

GOVERNMENT OF PUERTO RICO
DEPARTMENT OF HEALTH

SPECIAL SUPPLEMENTAL FOOD PROGRAM
FOR WOMEN, INFANTS, AND CHILDREN (WIC)

AUTHORIZED VENDOR REGULATION



“This institution is an equal opportunity provider”

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Legal Basis

This regulation is enacted pursuant to the Child Nutrition Act of 1966, 42 U.S.C. § 1786, as amended; the federal regulations contained in 7 CFR § 246, et. seq.; the Organic Law of the Department of Health, Law No. 81 of May 14, 1912, 3 L.P.R.A. §171, et. seq.; and the Administrative Procedure Act of the Government of Puerto Rico, Act No. 38-2017, 3 L.P.R.A. §2101, et. seq., as amended; which empowers the Secretary of the Puerto Rico Department of Health to establish the public policy, regulations, and procedures that will govern the administration of the Special Supplemental Nutrition Program for Women, Infants and Children of Puerto Rico, also known as the WIC Program.

The USDA Food and Nutrition Service (FNS) provides the funds for administering the WIC Program. This funding is provided on an annual basis. Like all WIC Program State agencies throughout the nation, each year the Puerto Rico WIC Program must enter into a Federal-State agreement with FNS in order to receive these funds. Under this agreement, the WIC Program agrees to comply with the Federal WIC Program regulations at 7 CFR, Part 246. If any provision of the WIC Program States regulations conflicts with the Federal WIC Program regulations or is interpreted in a manner that would conflict with the Federal WIC Program regulations, the clause in the Federal regulation shall prevail over the local regulation. In the event of such conflict, the Federal WIC Program regulations will be enforced, and the conflicting provision or interpretation of the WIC Program regulations will not be enforced.

This regulation applies to all vendors authorized by the WIC Program with the purpose of establishing the applicable eligibility requirements for becoming an authorized vendor, the duties and obligations of authorized vendors; the procedures required for WIC Program transactions; violations; and the sanction schedule. Vendors that do not comply with the requirements and obligations detailed in the Federal regulation and this regulation is subject to sanction and/or termination by the WIC Program. The regulation also includes a description of the requirement for cost containment measures.

This regulation will enter into effect immediately upon approval and on the date, it is filed with the Puerto Rico Department of State, in accordance with the, Act No. 38-2017, *supra*. The Regulation No. 8896 of December 30, 2016, *Authorized Vendor Regulation*, is repealed with the approval and filing of this Regulation.

Introduction

The WIC Program, provide supplement foods nutrition education, including breastfeeding promotion and support, of program participants during critical stages of their growth and development. Pregnant, post-partum, and breastfeeding women, infants, and children up to the age of five (5) who suffer medical-nutritional risks qualify to receive WIC Program benefits.

The eligibility criteria to receive program benefits are established in 7 CFR § 246.7, and consist of the following:

1. Meet one or more medical nutritional risks, such as:
 - a. Anemia
 - b. Underweight
 - c. Obesity
 - d. Low hemoglobin
 - e. Iron deficiency
 - f. Other dietary nutritional risks
2. Reside within the area served by the WIC Program assigned clinic.
3. Meet the income criteria or the poverty levels defined by the U.S. Department of Health and Human Services or the U.S. Department of Agriculture. The WIC Program provides nutrition and breastfeeding education to promote the development of better health and dietary habits in the family and the adequate use and preparation of the supplemental food items that participants receive.

Article I – Definitions

1. Above-50-percent vendor – Authorized WIC Program vendor that derives more than 50% of the store’s annual food sales revenue from the sale of food items that are obtained with the WIC Program food instruments or WIC EBT, and new vendor applicants expected to meet this criterion under guidelines approved by FNS.
2. Administrative hearing – Proceeding or hearing through which an authorized vendor has the opportunity to appear in his/her own right or through his/her legal representative and present allegations or defenses to adverse actions notified by the WIC Program that result in disqualification, termination of the vendor’s contract, administrative fines, and/or civil money penalties in lieu of disqualification as included in Article XII of this regulation. The proceedings or hearings are governed by federal regulations contained in 7 CFR § 246, and by Law No. 38-2017, *supra*, and the applicable regulations contained herein.
3. Authorization – Permission granted by the WIC Program to authorized vendors to accept and/or redeem WIC EBT, food instruments and/or cash-value vouchers to provide authorized supplemental foods to WIC participants.
4. Authorized supplemental foods – The brands and varieties of supplemental food products authorized by the WIC Program’s food list that contain the nutritional requirements established in 7 CFR § 246, which are prescribed to participants by nutritionists or other health professionals, according to their nutritional risk.
5. Authorized vendor stamp – Stamp bearing the authorized vendor’s identification number, which is used to validate WIC Program food instruments and cash-value vouchers at the time of redemption in the presence of participant or proxies in authorized stores or with farmers. Each redeemed food instrument and cash-value voucher must be stamped by the vendor. The WIC Program will reject food instruments and/or cash-value vouchers deposited without the vendor’s stamp.
6. Authorized vendor employees – Employees and/or any person working in the operational phase of the authorized stores, paid or not, for their work. The term includes, but is not limited to, independent contractors, agents, and representatives of the vendor.
7. Cash-value voucher – A fixed dollar amount food instrument, voucher, electronic benefit transfer (EBT) card, or other document that is used by a participant to obtain authorized fruits and vegetables.
8. Certification – The implementation of criteria and procedures to assess and document each participant applicant’s eligibility for the WIC Program.
9. Change in ownership – Transfer of the domain or title of an authorized store to another natural or juridical person or entity.

10. Clinic – Facility where the persons who qualify to receive WIC Program benefits are certified.

11. Competitive price – Determination made by the WIC Program after it evaluates the prices a vendor charges for supplemental foods as compared to the prices charged by other vendors in the same peer group. The WIC Program must authorize vendors selected from among those that offer the most competitive prices.

12. Complaint against participants – Administrative action filed by the WIC Program against a participant who has allegedly obtained or used program benefits improperly or has committed a violation to the laws and/or regulations that rule the WIC Program, through which the value of the food items or benefits improperly used by the participant is claimed.

13. Complaint against vendor - Administrative action filed by a Participant, the WIC Program, and/or any other person or entity against an authorized vendor who has allegedly committed a violation to the laws, regulations, vendor agreement, and/or policies and procedures that rule the WIC Program. Anonymous complaints are valid, and the WIC Program has the obligation to investigate.

14. Complaint investigation – Investigations carried out in an authorized vendor's store because of a complaint filed before the WIC Program.

15. Compliance buy – An undercover, on-site investigation in which an authorized representative of the WIC Program acts as a participant, parent, or caretaker of an infant or child participant, or proxy, and redeems one or more food instruments or cash-value voucher or use an EBT to review vendor's compliance with the WIC Program regulation.

16. Compliance investigations – The 7 CFR §246.12 requires the WIC Program to conduct compliance investigations. These investigations, either compliance buy investigations or inventory audits, must be conducted annually on a minimum of five percent (5%) of the total number of authorized vendors.

17. Conflict of interest – a situation in which a person, entity or organization is in a position to derive benefit from interests that could foreseeable result adverse to the policies, principles, objectives and/or regulations of the WIC Program, such as, but not limited to:

- a. When an applicant or authorized vendor requests authorization to establish or relocate an authorized retail store in a building or structure where a clinic is located, or where WIC Program services are offered.
- b. When the owner or tenant of the building where a WIC Program clinic is located requests to become a WIC authorized vendor.

- c. When an authorized vendor owns or has a substantial economic interest or is part of the corporation that owns the building where a WIC Program clinic is located.
- d. When a person or organization that already has another type of business relationship with the WIC Program requests to become a WIC Program authorized vendor.
- e. When an authorized vendor enters into another type of business relationship with the WIC Program.

18. Cost neutrality – Cost containment measure to ensure that the competitive price criteria and allowable reimbursement levels established for above-50-percent vendors do not result in average payments for above-50-percent vendors higher than the average payments to all regular vendors.

19. Disqualification – Action taken by the WIC Program against an authorized vendor, through which the vendor agreement is terminated because of a violation or multiple violations to the WIC Program’s regulations.

20. Farmer – Individuals who mostly or exclusively sell produce grown by themselves.

21. Food instrument – Non-negotiable documents or EBT card issued to participants to obtain authorized supplemental food products in WIC Program-authorized stores.

22. Food instrument/cash-value voucher number – Numbers that identifies the issuance sequence of food instruments and cash-value vouchers.

23. Food package – Authorized supplemental food products that are specifically prescribed to address the nutritional risks of participants.

24. Fraud – Act committed by means of a stratagem, simulation, scheme, trick, or any form of deceit to obtain a benefit.

25. Identification card (WIC-ID) – Document issued by the WIC Program to participants and/or their proxies for identification purposes when transacting food instruments and/or cash-value vouchers.

26. Inventory Audits – Inventory audits are for the purpose of examining food invoices or other proof of purchase, to determine whether a vendor has acquired sufficient quantities of supplemental foods to provide participants the quantities specified on food instruments redeemed by the vendor during a given period of time. These investigations are conducted in authorized stores. The compiled information may include one or more of the following: physical inventories; documents of transactions that reflect the inventory, such as invoices, purchases orders, returns, credits, etc.; and sales of authorized food products. The information is analyzed to determine if the vendor is overbilling the WIC Program and/or is in compliance with program policies and procedures, and regulations. These audits may also be used to determine if the vendor maintains the required minimum inventory of authorized food products, if the products are not expired, and if the documentation required to operate the business is up to date.

27. Mandatory sanctions – Sanctions established by federal regulations and this regulation contained in 7 CFR § 246.12.

28. Maximum allowable reimbursement amount – The limit that the WIC Program establishes on the amount of reimbursement allowed for food instruments.

