER He-P 3200 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

PART He-P 3207 SANCTIONS

He-P 3207.01 Local Agencies. The department shall disqualify a local agency under the criteria specified in 7 CFR 246.5(e).

**Readopt with amendment He-P 3207.02, effective 10-1-14 (Document # 10583), to read as follows:**

He-P 3207.02 Participants.

(a) Participant sanctions shall be as follows:

(1) All periods of suspension, termination, or disqualification shall commence with the next one-month voucher issuance following notice to the participant provided that the food package for that month will be prorated in accordance with these rules should the next set of food instruments be provided during the notice period;

(2) If a period of suspension exceeds the expiration of the current certification period, the participant shall be disqualified from reapplication until the period of suspension has been completed;

(3) The actions of a participant, a parent or caretaker of an infant or child participant, or a proxy shall be binding on the participant in the determination of violations and imposition of sanctions;

(4) Sanctions shall only be imposed on those participants for whom the evidence supports the sanction and not to all participating family members, even though the violations might have been committed with food instruments issued to one member;

(5) When more than one violation is involved, the sanction shall be based on the highest category violation;

(6) Excluding ~~(j)~~ and ~~(k)~~ (i) and (j) below, if a local agency competent professional authority submits a recommendation stating that the imposition of the disqualification would create an extreme nutritional hardship for the participant, the department shall waive a disqualification provided such waiver does not conflict with RSA 132:12-a, II;

(7) The competent professional authority's recommendation described in (6) above shall be made in writing to the department;

(8) The department shall grant or deny a waiver, requested in accordance with (6) and (7) above, within 15 days; and

(9) When a waiver has been requested, sanctions shall not be imposed pending waiver decision.

(b) The following shall apply if a participant fails to pick up food instruments as scheduled:

- (1) A participant who fails to participate by not picking up food instruments on the first day of the one-month of voucher issuance shall be disqualified from the program following the second consecutive month of failure to participate;
  - (2) On the 22nd day of the one-month voucher issuance, a participant who fails to pick up food instruments shall be determined to be non-participating for that month;
  - (3) The local agency shall mail a notice of appointment for the next regularly scheduled voucher appointment and a notice of disqualification if the participant fails to participate for that month; and
  - (4) On the 22nd day of the second one-month voucher issuance, the participant shall be determined to be non-participating for that month and disqualified from the program in accordance with (2) above.
- (c) Category I violations shall include actions related to misuse of program benefits or disruptive participant behavior such as:
- (1) Failure to follow proper redemption procedures;
  - (2) Failure to follow proxy procedures;
  - (3) Selection or purchase of unapproved foods within a WIC-approved food category;
  - (4) Selection or purchase of unapproved quantities of WIC-approved foods; and
  - (5) Behavior within a store or WIC clinic that is disruptive but not abusive or threatening.
- (d) Category I violations shall be subject to the following sanctions:
- (1) Written warning for the first occurrence within a 12-month period, unless a violation of Category II (e)(1) or (e)(2) for abusive behavior has been issued within a 12-month period, then (d)(2) below shall be implemented;
  - (2) A one-month suspension for the second occurrence within a 12-month period following warning;
  - (3) A 3-month disqualification for the third occurrence within a 12-month period following a one-month suspension for the second occurrence; and
  - (4) A participant disqualified for a Category I violation but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.
- (e) Category II violations shall include actions related to more serious misuse of program benefits or abusive participant behavior such as:
- (1) Abusive behavior within a store or WIC clinic such as swearing, hitting, or threatening department, local agency or vendor staff or other participants;

- (2) Abusive behavior over the phone such as swearing or threatening department, local agency or vendor staff;
  - (3) Redeeming food instruments prior to the valid date or after the expiration date printed on the food instrument;
  - (4) Redeeming food instruments which have been altered; and
  - (5) Purchasing non-WIC-approved foods.
- (f) Category II violations shall be subject to the following sanctions:
- (1) Written warning for the first actual or attempted occurrence;
  - (2) A 3-month disqualification for any subsequent actual or attempted occurrence within a 12-month period following warning; and
  - (3) A participant disqualified for a Category II violation, but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.
- (g) Category III violations shall include actions related to fraud or abuse of the WIC program such as:
- (1) Misrepresentation of eligibility for program benefits;
  - (2) Purchase of non-food items;
  - (3) Purchase of alcohol or tobacco products;
  - (4) Exchange of food instruments for cash or credit from retail vendors;
  - (5) Sale or attempted sale of WIC foods, infant formula, infant food or food instruments;
  - (6) Receipt from retail vendors of cash or credit toward purchase of unapproved foods or other items in exchange for food instruments or for foods purchased with food instruments;
  - (7) Redeeming both the food instrument reported lost or stolen and the replacement food instrument, resulting in over issuance of benefits;
  - (8) Returning WIC foods to a WIC vendor or other non-authorized retail store for cash or store credit;
  - (9) Returning WIC foods to a WIC vendor or another retail store for credit toward unapproved items; and
  - (10) Any return or attempt to return or sell infant formula by or on behalf of a participant or payee for cash or store credit if the specific brand of infant formula is the same as that included in the food package issued to the participant or payee.

(h) Category III violations shall be subject to ~~a 3-month disqualification for any subsequent actual or attempted occurrence.~~ the following sanctions:

(1) A 3-month disqualification for any subsequent actual or attempted occurrence, except as allowed by (k);

~~(2)~~ A participant disqualified for a Category III violation, but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above, shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.

~~(i)~~ Except as allowed by ~~(k)~~ below, the department shall disqualify a participant for one year in accordance with 7 CFR 246.12(u)(2) when:

(1) There is dual participation as defined in 7 CFR 246.2;

~~(2)~~ The department determines that program benefits have been obtained or disposed of improperly ~~as described in (g) above,~~ and these benefits total more than \$100.00; or

~~(3)~~ There is a second or subsequent demand for repayment of any amount.

~~(j)~~ The department shall collect improperly obtained benefits when there is a loss of funds they exceed \$100.00 as follows:

(1) In accordance with 7 CFR 246.23(c)(1), the department shall demand repayment, in writing, from the participant or parent or caretaker of an infant or child participant equal to the full value of these benefits;

(2) The department shall issue a second demand for repayment if full restitution is not made or a repayment schedule is not agreed upon within 30 days of receipt of the demand for repayment as described in (1) above; and

(3) If no written or oral response has been received from the participant or parent or caretaker of an infant or child participant after the second demand for repayment as described in (2) above, the department shall refer the matter to the New Hampshire department of justice.

~~(k)~~ The department shall permit the participant to continue participation in lieu of a mandatory disqualification when:

(1) Full restitution is made within 30 days;

(2) A payment plan is agreed to within 30 days of receipt of the letter demanding repayment; or

(3) For participants under the age of 18 and infant and child participants, the department approves proxies.

~~(m)~~(l) If full restitution is made or a repayment schedule is agreed upon before the end of a mandatory disqualification period as described in ~~(i)~~(i) above, the department shall allow a disqualified participant to reapply for the program.

~~(n)~~(m) Failure to make full and timely payment, as agreed upon in ~~(k)~~(k) or ~~(l)~~(l) above, shall result in disqualification for the remaining disqualification period established in the original disqualification notice.

#### APPENDIX

RULE	STATUTE
He-P 3207.01	7 CFR 246.2, 7 CFR 246.7
He-P 3207.02	7 CFR 246.5, 246.12, 246.15 and 246.23 <del>(b)</del> , and <del>246.23(c)</del>