

GOVERNMENT OF PUERTO RICO
DEPARTMENT OF HEALTH

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

AUTHORIZED VENDOR REGULATION



“Esta institución es un proveedor que ofrece igualdad de oportunidades”

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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, Law No. 170, of August 12, 1988, 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 Puerto Rico WIC Program.

The USDA Food and Nutrition Service (FNS) provides the funds for administering the WIC Program in Puerto Rico. This funding is provided on an annual basis. Like all WIC 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 Puerto Rico WIC Program agrees to comply with the Federal WIC regulations at 7 CFR, Part 246. If any provision of the Puerto Rico WIC Regulation conflicts with the Federal WIC regulations, or is interpreted in a manner that would conflict with the Federal WIC regulations, the clause in the Federal Regulation shall prevail over the local regulation. In the event of such conflict, the Federal WIC regulations will be enforced and the conflicting provision or interpretation of the Puerto Rico WIC regulations will not be enforced.

This regulation applies to all vendors authorized by the Puerto Rico 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 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 Puerto Rico 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 Administrative Procedures Act, Law No. 170 of August 12, 1988, as amended. The Secretary's Regulation No. 7927 of October 5, 2010, *WIC Program Authorized Vendor Regulation*, is repealed with the approval and filing of this Regulation.

Introduction

The Special Supplemental Nutrition Program for Women, Infants and Children, also known as the WIC Program, offers nutritional food products to supplement the diet 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 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 WIC food instruments, 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 representative and present allegations or defenses to the adverse actions notified by the WIC Program that result in the termination of the vendor's contract and/or 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. 170 of August 12, 1988, 3 L.P.R.A. § 2101 et. seq.; and the applicable regulations contained herein.
3. Authorization – Permission granted to contracted vendors by the Puerto Rico WIC Program to accept and redeem; only for authorized supplemental foods; EBT cards, food instruments and cash-value vouchers from WIC participants.
4. Authorized supplemental foods – The brands and varieties of supplemental food products authorized by the Puerto Rico 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 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 with the vendor's stamp. The Puerto Rico WIC Program will reject food instruments or cash-value vouchers deposited without the vendor's stamp.
6. Authorized WIC store employees – Employees and/or any persons working in the operational phase of the authorized stores, paid or not, for their work. The term includes 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 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.

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

11. Competitive price – Determination made by the Puerto Rico WIC Program to evaluate the prices a vendor applicant charges for supplemental foods as compared to the prices charged by other vendor applicants and authorized vendors. The Puerto Rico WIC Program must authorize vendors selected from among those that offer the Program the most competitive prices.

12. Complaint against participants – Administrative action filed by the Puerto Rico 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 Puerto Rico 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 and/or the Puerto Rico WIC Program against an authorized vendor who has allegedly committed a violation to the laws, regulations, vendor agreement, policies and procedures that rule the Puerto Rico WIC Program.

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

15. Compliance buy – An undercover, on-site investigation in which an authorized representative of the Puerto Rico 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 to review vendor's compliance with the WIC Program regulation.

16. Compliance investigations – 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 (5) percent 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 in adverse to the policies, principles, objectives and regulations of the Puerto Rico 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 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 Puerto Rico WIC Program requests to become a WIC authorized vendor.
- e. When an authorized vendor enters into another type of business relationship with the Puerto Rico 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 per food instrument for above-50-percent vendors that is higher than the average payments per food instrument to all regular vendors (vendors other than above-50-percent vendors) within Puerto Rico's jurisdiction and to comparable regular vendors, if WIC Program participants redeem their food instruments in above-50 percent stores, rather than in regular vendors' stores.

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

22. Food instrument/cash-value voucher number – Number 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 Puerto Rico WIC Program to participants and/or their proxies for identification purposes when transacting food instruments and 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 Puerto Rico WIC Program and/or is in compliance with program policies, 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 contained in 7 CFR § 246.12.

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

29. Minimum inventory – The minimum requirement for the variety and quantity of supplemental foods that a vendor must stock. The Puerto Rico WIC Program shall not authorize a vendor applicant if the vendor applicant does not meet the minimum stock requirement.

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.

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 as defined by the vendor agreement. The Puerto Rico WIC Program may deny payment or assess a claim for the entire value of the food instrument or cash-value voucher involved in an overcharge claim. The Puerto Rico WIC Program must disqualify a vendor for a pattern of overcharging as per 246.12.

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

33. Participants – Pregnant, breastfeeding or 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 this regulation as an incidence of violation occurring on more than one occasion during the full term of the authorization granted by the vendor agreement.
36. Peer group – Grouping of vendors that share similar characteristics and are expected to have similar business practices and prices.
37. Price adjustment – An adjustment made by the Puerto Rico WIC Program, in accordance with the vendor agreement, to the purchase price on a food instrument 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 Puerto Rico WIC Program’s price limitations.
38. Proxy – Any person designated by a participant, or by a parent or caretaker of an infant or child participant, to obtain and transact food instruments and cash-value vouchers, or 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 on behalf of the participant and obtain the supplemental food items.
39. 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.
40. Regular vendors – Vendors that do not derive more than 50% of the store’s annual food revenue from the exchange of WIC food instruments.
41. Routine monitoring visits – Unannounced overt monitoring visits at any time the store is open for business. The Puerto Rico WIC Program, or its agents, shall perform routine monitoring visits in order to identify any violations that may be occurring, and to take the appropriate measures. The Puerto Rico WIC Program reserves the right to conduct as many monitoring visits as deemed necessary. Federal government personnel are authorized to also conduct monitoring visits.