29. Minimum inventory – The minimum requirement established by the WIC Program for the variety and quantity of supplemental foods that a vendor must stock at all times.

30. Nutrition Assistance Program sales – The sales of all foods that are eligible under the Puerto Rico Department of the Family's Nutrition Assistance Program (NAP) purchased with NAP funds in a vendor authorized store.

31. Overcharge – When the vendor intentionally or unintentionally charges the WIC Program more than the vendor's authorized shelf price established for authorized supplemental foods. The WIC Program may deny payment or assess a claim for the entire value of the food instrument, cash-value voucher and/or EBT transaction involved in an overcharge claim. The WIC Program must disqualify a vendor for a pattern of overcharging as per the 7 CFR § 246.

32. Participant access. Determination made by the WIC Program to ensure that participants have adequate access to authorized stores to transact their food instruments, cash-value vouchers, and/or to use their EBT cards, considering geographic barriers and the availability of other authorized vendors in the same area, as described in WIC Program Policies and Procedures.

33. Participants – Pregnant, breastfeeding and post-partum women, infants and children, who meet the eligibility criteria established in the federal regulations.

34. Participant violation – Any intentional action of a participant, parent, caretaker, or authorized representative of an infant or child participant, or proxy, who violates Federal or State statutes, regulations, policies, or procedures governing the WIC Program. Participant violations include: intentionally making false or misleading statements; intentionally misrepresenting, concealing or withholding facts to obtain benefits; exchanging cash-value vouchers, food instruments, or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant’s food instrument; threatening to harm or physically harming clinic, or vendor staff, or farmers; and dual participation.

35. Pattern of violations – When an authorized vendor incurs in a conduct classified by the Code of Federal Regulations (CFR) and/or as described in Article XII of this regulation as an incidence of the same violation occurring on more than one occasion.

36. Peer group - Grouping of vendors that share similar characteristics and are expected to have similar business.

37. Price adjustment – An adjustment made by the WIC Program, in accordance with the policies and procedures and others WIC Program regulations, to the purchase price on a food instrument or EBT transaction after it has been submitted by a vendor for redemption, to ensure that the payment to the vendor for the food instrument complies with the WIC Program’s price limitations.

38. Program Related Records – All documentation required by the Government of Puerto Rico for the operation of a food vendor; tax returns; municipal tax documents; proof of food purchases (invoices); financial statements; and any other business-related document required for the operations of the food vendor.

39. Proxy – Any person designated by a participant, or by a parent or caretaker of an infant or child participant and approved by the WIC Program, to obtain and transact food instruments, cash-value vouchers, and/or EBT card to obtain supplemental foods on behalf of a participant. The proxy designation must be consistent with the procedures stated in 7 CFR § 246.12. The spouse of the parent, or caretaker applying on behalf of a child or an infant participant, must be designated as a “proxy” in order to receive and redeem food instruments and cash-value vouchers and/or to use an EBT card on behalf of the participant to obtain the supplemental food items.

40. Puerto Rico WIC Program – The entity within the Puerto Rico Department of Health that administers the WIC Program, pursuant to the delegation of powers and authority conferred by 7 CFR § 246 and applicable local laws and regulations.

41. Regular vendors – Vendors that do not derive more than 50% of the store’s annual food revenue from the exchange of WIC Program food instruments.

42. Routine monitoring visits – Unannounced overt monitoring visits at any time the store is open for business. The WIC Program shall perform routine monitoring visits to make sure that authorized vendors are in compliance with the vendor agreement, federal or state statutes, regulations, and /or policies and procedures that rule the WIC Program, and to take appropriate measures in any case any violations were found. The WIC Program reserves the right to conduct as many monitoring visits as deemed necessary. Federal government personnel are authorized to also conduct monitoring visits.

43. Sanction – The disqualification, civil money penalty or administrative fine imposed on a vendor by the WIC Program, based on actions of that vendor that constitute one or more violations of the vendor agreement or federal or state statutes, regulations, policies and/or procedures that rule the WIC Program. When the State agency disqualifies a vendor, must also terminate the vendor agreement.

44. Secretary of Health – The person designated by the Government of Puerto Rico to administer the Puerto Rico Department of Health.

45. Shelf price – Current price that retail vendors charge to their customers for authorized supplemental foods that must not be higher than the authorized competitive price. Shelf prices shall be displayed on shelves and/or in the products.

46. Store chain- multiple authorized stores owned by the same person or entity.

47. Termination of agreement – When the WIC Program disqualifies a vendor, must also terminate the vendor agreement.

48. Trafficking –buying and/or selling of food instruments for cash.

49. Type of food – A product or a variety of product authorized by the WIC Program.

50. Vendor – A sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the WIC Program to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity must be authorized separately from other stores. Each store must have a single fixed location.

51. Vendor agreement – executed document between a vendor and the WIC Program containing the rights, duties and obligations of authorized vendors, as set forth in 7 CFR § 246.12, this regulation and the policies and procedures of the WIC Program.

52. Vendor authorization selection process – Procedure through which the WIC Program selects and authorizes the vendors to implement its food delivery system, where participants, parents, caretakers, or proxies obtain authorized supplemental foods.

53. Vendor identification number – Numeral that identifies each authorized vendor.

54. Vendor limiting criteria - Means criteria that the WIC Program may established to control the number and/or distribution of vendors it authorizes. Participant access, program participation, location, funding, food sales, type of business and vendor prices will be taken in consideration.

55. Vendor violation – Any intentional or unintentional action committed by a vendor, officials, managers, agents and/or employees—with or without the knowledge of the management—that breaches the vendor agreement or federal or state statutes, regulations, and/or policies and procedures that rule the WIC Program.

56. Voucher – Credit certificate issued to the vendor by the WIC Program on a monthly basis, equivalent to the total number of units of infant formula sold during the previous month, multiplied by the rebate corresponding to the type of formula under agreement.

Article II – Puerto Rico WIC Program Administration

Section A – Delegation of Authority

1. The WIC Program is ascribed to the Food and Nutrition Service (FNS), United States Department of Agriculture.
2. Pursuant to the delegation of authority conferred by 7 CFR §246, the Puerto Rico Department of Health administers the WIC Program.

Section B – Puerto Rico WIC Program Authorities

1. Administer the WIC Program effectively and efficiently according to the statutes, regulations, policies, guidelines and instructions issued by the federal and state governments.
2. Establish the policies and procedures required to ensure the quality and efficiency of services.
3. Certify persons who meet the eligibility requirements to receive the WIC Program benefits.
4. Authorize the stores that will accept food instruments, cash-value vouchers, and/or EBT cards that are issued to participants, and the farmers that will accept cash-value vouchers.
5. Ensure that participants, vendors, and farmers comply with WIC Program regulations.
6. Select vendors to guarantee adequate participant access to the WIC Program benefits.
7. Disseminate information and train authorized vendors and/or farmers on federal and state laws and regulations governing the WIC Program.
8. Perform the required on-site inspections to the stores prior to authorization in accordance with the WIC Program regulations.
9. Identify high-risk vendors at least once a year, using criteria developed by FNS and/or other statistically based criteria developed by the WIC Program, pursuant to the regulations contained in 7 CFR § 246.12.
10. Plan, coordinate, and perform vendor monitoring reviews, compliance buys, and inventory audits.

11. Investigate and follow up on complaints and determine the corresponding course of action.

12. Refer and/or participate in investigations and inventory audits carried out by other authorized federal and/or state agency.

13. Notify vendors of changes to Federal or State statutes, regulations, policies, or procedures governing the WIC Program before the changes are implemented. The WIC Program should give thirty (30) days advance notice.

14. Guarantee the confidentiality of authorized vendors in accordance with the requirements in 7 CFR §246.26.

15. Any other task established by the WIC Program Director in accordance with the applicable federal and state laws and regulation.

Article III – Vendors Authorization, Peer Groups, and Cost Containment

Pursuant to 7 CFR 246, the WIC Program must authorize an appropriate number and distribution of vendors to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods, and to ensure effective program management, oversight, and review of its authorized vendors.

The WIC Program participants receive food instruments, cash-value vouchers and/or EBT cards for WIC foods to be redeemed at authorized vendors throughout Puerto Rico.

Vendors are required to stock specific types and quantities of food items according with the authorize supplemental food list of the participants served by the WIC Program. These specific types of authorized foods are listed in the minimum inventory requirement.

The WIC Program reserves the right to limit the number of vendors it authorizes in each vendor selection process when deemed necessary to fulfill its objectives effectively.

Section A- Vendor Cost Containment Requirement

According to Federal WIC Regulations at 7 CFR 246.12, the WIC Program may only authorize above-50-percent vendors if it obtains FNS certification of its vendor cost containment system as described in the Federal WIC Regulations. The Federal WIC Program regulations allow FNS to provide certification only if the above-50-percent vendors of the WIC Program are cost neutral. As per 7 CFR 246.12, the WIC Program must ensure that the prices of above-50-percent vendors do not inflate the competitive price criteria and allowable reimbursement levels for the peer groups or result in higher total food costs if program participants transact their food instruments at above-50-percent vendors rather than at other vendors that do not meet the above-50-percent criterion.

In order for the WIC Program to authorize above-50-percent vendors, FNS must certify its cost containment system at least every three (3) years.

Section A1 Classification of Vendors as Regular or Above 50% Vendors.

1. The WIC Program will determine whether current vendors meet the above-50-percent vendor criterion, by calculating the WIC Program redemptions as a percent of the vendor's total Nutrition Assistance Program (NAP) eligible foods sales for the same period. If the WIC Program redemptions are more than 50 percent of the total NAP eligible food sales, the vendor will be deemed to be an above-50-percent vendor.
2. The WIC Program will require from vendors a statement of the total amount of revenue derived from the sale of foods using NAP benefits.
3. The WIC Program will also require from these vendors verifiable documentation to support the amount of food sales claimed by the vendor.

4. The WIC Program will determine whether new vendor applicants are expected to be above-50-percent vendors.
5. Each vendor must state on the application whether the vendor is a regular or an above-50-percent vendor. The WIC Program will inquire vendor applicants whether they expect to derive more than 50 percent of their annual revenue from the sale of food items from transactions involving the WIC Program food instruments. If a vendor answers in the affirmative, he will be treated as an above-50-percent vendor. If a vendor answers in the negative, the WIC Program will further assess the vendors by:
 - i. Calculating the WIC Program redemptions as a percent of total NAP eligible food sales for the same period in existing WIC Program-authorized stores owned by the vendor applicant;
 - ii. Requesting from the vendor applicant the percentage of anticipated food sales by type of payment, i.e., cash, NAP, WIC Program, and credit/debit card;
 - iii. Reviewing either the inventory invoices for food items, or the actual food items present at the preauthorization visit;
 - iv. Determining whether the WIC Program authorization is required in order for the store to open for business.
6. If the vendor is expected to be an above-50-percent vendor under any of the criteria described above, then the vendor will be treated as an above-50-percent vendor. The WIC Program may use additional data sources and methodologies, if approved by FNS.
7. The WIC Program methodology to determine if a vendor is a regular or above 50% vendor, will be included in its policies and procedures. Any changes to the policies and procedures will be notified to vendors with not less than thirty (30) days before implementation.
8. For the purpose of the vendor classification process, "food sales" are all foods that are eligible items under the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program. Since Puerto Rico does not participate in SNAP, but rather in the Nutrition Assistance Program (NAP), the WIC Program will use eligible NAP food sales, which are equivalent to SNAP food sales.
9. The WIC Program will reassess the status of new vendors within six (6) months after authorization by calculating the WIC Program redemptions as a percent of total WIC Program and NAP redemptions to determine whether or not the vendors are above-50-percent vendors and will reclassify in accordance with 7 CFR §246.12.
10. The WIC Program will reassess the status of all vendors yearly.

Section A2- Peer groups

1. Pursuant to 42 U.S.C. 1786(h)(11)(A)(i) and 7 CFR 246 the WIC Program will assign each vendor a peer group based on the vendors gross sales volume and geographic area.
2. Vendor peer group system methodology will be defined in the WIC Program policies and procedures, establishing the distinct competitive price criteria and allowable reimbursement levels for each peer group.
3. The WIC Program must reevaluate its policies and procedures related to its peer group system at least every three (3) years to reflect any changes in store classification, geographic area, program participation, and/or other changes as deemed reasonable, subject to FNS approval and will be notified to all vendors with at least thirty (30) days before implementation.
4. The WIC Program will notify each individual vendor of its peer group assignment.

Section A3 Competitive Price Criteria

1. Pursuant to 42 U.S.C. 1786(h)(11)(A)(i) and 7 CFR 246.12, the WIC Program will implement competitive price criteria and allowable reimbursement levels for each peer group.
2. The competitive price is calculated in consideration of the prices submitted by regular vendors in the shelf price surveys.
3. The WIC Program must consider a vendor applicant's shelf prices for supplemental foods for competitive price criteria to evaluate the prices that a vendor applicant charges for supplemental foods, as compared to the prices charged by other vendor applicants and must authorize vendors selected from among those that offer the program the most competitive prices. In establishing competitive price criteria and allowable reimbursement levels, the WIC Program will consider participant access.
4. The WIC Program will include the competitive price calculation in the corresponding Policy and Procedure. Any changes to the competitive price criteria will be notified at least thirty (30) days to all vendors prior to implementation.

Section A4 Cost Neutrality

1. As per 7 CFR 246.12 the WIC Program must ensure that the prices of above-50-percent vendors do not inflate the competitive price criteria and allowable reimbursement levels for the peer groups or result in higher total food costs if program participants transact their food instruments at above-50-percent vendors rather than at other vendors that do not meet the above-50-percent criterion.

2. The WIC Program must compare above-50-percent vendors' prices against the prices of vendors that do not meet the above 50-percent criterion in determining whether the above-50-percent vendors have competitive prices, and in establishing maximum allowable reimbursement levels for such vendors at least quarterly.
3. The WIC Program must test its cost containment system for cost neutrality quarterly.
4. If average payments for above-50-percent vendors exceed average payments for regular vendors, the WIC Program must adjust payment levels to ensure compliance.

Section A5 Maximum allowable reimbursement levels

1. In accordance with 7 CFR 246.12, the WIC Program must ensure that the prices of above-50-percent vendors do not inflate the competitive price criteria and allowable reimbursement levels for the peer groups or result in higher total food costs if program participants transact their food instruments or EBT cards at above-50-percent vendors rather than at other vendors that do not meet the above-50-percent criterion.
2. The maximum allowable reimbursement amount by food instrument in the paper-based system and by food type in the EBT based system for regular and above 50% vendors shall be calculated using only regular vendors prices. Above 50% vendors prices cannot exceed prices charged by regular vendors.
3. The WIC Program will monitor and adjust the maximum allowable reimbursement level for each vendor peer group periodically to maintain the cost of foods at competitive levels. The methodology to the maximum allowable reimbursement level will be included in the corresponding policy and procedure and changes authorized by FNS and will be notified at least thirty (30) days to all vendors prior to implementation.

Section A6 Compliance to the Competitive Price Criterion

1. Competitive prices determined from the shelf prices survey
 - a. Competitive prices are calculated from the initial shelf prices survey submitted by regular vendors with the vendor authorization application utilizing a formula and methodology described in the WIC Program policies and procedures, previously approved by FNS.
 - b. Shelf prices shall be obtained from authorized vendors every six (6) months after authorization to recalculate the competitive prices for each food item from the prices submitted by regular vendors only, and to evaluate the competitive prices of all vendors.

- c. For exempt formula, competitive prices for formula may be determined from prices submitted by formula manufacturers by a method authorized by FNS.
- d. Vendors must meet the competitive price criterion in order to remain authorized.

2. Price competitiveness based on redemptions

The WIC Program methodology for competitive price criteria will be included in the corresponding policy and procedure as authorized by FNS, and changes will be notified at least thirty (30) days prior implementation to all vendors.

Section B – Vendor Authorization

Vendors interested in participating in the WIC Program must apply within the application period as determined by the WIC Program. The WIC Program will publicly announce the time frame, the process and, the information required for filing the applications.

All Vendors must comply with the eligibility requirements established by the WIC Program to be authorized and must continue to meet these requirements throughout the term of the agreement. Non-compliance with any eligibility requirement is basis for termination of the Vendor Agreement.

The WIC Program may authorize food retailers, Pharmacies and Farmers that comply with application procedures, the eligibility requirements defined below, and any other measures or limiting criteria determined by the WIC Program.

Section B1-Eligibility Requirements

Vendors must meet eligibility criteria in order to be authorized and must continue to meet these criteria throughout the term of the agreement to stay authorized. Meeting the eligibility criteria will not guarantee authorization.

The eligibility requirements applicable to the selection process will be included in the invitation to request authorization. Compliance with all eligibility requirements is required throughout the term of the vendor agreement. Failure to comply with eligibility requirements after execution of the vendor agreement is cause for termination. Eligibility requirements and methodology for implementation will be included in the WIC Program corresponding policies and procedures as authorized by FNS, and any changes, will be notified at least thirty (30) days prior to implementation to all vendors.

Section B2: Vendor Application for Authorization

Applications will be made available as specified by the WIC Program in a public announcement published in a mass communication media. The public notice for the vendor authorization process will advise interested parties where, when, and how to file applications and the information required on the vendor authorization application.

1. The WIC Program shall establish the deadline for vendors to submit fully completed applications, the required documents and the shelf prices for the authorized supplemental foods.
2. The completed applications, the required documents and the shelf prices for the supplemental foods must be submitted on or before the established authorized deadline.
3. The WIC Program will provide orientations on the requirements and process before the start of the authorization process.
4. Incomplete applications will be denied.

Section B2(a): Selection Process

1. The WIC Program will verify each vendor application to validate that the vendor meets the regulatory requirements and documentation.
2. The WIC Program will determine whether current vendors meet the above-50-percent vendor criterion, by calculating the WIC Program redemptions as a percent of the vendor's total foods sales for the same period.
3. The WIC Program will assign the corresponding peer group to each applicant vendor.
4. Vendors' shelf prices will be utilized to determine if the vendor complies with the WIC Program's competitive price selection criterion.
5. Vendor application will be evaluated utilizing the shelf prices, vendor limiting criteria and history of violations and compliance. Vendors will be authorized from among those that offer the most competitive prices according to the calculation for competitive prices.
6. Vendors that do not meet the requirements established by the WIC Program will be notified and will be provided the opportunity to request an administrative hearing.
7. Pre-selected vendors will be notified in writing of the next steps for authorization as provided in the authorized policy and procedure.

Section B2(b) Authorization Process

1. The WIC Program will conduct initial site visits to new applicants that did not participate as authorized WIC vendors for the prior agreement term to verify that the minimum food inventories are met, verify shelf prices, and determine compliance with the eligibility criteria. The WIC Program reserves the right to visit any other vendor that had prior participation as authorized vendor for the purposes stated above.
2. Once the WIC Program Director determines that the applicant has met all the eligibility criteria, selected vendors will be notified, in writing, of the determination. The notice will contain information on the mandatory attendance to a vendor training session prior to signing the authorization agreement and will set the date for the training. The notice will advise that failure to attend the training will result in the denial of the authorization, except when written justification is presented. The WIC Program will provide vendors with one alternative date to attend training within those already scheduled. Vendors will also be advised that they will be classified as either regular or above-50- percent vendors. In accordance with 7 CFR §246.12, the WIC Program shall inform all vendors of the peer group criteria and must inform each individual vendor of its peer group assignment. As per 7 CFR §246.18 the peer group and above-50-percent criteria are not subject to administrative review.
3. The WIC Program Director will notify non-selected vendors, in writing, of the denial action, stating the reason for denial. The notice will contain information on the right to appeal the determination, the period in which to appeal, and the process to request an administrative review.

Section B2(c) Vendor Authorization Agreement

1. After receiving the mandatory training, the vendors will sign the authorization agreement.
2. The vendor authorization agreement will be for a term determined by the WIC Program, but never more than three (3) years.

The WIC Program will inform the vendors that were selected that they shall be subject to the cost containment measures.

Article IV – Training

1. Authorized vendors' store managers, representatives, and employees must comply with the training requirements contained in this regulation and the vendor agreement.
2. The training offered to vendors prior to signing agreements, as well as the annual vendor training, are mandatory. At least one representative of the vendor must participate in training annually.
3. Annual vendor training may be provided by the WIC Program in a variety of formats, including newsletters, videos, and interactive training.
4. The WIC Program will designate the date, time, and location of all interactive training and will notify by electronic mail to vendors and through public announcement.
5. If the vendor or an authorized representative cannot attend, the vendor must notify the WIC Program, which will provide at least one alternative date on which to attend such training.

Article V – Vendor Obligations and Responsibilities

Authorized vendors must comply with the obligations and responsibilities included in the federal regulations, these regulation, policies and procedures; and the vendor agreement. Non-compliance with Vendor Obligations and Responsibilities as defined in this Section A could result in just cause for termination of the Vendor Agreement.

Section A – General

1. The vendor must provide current physical, postal and electronic mail addresses to the WIC Program. Addresses provided by the vendor will be considered correct for the effect of any WIC Program communication and notification. Vendor must keep all contact information current and is responsible for immediate notification to the Vendor Management Division of any changes to these addresses.
2. Vendors must comply with the WIC Program’s eligibility criteria throughout the vendor agreement term, including any changes to the policies and procedures that WIC Program notifies that have an effect on these criteria. The WIC Program may reassess the Vendors at any time and will terminate the vendor agreement if the vendor fails to meet the current vendor eligibility criteria.
3. Vendor must have written policy and program to prevent trafficking.
4. Vendors cannot demand restitution from participants for the value of food instruments or cash-value vouchers not paid by the WIC Program.
5. Authorized vendors cannot accept altered food instruments or cash-value vouchers. The WIC Program will not pay altered food instruments or cash-value vouchers.
6. Authorized vendors, their representatives, agents or employees cannot instigate, intervene, coerce, exert pressure, offer transportation, distribute flyers, business cards, or any other promotional material to participants in WIC Program clinics or their premises, in order to promote the patronage of a specific authorized retail store over others.
7. Authorized vendors cannot offer gifts or gratuities, store credits, lottery tickets or cash to participants and/or WIC Program employees or exhibit any other conduct that has the appearance that a special business relationship exists between the authorized vendor and the WIC Program.
8. The WIC Program will not authorize an above-50-percent vendor that provides or intends to provide prohibited incentive items to customers. Regular vendors must extend participants the same offers available to all customers.

9. In accordance with 7 CFR §246.12, the vendor must offer to the WIC Program participants, parents, or caretakers of infant or child participants or proxies the same courtesies offered to other customers.

10. In accordance with 7 CFR §246.12, the vendor shall comply with the nondiscrimination provisions.

11. Authorized stores must be opened a minimum of six (6) days per week, eight (8) uninterrupted hours per day, except holidays. Vendors must notify the WIC Program if store services cannot be provided during the required schedule or during the hours provided by the vendors to the WIC Program.

12. In case of an emergency or natural disaster the authorized stores that are not affected must collaborate with the WIC Program and offer their services and carry out the contingency plans delineated by the WIC Program for such instances.

13. The vendors must keep authorized stores, and premises, clean and meet all sanitary conditions required by laws and regulations of the Commonwealth of Puerto Rico applicable to the business operations.

14. An authorized vendor must offer restroom services that must be clean and in good conditions, have a lock, be private and accessible to participants, and provide access to participants with physical limitations, in accordance with applicable Federal and State laws and regulations.

Section B – Authorized Food List and Minimum Inventory and Brand Requirements:

The WIC Program will establish the minimum inventory and brand requirements. The vendor will receive a list of all authorized food products, the minimum inventory, brand requirements, and required varieties and product sizes as part of the application package. Changes to the requirements will be notified in advance to the vendor.

1. The authorized vendors must:
 - a. Display the authorized food list in a conspicuous place in the store;
 - b. Assure that owner and store employees are acquainted with the authorized food products list;
 - c. Maintain the brands and minimum inventory of authorized food products on the shelves;
 - d. Always identify all products authorized by the WIC Program and their shelf prices;

- e. Have available the authorized food products list at the cash register, to help participants verify that the products that were selected are authorized by the WIC Program;
- f. In accordance with 7 CFR §246.12, the vendor may provide only the authorized supplemental foods listed on the food instrument and cash-value voucher. The vendor may not provide unauthorized food items, non-food items, cash, or credit (including rain checks) in exchange for food instruments or cash-value vouchers
- g. All products must be within their expiration date;
- h. In accordance with 7 CFR §246.12, the vendor may not provide refunds nor allow exchanges for authorized supplemental foods obtained with food instruments and cash-value vouchers, except for exchange for an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its “sell by,” “best if used by,” or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant;
- i. Provide participants with only the prescribed authorized contracted infant formula obtained from the list of authorized manufacturers by the WIC Program, in exchange for food instruments specifying the infant formula. The list is obtained from the WIC Program and includes the names and addresses of infant formula wholesalers, distributors, retailers licensed in Puerto Rico, and infant formula manufacturers registered with the FDA that provides infant formula;
- j. Remove the expired or damaged merchandise from the sales area;
- k. Must maintain inventory records used for Federal tax reporting purposes and other records the State agency may require for the period of time specified by the State agency in the vendor agreement. Upon request, the vendor must make available to representatives of the State agency, the U.S. Department of Agriculture, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all food instruments and cash-value vouchers in the vendor's possession and all program-related records in accordance with 7 CFR §246.12.

Section C–Alcoholic Beverages

1. The WIC Program prohibits alcohol consumption within the authorized store.
2. If the store is licensed to sell alcoholic beverages, these must be sold unopened and must not be consumed in the store.

Article VI – Obligations and Responsibilities for Redemption of Food Instruments and Cash-Value Vouchers

Section A – General

In accordance with 7 CFR §246.12, the authorized vendor must comply with the following obligations when redeeming food instruments and cash-value vouchers:

1. The vendor may accept food instruments and cash-value vouchers from participants only within the “first date of use” and “last date of use” of the food instrument, except when previously authorized by the WIC Program Director regarding specific instances, such as emergencies, contingency plans, and natural disasters.
2. Participants can exchange any or all food instruments and the cash value vouchers within the thirty (30) days period from the “first date of use” and the “last date of use”, except when previously authorized by the WIC Program Director regarding specific instances, such as emergencies, contingency plans, and natural disasters.
3. The WIC Program may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the allowable reimbursement level applicable to the vendor. A vendor's failure to remain price competitive is cause for termination of the vendor agreement, even if actual payments to the vendor are within the maximum reimbursement amount.
4. Disputes concerning food instrument and/or cash-value voucher payments and vendor claims are not subject to administrative review. Vendors cannot redeem cash-value vouchers for a dollar amount greater than the amount shown on the cash-value voucher.
5. The vendor must pay any claims assessed by the WIC Program. The Program shall provide written notification of the reasons for the claim.
6. The vendor must accept the limits on the amount of reimbursement allowed for food instruments based on the redemptions of regular vendors and the competitive price criteria.
7. The vendor must request and verify the WIC identification card from participants and their authorized representatives and make sure that correspond to the food instruments and cash-value vouchers being redeemed.
8. The vendor must verify that the name of the participant, identification number, date, amount of food items, and signature are correct, not altered, and that all information correspond to the participant.

9. If a vendor receives an altered food instrument or cash-value voucher, he/she must notify the WIC Program and/or the clinic that issued the food instrument or cash-value voucher immediately. The vendor shall advise the participant to return the food instrument or cash-value voucher to the issuing clinic.
10. If the vendor receives food instruments or cash-value vouchers before the “first date to use” and after the “last date of use”, he/she must immediately notify the WIC Program, in writing, and provide the name of the participant, the clinic that issued the food instrument or cash value voucher, and the payer’s stamp number.
11. The vendor must verify that the food instruments or cash-value vouchers are validated with the WIC official payer’s stamp of the clinic that issued the food instruments or cash-value vouchers.
12. The vendor must verify that the signature of the authorized representative coincides with the signature on the identification card.
13. The vendor must check that the food products to be dispatched are authorized by the WIC Program.
14. The vendor must accept a food instrument or cash-value voucher regardless of the location of the clinic that issued it to the participant.
15. The vendor must process each food instrument separately and must provide all the food products prescribed on it.
16. The vendor must not give participants store credits for products not provided to the participants when the vendor accepts food instruments or cash-value vouchers.
17. The vendor must write the date, price of each authorized product, and the total purchase price on the food instrument in the presence of the participant. The vendor must write the date and total purchase price on the cash-value voucher in the presence of the participant. If the vendor commits an error in the price entered for each authorized product, the vendor can make the correction on the food instrument, as long as it is legible. If the vendor commits an error in the total purchase price on a food instrument or cash-value voucher, the vendor can make the correction on the food instrument or cash-value voucher, as long as it is legible.
18. The vendor must request the signature of the participant or authorized representative after writing the total purchase price on the food instrument or cash-value voucher and must allow the participant to verify that the amount is correct.
19. The vendor must stamp the food instrument or cash-value voucher in the presence of the participant or authorized representative after the food instrument or cash-value voucher is signed.

20. The vendor must redeem the food instruments and cash-value vouchers within thirty (30) days counted from “last date of use” of the food instrument.

21. The vendor cannot negotiate food instruments or cash-value vouchers with suppliers or other persons.

22. The WIC Program will not reimburse or replace vendors for lost or stolen food instruments.

23. The WIC Program will not pay vendors for food instruments or cash-value vouchers deposited beyond the valid dates of the food instrument or cash-value vouchers.

Section B - Delivery of Authorized Food Products to Participants

1. Vendors who derive more than 50% of their annual revenue from the sale of food items obtained with WIC food instruments are not allowed to provide participants with transportation to and from authorized stores, or to deliver authorized food products to the homes of participants, unless such services are for-profit goods or services offered by the above-50-percent vendor to WIC participants at a fair market value based or comparable for-profit goods or services of other businesses.

2. All vendors must transact the WIC Program food instruments and cash-value vouchers inside the store. Regular vendors that offer delivery services for customers may deliver WIC foods after the transaction has been completed in the store. The delivery is not a part of the WIC Program transaction; and the WIC Program bears no responsibility for the customer’s use of delivery services or associated costs.

Article VII – Credit Rebate System

Section A – Infant Formula Credit Rebate System

1. Pursuant to 7 CFR § 246, the WIC Program must receive a rebate for each unit of the infant formulas prescribed to participants under the agreement for compliance with the cost containment measurements.
2. On a monthly basis, the WIC Program will issue vouchers or credit certificates to authorized vendors for each type of infant formulas under the agreement. The value of the vouchers or certificates is equivalent to the product of the infant formula units sold by the vendor during the previous month, multiplied by the rebate corresponding to the type of formula under agreement, and are valid for a period of sixty (60) days from the issue date.
3. The methodology for the infant formula rebate system will be included in the Policies and Procedures of the WIC Program and approved by FNS.
4. The WIC Program may reassess its Infant Formula Credit Rebate System at any time, subject to FNS approval. Changes to the WIC Program rebate system or criteria will be included in the corresponding Policies and Procedures and authorized by FNS and notified to vendors at least thirty (30) days before implementation.

Section B – List of Infant Formula Manufacturers, Wholesalers, Distributors, and Retailers.

1. Pursuant to 42 U.S.C. § 1786, supra, and by 7 CFR §246, the WIC Program shall compile and distribute to authorized vendors, at a minimum on an annual basis a list of infant formula manufacturers, distributors, wholesalers and retailers that are licensed in Puerto Rico, in accordance with the State laws (including regulations), and registered with the Food and Drug Administration (FDA).

Vendors may only provide participants with the authorized infant formula that they have obtained from a source included on the list authorized by the WIC Program.

Article VIII – Vendor Account Reconciliation

Section A – Vendor Account Reconciliation Process

1. Vendor shall have up to fifteen (15) calendar days from the receipt of each payment to file any claim regarding errors reflected in the payment report.
2. The vendor's objection to the payment must be notified in writing to the WIC Program Director. No oral requests will be considered.
3. Failure to raise any objection as described in this section, within the fifteen (15) calendar days, shall be interpreted as an acceptance of the payment and will bar further claims.
4. The WIC Program will review the food instruments in which errors were detected to determine if the vendor's claim is valid. If the claim is valid and the error is sustained, the difference will be credited to the vendor's bank account.

Section B – Recoupment of Payments – Cost Containment

Pursuant to the federal regulations contained in 7 CFR § 246.12, the WIC Program verifies food instruments and cash-value vouchers deposited by vendors to assure that the prices charged complied with the applicable price limitations, and to detect any vendor overcharges, charges in excess of the maximum allowable reimbursement level, and other errors.

- 1) The WIC Program may adjust charges in excess of the established maximum reimbursement level from the vendors' deposits.
- 2) When the WIC Program determines that a vendor has committed a violation that affects payments, it may delay payment or establish a claim. Such vendor violations may be detected through compliance investigations, food instrument or cash-value voucher reviews, or by other reviews or investigations of a vendor's operations. The WIC Program may delay payment or establish a claim in the amount of the full purchase price of each food instrument or cash-value voucher that contained the vendor overcharge or other error.
- 3) When payment for a food instrument or cash-value voucher is delayed or a claim is established, the WIC Program will provide the vendor with an opportunity to justify or correct the vendor overcharge or other error. If satisfied with the justification or correction, the WIC Program will provide payment or adjust the proposed claim accordingly.

- 4) Timeframe and offset. The WIC Program must deny payment or initiate claims collection action within ninety (90) days of either the date of detection of the vendor violation or the completion of the review or investigation giving rise to the claim, whichever is later. Claims collection action may include offset against current and subsequent amounts owed to the vendor.
- 5) The methodology for the implementation regarding this section will be included in the policies and procedures of the WIC Program and notified to vendors. Any changes to the policies and procedures will be notified to the vendors with at least thirty (30) days before implementation.

Article IX – Change of Ownership or Location, or Cessation of Operations

Section A – Introduction

Pursuant to 7 CFR §246.12, the vendor must provide thirty (30) days advanced written notification and obtain authorization from the WIC Program for any change in vendor ownership, store location, or cessation of operations. If any vendor does not comply with the above mentioned, the vendor agreement will be terminated.

The WIC Program may permit vendors to move short distances without terminating the agreement if the relocation does not involve a reclassification to another peer group. For the purpose of this regulation, a short distance is defined as being within five (5) miles from the current authorized store location.

The WIC Program shall determine whether a change in business structure or operation constitutes a change in ownership. A power of attorney may not be used as a subterfuge for a change in ownership.

No natural or legal person may sell, assign, convey or otherwise transfer to another either the authorization or stamp obtained from the WIC Program as an authorized vendor, as established in this Regulation. Failure to comply with this requirement will result in the termination of the vendor agreement in compliance with federal regulations.

Section B – Relocation due to Expropriation

Vendors must notify the WIC Program of the expropriation of an authorized store as soon as they receive the notification of expropriation. An expropriation will not result in the termination of the vendor agreement due to a cessation of operations if the vendor complies with the requirements established in Section D of this Article within sixty (60) days of the expropriation.

Section C – Fortuitous Causes or Natural Disasters

A cessation of operations due to fortuitous causes or natural disasters does not entail the termination of the vendor agreement, as long as the vendor notifies the intention to relocate or to continue with further operations in the same location, within ninety (90) days of the fortuitous event. The vendor will have one (1) year from the date of the fortuitous event to relocate or to continue with the operations, if complies with the requirements in Section D of this Article.

Section D – Requirements of the Notification of Relocation

1. The vendor must provide the following information with the notification of relocation:
 - a. The physical address of the new location.
 - b. A general description of the store, including the type of store, square footage, number of cash registers, and number of employees.
 - c. All documents, licenses, permits, certifications and endorsements necessary to operate a food store in Puerto Rico, including but not limited to:
 - i. Municipal license (Patente Municipal).
 - ii. Use Permit or government issued document authorizing the intended use for the proposed location.
 - iii. Sanitary license.
 - iv. Sworn statement attesting that the relocation request does not imply a conflict of interest as defined in Article I of this regulation.
 - v. Certificate of penal record.
2. The WIC Program shall accept provisional permits for the period established by the issuing agencies. The WIC program reserves the right to request other documents as deemed necessary.
3. The WIC Program will deny the requests for relocation of vendors who do not provide the documents requested. Once the documents are provided, the WIC Program shall evaluate the application and make a determination within thirty (30) days.
4. The WIC Program will terminate the Agreement of a vendor who relocates the business without the WIC Program's authorization, which might entail the total reimbursement of the value of the food instruments redeemed in the new store after its relocation and the legal interests corresponding to that value.
5. Documents, permits, authorizations, certifications and endorsements required by the Government of Puerto Rico to operate a food related business, such as, but not limited to, the use permit, the sanitary license issued by the Department of Health, and the municipal license (patente municipal) must always be up to date and visible at vendor's location. Vendor must provide in a term of fifteen (15) days upon request by the WIC Program with copies of documents detailed in this section. The failure to maintain all requirements imposed by the Government of Puerto Rico to operate a food vendor will be cause for termination.

Section E – Voluntary Withdrawal and Change of Ownership

1. The Vendor's Agreement, and stamp are not transferable.
2. The vendor agreement will be terminated and will no longer remain in effect if the vendor transfers ownership of the authorized store without the WIC Program authorization. This restriction applies to individual vendors, partnerships, or corporations.
3. The vendor must provide the WIC Program thirty (30) days advanced written notification of any change in ownership, or cessation of operations.
4. The written notice must contain the date that the owner will no longer be the party authorized by the WIC Program. The notice must be addressed to the WIC Program Director and must include the name, address, and circumstances of the person who intends to acquire the authorized store.
5. The new owner must file request, comply with all eligibility requirements and criteria as described in this regulation and sign a new vendor agreement in order to participate as an authorized WIC vendor.
6. The WIC Program has no obligation to authorize the new owner and will exercise its discretion when taking a determination as to authorization of the new owner to participate as a WIC vendor.
7. The authorized vendor must return the vendor stamp on or before the date of the transfer of the authorized store and remove any WIC Program sign from the store.
8. Voluntary withdrawal and/or change of ownership cannot be used as a subterfuge to avoid sanctions described in this regulation.

Section F – Incorporation and Changes in Corporate and Partnership Management

1. The authorized vendor shall notify the WIC Program of the intention to incorporate the business thirty (30) days in advance of such action. In such case, the vendor must comply with the requirements established in Vendor's Policies and Procedures for corporations and must be the sole or the controlling shareholder of the corporation.
2. In the event that a Vendor is a legal entity, the shares or participation of which are not publicly traded, Vendor shall be required to duly notify the program of any change of shareholder, partner, or any other kind of participant. Such notice shall be given in writing within thirty (30) calendar days of the effective date of the change.
3. Notwithstanding the foregoing, upon the occurrence of any of the following events, a Vendor shall be required to give the program prior written notice of such event no less than thirty (30) days prior to its effective date: (i) a change of shareholder, partner or any

other kind of participant which involves fifty percent (50%) or more of the shares or participation of Vendor; (ii) a change in the right to control the direction of the legal entity; or (iii) the right to participate in the controlling group thereof. In such cases, these constitute a change in ownership and the new shareholder, partner, or participant must apply for program authorization as established in Section E of this Article.

Article X – Monitoring Visits, and Compliance Investigations

Section A – General

Pursuant to 7 CFR §246.12, vendors shall be monitored for compliance in accordance with the WIC Program requirements. Thus, the WIC Program will continuously inspect and monitor all authorized stores to verify that the operational aspects of the businesses are in compliance with the applicable laws and regulations.

1. The WIC Program, Federal and/or State personnel, their agents or representatives, or those contracted and duly authorized by them for these purposes, shall carry out routine monitoring visits, compliance investigations, undercover monitoring visits and/or audits.

2. When during the course of a single investigation the agency determines a vendor has committed multiple incidents of the same violation; which may include violations subject to state agency sanction; the state agency must disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the state agency must include all violations in the notice of administrative adverse action. If a mandatory sanction is not upheld on appeal, then the state agency may impose the state agency-established sanction.

Article XI – Vendor Agreements

Section A – General

In accordance with 7 CFR §246, the vendor agreement does not constitute a license or a property interest. The Vendor Authorization will be for the period described in the vendor agreement. All vendors operating and authorized by an agreement must file a new application for authorization and comply with all eligibility requirements determined by the WIC Program to be authorized for a new term with a new agreement.

If a vendor is disqualified, the WIC Program will terminate the vendor's agreement. Once the disqualification period is over, the vendor, if interested, will have the option to apply for authorization with the filing of a new application that must comply with all eligibility requirements and will be subject to the WIC Program's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication. The WIC Program has no obligation to authorize the disqualified vendor and will exercise its discretion when taking a determination as to authorization of a WIC vendor.

Section B – Termination

1. Vendors must comply with the vendor eligibility requirements and/or obligations, the WIC Program federal regulations, this regulation and policies and procedures, throughout the agreement period. Using the vendor eligibility requirements, the WIC Program may reassess any and/or all vendors at any time during the agreement period. The WIC Program will terminate the vendor agreement if the vendor fails to meet the eligibility requirements and/or obligations as defined in this regulation.

Section C – Resolution

1. If the vendor wants to terminate the agreement, the written notification must be addressed to the WIC Program Director, not less than thirty (30) days in advance.

Article XII – Puerto Rico WIC Program-Violations and Sanction Schedule

Section A. State and Federal Sanction Schedule Violations

Sanctions for violations include administrative fines, disqualification or civil money penalties (CMP) in lieu of disqualification. If during the course of a single investigation the WIC Program determines that a vendor has committed multiple violations the administrative fine or disqualification shall be imposed for the amount of the most serious violation. Vendors' who do not object and fail to pay the fine within thirty (30) days' notice, will be disqualified according to sanction schedule. A vendor has fifteen (15) days from the notice of the violation to file a written objection and to present any supporting documentation to the WIC Program. A Vendor will have thirty (30) days to pay the fine, if sustained, after final notice of the WIC Program determination regarding their written objection.

The WIC Program will send the Vendor a single warning letter after the first incident of a violation, unless, in its discretion and according to federal regulations, it determines that a warning letter would compromise an investigation. Subsequent incidents of a violation will result in administrative fines, disqualification or CMP in lieu of disqualification.

Violations requires by the vendor immediate corrective action after every incident. The WIC Program, in its discretion, may continue an investigation of a violation.

The first incident of a violation will be notified by a warning letter. Subsequent incidents of the same violation after the first incidence constitute a pattern of violations and will result in administrative fines, disqualification or CMP in lieu of disqualification, according to the below sanction schedule. If a violation that requires a disqualification in the first incident, according to the Mandatory Federal Sanction Schedule Violations the vendor, will be notified by a disqualification letter.

If the WIC Program determines that disqualification of the Vendor would result in inadequate participant access, a CMP may be imposed in lieu of disqualification.

Section B.

i. State Sanction Schedule Violations

Violations (First (1 st) Incident will be notified by a warning letter)	Second (2nd) Incident	Third (3rd) Incident	Fourth (4th) Incident
1. Failure to identify the authorized vendor store with the signage/poster provided by the WIC Program, and/or using any other signage/poster without the WIC Program authorization.	\$100.00	\$250.00	Six (6) month disqualification.
2. Failure to correctly identify the WIC Program food item and/or authorized products in the store.	\$100.00	\$250.00	Six (6) month disqualification.
3. Failure to display the current price of an authorized WIC Program food item, on the shelf, item or nearby sign.	\$100.00	\$250.00	Six (6) month disqualification.
4. Failure to keep in the cash register area a copy of the Puerto Rico WIC Vendor Regulations; and the authorized products list.	\$100.00	\$250.00	Six (6) month disqualification.
5. Failure to keep posted in a visible place at the authorized vendor store copies of documents required to operate; such as, municipal patent, sanitary license, lease agreement, and use permit; as requested by the WIC Program.	\$100.00	\$250.00	Six (6) month disqualification.
6. Accepting food instruments or cash-value vouchers that are not validated with the WIC Program clinic official payer's stamp.	\$250.00	\$500.00	One (1) year disqualification.
7. Failure to verify that the WIC-ID number on the food instrument corresponds to the WIC-ID Number on the identification card of the participant.	\$250.00	\$500.00	One (1) year disqualification.
8. Accepting a food instrument that is outside valid dates, post-dated or missing a signature, and/or any other information.	\$250.00	\$500.00	One (1) year disqualification.

9. Failure to allow WIC Program participants to use coupons or other promotional specials, and/or failure to extend to WIC Program participants any special offers carried out in the store.	\$250.00	\$500.00	One (1) year disqualification.
10. Failure to record the individual food item prices and/or the total actual price, and/or the date of the transaction, and/or the vendor stamp on the WIC Program food instrument before obtaining the WIC Program participant's signature.	\$250.00	\$500.00	One (1) year disqualification.
11. Accepting food instruments, EBT transaction or cash-value vouchers before the participant or proxy receives the authorized food products.	\$250.00	\$500.00	One (1) year disqualification.
12. Failure to maintain required minimum stock and/or minimum variety of authorized brands.	\$250.00	\$500.00	One (1) year disqualification.
13. Requiring other purchases as a condition to use WIC Program food instruments.	\$250.00	\$500.00	One (1) year disqualification.
14. Collecting sales tax on a WIC Program food purchase.	\$250.00	\$500.00	One (1) year disqualification.
15. Contacting WIC Program participants to attempt to collect funds that will not be or were not paid to the Vendor by the WIC Program.	\$250.00	\$500.00	One (1) year disqualification.
16. Allowing the purchase of less than the total amount of infant formula as specified on the food instrument.	\$250.00	\$500.00	One (1) year disqualification.
17. Using the WIC Program logo or the acronym "WIC".	\$250.00	\$500.00	One (1) year disqualification.
18. Allowing the consumption of alcoholic beverages in and/or within the premises of WIC Program authorized vendor store.	\$250.00	\$500.00	One (1) year disqualification.

19. Failure to keep in the cash register area the vendor's stamp.	\$250.00	\$500.00	One (1) year disqualification.
20. Requiring additional identification card and/or any other method of identification other than the WIC ID and/or besides the Personal Identification Number (PIN) to process an eWIC transaction.	\$250.00	\$500.00	One (1) year disqualification.
21. Requiring a participant to provide the cardholder's PIN information and/or entering the eWIC cardholder's PIN to process an eWIC transaction.	\$250.00	\$500.00	One (1) year disqualification.
22. Failure to maintain store open for business according to schedule provided to the WIC Program in the Vendor selection process application.	\$250.00	\$500.00	One (1) year disqualification.
23. Provide to participants expired WIC Program food products.	\$250.00	\$500.00	One (1) year disqualification.
24. Failure to maintain adequate sanitary services and facilities.	\$250.00	\$500.00	One (1) year disqualification.
25. Failure to provide the required training to cashiers on how to process eWIC transactions.	\$250.00	\$500.00	One (1) year disqualification.
26. Preventing the purchase of all items listed on the WIC food instrument.	\$250.00	\$500.00	One (1) year disqualification.
27. Providing to participants the approved products by the WIC Program but charging and/or scanning a different UPC not approved by the WIC Program.	\$250.00	\$500.00	One (1) year disqualification.
28. Requiring the purchase of specific brands when other WIC authorized brands are available.	\$250.00	\$500.00	One (1) year disqualification.
29. Failure to submit Vendor's gross and food sales form within the timeframe as requested by the WIC Program.	\$500.00	One (1) year disqualification	

30. Failure to submit price survey within the timeframe as requested by the WIC Program.	\$500.00	One (1) year disqualification	
31. Failure to accept and redeem participant's food instruments, EBT Card and/or cash value vouchers.	\$500.00	One (1) year disqualification	
32. Failing to provide access to Vendor premises and/or in any manner hindering or impeding authorized WIC personnel from conducting an on-site education, monitoring, inventory audit, or investigation visit.	\$500.00	One (1) Year disqualification	
33. Failure to maintain inventory records or other records required by the WIC Program for a period of three (3) years.	\$500.00	One (1) Year disqualification	
34. Purchasing infant formula from a source that is not listed on the Puerto Rico WIC Program's list of infant formula manufacturers, wholesalers, or distributors.	\$500.00	One (1) Year disqualification	
35. Failure to attend the annual mandatory training after having the opportunity to reschedule once.	One (1) year disqualification		
36. Discriminating against any WIC Program participant on the basis of race, color, national origin, age, sex, disability	One (1) year disqualification		
37. Providing false information during a monitoring visit and/or compliance buy investigation.	One (1) year disqualification		
38. Failure to pay an administrative fine.	One (1) year disqualification		

ii. Mandatory Federal Sanction Schedule Violations

<u>Violations</u>	<u>First (1st) Incident</u>	Second (2nd) Incident	Third (3rd) Incident
1. A pattern of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental foods provided in excess of those listed on the food instrument.	Warning letter	Warning letter	One (1) year disqualification
2. A pattern of an above-50-percent vendor providing prohibited incentive items to customers as set forth in paragraph (g)(3)(iv) of this section, in accordance with the State agency's policies and procedures required by paragraph (h)(8) of this section.	Warning letter	Warning letter	One (1) year disqualification
3. A pattern of vendor overcharges	Warning letter	Warning letter	<u>Three (3) Years Disqualification</u>
4. A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time	Warning letter	<u>Three (3) Years Disqualification</u>	
5. A pattern of charging for supplemental food not received by the participant.	Warning letter	<u>Three (3) Years Disqualification</u>	
6. A pattern of receiving, transacting and/or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor and/ or an unauthorized person.	Warning letter	<u>Three (3) Years Disqualification</u>	

7. A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers.	Warning letter	<u>Three (3) Years Disqualification</u>	
8. One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash-value vouchers.	<u>Three (3) Years Disqualification</u>		
9. One incidence of buying or selling food instruments for cash (trafficking)	<u>Six (6) Years Disqualification</u>		
10. One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers.	<u>Six (6) Years Disqualification</u>		
11. The State agency must permanently disqualify a vendor convicted of trafficking in food instruments or cash value vouchers or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments or cash-value vouchers. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.	<u>Permanent Disqualification</u>		

Section C.

i. If reflected in its State Plan, the WIC Program may impose a civil money penalty in lieu of a disqualification for the violation number eleven (11) of the Mandatory Federal Sanction Schedule Violations when it determines, in its sole discretion, and documents that:

(a) Disqualification of the vendor would result in inadequate participant access; or

(b) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(ii) *Second mandatory sanction.* When a vendor, who previously has been assessed a sanction for any of the violations in paragraphs (I)(1)(ii) through (I)(1)(iv) of 7 CFR 246.12, receives another sanction for any of these violations, the State agency must double the

second sanction. Civil money penalties may only be doubled up to the limits allowed under paragraph (I)(1)(x)(C) of 7 CFR 246.12.

(iii) *Third or subsequent mandatory sanction.* When a vendor, who previously has been assessed two or more sanctions for any of the violations listed in paragraphs (I)(1)(ii) through (I)(1)(iv) of 7 CFR 246.12, receives another sanction for any of these violations, the State agency must double the third sanction and all subsequent sanctions. The State agency may not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in paragraphs (I)(1)(ii) through (I)(1)(iv) of 7 CFR 246.12.

(iv) *Disqualification based on a NAP disqualification.* The State agency must disqualify a vendor who has been disqualified from NAP. The disqualification must be for the same length of time as NAP disqualification, may begin at a later date than NAP disqualification, and is not subject to administrative or judicial review under the WIC Program.

(v) *Voluntary withdrawal or nonrenewal of agreement.* The State agency may not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for the violations listed in paragraphs (I)(1)(i) through (I)(1)(iv) of 7 CFR 246.12, but must enter the disqualification on the record. In addition, the State agency may not use nonrenewal of the vendor agreement as an alternative to disqualification.

Section D– Civil Money Penalties

If the WIC Program determines that disqualification of an authorized vendor would result in inadequate participant access, a CMP may be imposed in lieu of disqualification. The WIC Program shall use the USDA Federal Regulations at 7 C.F.R. § 246.12 to determine CMP amount. The formula is as follows:

Step I. The WIC Program shall determine the vendor's average monthly redemption for at least the six (6)-month period ending with the month immediately preceding the month during which the notice of adverse action is dated.

Step II. The average monthly redemption shall be multiplied by ten percent (10%).

Step III. The product of the previous paragraph shall be multiplied by the number of months for which the store would have been disqualified.

1. The civil money penalty shall not exceed \$15,041 for each violation subject to mandatory sanctions or according to 7 CFR 3.91 (b)(3)(v), as amended; and/or \$5,000 for each violation subject to State agency-established sanctions.

2. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be \$15,041 or according to 7 CFR 3.91 (b)(3)(v).

3. If during the course of a single investigation the WIC Program determines that a vendor has committed multiple violations, a civil money penalty shall be imposed for each violation.

4. The total amount of civil money penalties imposed for violations investigated as part of a single investigation may not exceed \$60,161 or according to 7 CFR 3.91 (b)(3)(v), as amended.

Section E – Criminal Penalties

1. In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under Section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

2. The WIC Program shall refer all cases of fraud and abuse involving more than \$1,000 to the USDA Food and Nutrition Service's Mid-Atlantic Regional Office.

Section F – Voluntary Withdrawal or Non-Renewal of Agreement

Pursuant to 7 CFR §246.12 the WIC Program will not accept the vendor's voluntary withdrawal as an alternative to disqualification for the mandatory federal sanctions listed in Sections B, C, D, and E of this Article, but must enter the disqualification on the record. In addition, the WIC Program shall not use nonrenewal of the vendor agreement as an alternative to disqualification.

Section G. Termination/Denial/Disqualification

Vendors may appeal a denial of authorization, termination, disqualification, civil money penalty, or an administrative fine according to the administrative hearing procedures detailed in Article XV of this Regulation.

Warning letters are not subject to administrative review. A vendor may object a warning letter by requesting an informal review to the Director of Vendors Division within fifteen (15) days of the warning letter notification.

A termination, disqualification, civil money penalties in lieu of disqualification, and/or administrative fine are subject to administrative review. When a Vendor timely request an administrative review, the Vendor is allowed to continue authorized by the program,

and all provisions of the WIC Vendor agreement will continue to apply, including sanctions for non-compliance, during the time period of the reviewing process.

Vendors who are disqualified and/or terminated once the disqualification period is over, will have the option to reapply for authorization with the filing of a new application that must comply with all eligibility requirements and will be subject to the WIC Program's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication.

Article XIII – Notification of Violations

Section A – Notification of Violations

Notification will be procured by regular mail to the current mailing address or electronic mail address as provided by the vendor to WIC Program.

1. The WIC Program will issue a warning letter by certified mail, to the address as provided by the vendor after the first incident of a violation for which a pattern of incidences must be established in order to impose a sanction, unless the WIC Program determines, at its discretion, that notifying the vendor would compromise an investigation.
2. A second and/or subsequent letters for incidents of violations that includes a sanction according to Article XII of this Regulation will be notified by certified mail to the current address as provided by the vendor to the WIC Program. The notification will inform the vendor of his right to file for an administrative review within fifteen (15) days of notification.
3. The WIC Program shall notify an adverse action resulting in a sanction against the authorized vendor, with not less than fifteen (15) days in advance of the effective date of the action. The notification shall be delivered by certified mail to the address in record provided by the authorized vendor and will inform the vendor of the right to file for administrative review within fifteen (15) days of notification.
4. When the WIC Program disqualifies a vendor, must also terminate the vendor agreement. The WIC Program will notify the vendor with thirty (30) days in advance prior to terminate the vendor's agreement.
5. The WIC Program may continue its investigation after the violation is notified to the vendor, consistent with the WIC Program's procedures for providing such notice.
6. It is the responsibility of each vendor to notify the Vendor Management Division of any changes to their mailing and electronic addresses. Mailing and Electronic Addresses provided by the vendor will be considered correct. All notifications will be sent to the mailing address or electronic address provided by the vendor and will be considered delivered five (5) days after the mailing date.

Article XIV – Administrative Review

Section A – Actions Subject to Full Administrative Reviews

Vendors shall have the right to appeal (request for a fair hearing) certain adverse actions of the WIC Program as set forth in the Federal Regulations, Puerto Rico WIC Program regulations, policies and procedures. Adverse actions subject to administrative review include:

1. *Denial of authorization*
2. Termination of the vendor agreement;
3. Disqualification;
4. Imposition of an administrative fine or a civil money penalty in lieu of disqualification;

Section B - Adverse Actions NOT Subject to Administrative Reviews

1. The validity or appropriateness of the WIC Program Vendor limiting or selection criteria.
2. The validity or appropriateness of the WIC Program participant access criteria and WIC Program participant access determination.
3. The validity or appropriateness of the WIC Program Vendor peer group criteria and the criteria used to identify Vendors that are Above-50-Percent Vendor or comparable to Above-50-Percent Vendors.
4. The validity or appropriateness of the WIC Program prohibition of incentive items and the WIC Program denial of an Above-50-Percent Vendor's request to provide an incentive item to customers.
5. The Puerto Rico WIC Program determination whether to notify a Vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction.
6. The WIC Program determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the Puerto Rico WIC Program Infant Formula Suppliers list.
7. The expiration of the vendor's agreement.
8. Disputes regarding food instrument payments and Vendor claims (other than the opportunity to justify or correct a Vendor overcharge or other error) as permitted by 7 CFR § 246.

9. The WIC Program's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation (§246.12).

Section C – Effective Date of Adverse Actions against Vendors

The WIC Program shall make denials of authorization, and disqualifications impose for permanent disqualifications under 7 CFR 246.12(l)(1)(i) effective on the date of the delivery of notice of the adverse action.

The WIC Program shall make all other adverse actions effective no earlier than fifteen (15) days after the date of the notice of the adverse action.

In the event that the vendor timely exercises his right to file an administrative review within the fifteen (15) days from the notice of the adverse action; the WIC Program shall make effective the sanction no earlier than the date of notice of the reviewed decision.

Further judicial review nor a request for reconsideration by the vendor will not automatically suspend the effective date of the adverse action.

The WIC Program will not be held responsible for losses incurred by any vendor as a result of termination and/or disqualification pending an appeal decision. A vendor will not be entitled to receive any compensation for revenues lost as a result of violations resulting in a permanent disqualification.

Request for an Informal Review to warning letters described in Article XII must be filed in writing within fifteen (15) days from notice together with all supporting documentation before the WIC Program Director of Vendors Division. Determinations related to warning letters subject to Informal Review Procedures will not be revised or subject to Full Administrative Review.

Article XV – Administrative Reviews Procedures

1. A petition for an Administrative Review shall be filed within fifteen (15) days of notice of an adverse action at the Director's office of the WIC Program in order for the filing to be effective.
2. An Official examiner shall notify the date of the administrative hearing within fifteen (15) calendar days from the date that the administrative hearing request was received.
3. The administrative hearing notice shall contain the following information:
 - a. Date, time and place and the nature of the hearing.
 - b. The rights of the appellant during the proceedings.
 - c. Brief explanation of the proceedings.
 - d. Legal citation of the statutes and regulations that authorizes the proceedings.
 - e. Notice that the parties may be assist by an attorney, even though it is not required, or self-representation.
 - f. Warning that the proceedings shall be continued in absence, should the vendor does not appear and its consequences.
 - g. Warning that the proceedings cannot be suspended, except for what is established in the regulations.
4. Full administrative review procedures. The appellant shall have the right to:
 - a. The opportunity to present his/her case and to request to reschedule the hearing once, provided the request is filed with five (5) days in advance of the date of the hearing and for just cause.
 - b. The opportunity to cross-examine adverse witnesses identified by the WIC Program. When necessary to protect the identity of WIC Program investigators, such examination will be conducted behind a protective screen or other device.
 - c. Present witnesses and evidence in its favor, when announced and identified before the administrative hearing.
 - d. The appellant must be represented by an owner, a representative holding written authorization or an attorney.

e. The appellant has the right to review the evidence upon which the WIC Program's action is based, prior to the administrative hearing.

f. Receive written notice of the Final Resolution from the Secretary of the Department of Health within ninety (90)-calendar days from the date in which the case is submitted for adjudication. These timeframes are only administrative requirements for the WIC Program and do not provide a basis for overturning the WIC Program's adverse action if a decision is not made within the specified timeframe.

g. Appealing an adverse action does not relieve a vendor, who is permitted to continue in the WIC Program during the appeals process, from the responsibility of continued compliance with the terms of the Vendor Participation Agreement. The vendor will be sanctioned accordingly for any violations occurring during this period.

Article XVI – Hearings Official

The Hearings Official designated by the Secretary of Health shall not have personal interest in the proceedings.

Section A – Authority of the Hearings Official

1. Take oaths.
2. Consider all the material evidence at the time of issuing interlocutory decisions and final recommendations.
3. Require, receive, and make part of the record all the material evidence.
4. Manage the administrative procedures according to the due process of law, in order to guarantee the rights of the parties.
5. Summon witnesses, issue orders related to the discovery of evidence, for the production of documents, materials and other objects, where appropriate, as well as protective orders pursuant to the Rules of Civil Procedure and/or applicable Rules of Evidence.
6. Rule on the case under consideration based on the case file and evidence presented in the hearings.
7. Impose economic sanctions to the parties in accordance with what is established in the Act No. 38-2017, *supra*. This does not prevent the imposition of civil money penalties or fines of greater amounts as required or permitted by 7 CFR 246.

Section B – Contents of the Hearings Official Report

The Hearings Official report shall contain:

1. The caption that correctly identifies the case and its parties.
2. The citation of the provisions of the regulations stated herein that apply to the case.
3. The findings of facts based on the evidence presented at the hearing and the record of the case.
4. The legal conclusion supporting the findings and the recommendations.
5. The final recommendations on the case.

6. The Hearings Official shall submit to the Secretary of Health a report with findings and recommendations based on the totality of the record on the grounds of:

- a. The WIC Program's Authorized Vendor Regulation.
- b. The federal regulations contained in 7 CFR §246.
- c. Applicable case law.
- d. The evidence received at the hearing.
- e. The record of the case.

7. The Secretary of the Department of Health, or the official designated by him/her, shall issue a final resolution containing findings of facts and adjudications based on the record.

Section C – Contents and Disposition of the Case File

1. The case file will include, but it's not limited to:

- (a) Notifications of all procedures.
- (b) Any order or interlocutory resolution dictated.
- (c) Any motion, claim, request or requirement filed within the proceedings.
- (d) Evidence received or considered.
- (e) A list of all matters that official knowledge was noted.
- (f) Offer of proof, objections and resolutions about the same.
- (g) Proposals of determinations in fact and conclusions of law, requested orders and exceptions.
- (h) The memorandum and recommendation prepared by the officer who presided over the hearing, along with any transcript of all or part of the hearing considered prior to the final disposition of the proceedings.
- (i) Final resolution of the case issued by the Secretary of the Department of Health or the official designated by him/her, and any posterior request for reconsideration or review.

2. Disposition

- a. The WIC Program will retain the administrative files for a minimum of three (3) years following the date of submission of the final expenditure report for the period to

which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records shall be kept until all issues are resolved, or until the end of the regular three-year period, whichever is later, as required by 7 CFR 246.

b. The vendor that is part of the case or his/her authorized representative may (prior request) examine the appeal file at the WIC Program's offices, as established by the agency. Vendors may request copy of discoverable documents upon payment of a fee established by the Program.

Section D – Notice of the Determination

The decision of the Secretary of the Department of Health, or the official designated by him/her, together with the Hearings Official's Final Report and Recommendations shall be notified by the WIC Program to the vendor on or before ninety (90) days from the date in which the case is submitted for adjudication. The WIC Program will send copy of the decision to appellant and legal representative at the address of record. The decision will become final after thirty (30) days from the notification.

Section E – Resolution of the Case

The Final Resolution issued by the Secretary of the Department of Health shall be effective on the date of filing of the notice.

Section F – Reconsideration

1. The party adversely affected by a resolution or final order may, within the term of twenty (20) days from the date of the notification of the Final Resolution or Final Order, present a Motion of Reconsideration.
2. The Secretary of Health may consider the Motion of Reconsideration within fifteen (15) days of filing. If the Secretary of Health rejects the Motion of Reconsideration or does not act within fifteen (15) days, the term for requesting Judicial Review will begin again from the date of the notification of the rejection or from the expiration of the fifteen (15) days term.
3. If the Secretary of Health notifies that the Motion of Reconsideration is being taken under consideration, the term to file for Judicial Review will commence from the date of the notification of the Secretary of Health Resolution resolving the Motion of Reconsideration. If the Secretary of Health takes under consideration the Motion of Reconsideration, but do not act within ninety (90) days from the date of the notification that the Motion was being taken under consideration, it will lose jurisdiction of the case and the thirty (30) days term for requesting Judicial Review will begin from the expiration of the 90 days term.

4. Filing a Motion of Reconsideration will not suspend the effective date of the adverse action.

Article XVII – Judicial Review

Section A– A party adversely affected by a final order or resolution of the agency, and that has exhausted all remedies provided by the agency, may present a request for a Judicial Review before the Puerto Rico Court of Appeals, within a term of thirty (30) days counted from the date of the filing of the copy of the notification of the agency’s final order or resolution.

Section B- The party filing for Judicial Review shall notify of the filing to the Secretary of the Department of Health, the Secretary of the Department of Justice, the WIC Program and all the interested parties, within the term to file said review.

Section C- A request for a Judicial Review will not suspend the effective date of the adverse action.

Article XVIII – General Provisions

Section A – Governing Regulation

The validity and interpretation of this regulation shall be governed by the English version in agreement with the dispositions of Act No. 38-2017, *supra*.

Section B – Amendments

1. The WIC Program reserves the right to amend this regulation when deemed necessary.
2. The proposal for amendment shall be notified through the publication of an edict in a daily circulation newspaper. The edict will indicate the proposed change(s) and availability of the proposed amendment at the WIC Program offices and shall grant a period of thirty-days (30) during which interested persons may submit written comments.
3. Any proposed amendment to this regulation shall be in compliance with the provisions of the Act No. 38-2017, *supra*.

Section C – Severance and Effectiveness Clause

If any provision of this regulation is declared unconstitutional or incompatible with any law in effect by a Court with jurisdiction over the subject matter, that finding shall not affect the other provisions of this regulation, which will continue to have full force and effect.

Section D – Other Provisions

Any situation not contemplated herein that needs immediate action will be remedied by an administrative order issued by the Secretary of the Department of Health.

Section E – Effective Date

This regulation was approved by the Secretary of the Department of Health, pursuant to the authority conferred by 7 CFR §§246.3 and will be effective thirty days after filing.

In San Juan, Puerto Rico, _____, 2019.

Rafael Rodríguez Mercado, MD, FAANS, FACS
Secretary
Department of Health of the Government of Puerto Rico

This regulation was filed in the Department of State of the Government of Puerto Rico on _____, 2019.