42. Sanction – The termination, disqualification, civil money penalty or administrative fine imposed on a vendor by the Puerto Rico WIC Program, based on actions of that vendor that constitute one or more violations of the CFR, the Authorized Vendor Regulation, the vendor agreement and the policies and procedures of the Puerto Rico WIC Program.
43. Secretary of Health – The Secretary of the Puerto Rico Department of Health, or the person designated by administrative certification.
44. Shelf price – Current shelf price that retail vendors charge their customers for authorized supplemental foods must not be higher than the authorized competitive price. Shelf prices shall be displayed on shelves and/or in the products.
45. Store chain- multiple authorized stores owned by the same person or entity.
46. Trafficking – buying and selling food instruments for cash.
47. Type of food – Each product or food variety authorized by the Puerto Rico WIC Program.
48. Vendor – A sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the Puerto Rico WIC Program to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity. Each store must have a single, fixed location.
49. Vendor agreement – Agreement that establishes the rights, duties and obligations between authorized vendors and the Puerto Rico WIC Program, as set forth in 7 CFR 246.12, this regulation and the policies and procedures of the Puerto Rico WIC Program.
50. Vendor authorization process – Procedure through which the Puerto Rico WIC Program selects and authorizes the number of vendors needed to implement its food delivery system, where participants, parents, caretakers, or proxies obtain authorized supplemental foods.
51. Vendor identification number – Numeral that identifies each authorized vendor.
52. Vendor limiting criteria –Means criteria established by the Puerto Rico WIC Program to control the number and/or distribution of vendors it authorizes. The Puerto Rico WIC Program will establish the criteria to limit the number of stores it authorizes, as per 7 CFR 246.12.
53. 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, polices and/or procedures that rule the Puerto Rico WIC Program.

54. Voucher – Credit certificate issued to the vendor by the Puerto Rico 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 Puerto Rico WIC Program.

Section B – Puerto Rico WIC Program Authorities

1. Administer the Puerto Rico 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 that are required to ensure the quality and efficiency of services.
3. Certify persons who meet the eligibility requirements to receive WIC Program benefits.
4. Authorize the stores that will accept the food instruments and cash-value vouchers 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 as necessary to guarantee adequate participant access to Program benefits.
7. Disseminate information and train authorized vendors and farmers on federal and state laws and regulations governing the Puerto Rico WIC Program.
8. Perform the required on-site inspections of the stores prior to authorization by the Puerto Rico WIC Program.
9. Identify high-risk vendors at least once a year, using criteria developed by FNS and/or other statistically based criteria developed by the Puerto Rico WIC Program, pursuant to the regulations contained in 7 CFR § 246.12.
10. Plan, coordinate, and perform vendor monitoring reviews, compliance buys, and audits.

11. Investigate and follow up on complaints submitted by someone with personal knowledge of the facts alleged in the complaint, and determine the corresponding course of action.

12. Refer and/or participate in investigations and audits carried out by other authorized representatives of the Puerto Rico WIC Program.

13. Notify vendors of changes to Federal or State statutes, regulations, policies, or procedures governing the Program before the changes are implemented. The Puerto Rico WIC Program should give as much advance notice as possible, in accordance with §246.12.

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

15. Any other task assigned by the Puerto Rico WIC Program Director.

Article III – Authorization, Peer Groups, and Cost Containment

Pursuant to 7 CFR 246, the Puerto Rico WIC Program must authorize an appropriate number and distribution of vendors in order 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.

WIC participants receive food instruments and cash-value vouchers 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 that meet the nutritional needs of the participants served by the Puerto Rico WIC Program. These specific types of authorized foods are listed in the minimum inventory requirement.

The Puerto Rico WIC Program reserves the right to limit the number of vendor stores it authorizes in each vendor selection process and to make changes to the limiting criteria as approved by FNS when deemed necessary to fulfill its objectives effectively.

Section A- Vendor Cost Containment Requirement

According to Federal WIC Regulations at 7 CFR 246, the Puerto Rico WIC Program may only authorize above-50-percent vendors if it obtains Food and Nutrition Service (FNS) certification of its vendor cost containment system as described in the Federal WIC Regulations. The Federal WIC Regulations allow FNS to provide certification only if the above-50-percent vendors are cost neutral to the Program. Per 7 CFR 246, 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 Puerto Rico WIC Program to authorize above-50-percent vendors, FNS must certify its cost containment system at least every three years.

Section A1 Classification of Vendors As Regular Or Above 50% Vendors.

1. The Puerto Rico WIC Program will determine whether current vendors meet the above-50-percent vendor criterion, by calculating WIC redemptions as a percent of the vendor's total foods sales for the same period:
2. If WIC redemptions are more than 50 percent of the total food sales, the vendor will be deemed to be an above-50-percent vendor.
3. The Program will require from vendors a statement of the total amount of revenue derived from the sale of foods that could be purchased using Nutrition Assistance Program benefits.

4. The Program will also require from these vendors verifiable documentation to support the amount of food sales claimed by the vendor.
5. The Program will also calculate WIC redemptions as a percent of total food sales in existing WIC-authorized stores owned by the vendor. If other stores are classified as above 50% vendors, the store the vendor is applying for will also be classified as above 50%.
6. The Puerto Rico WIC Program will determine whether new vendor applicants are expected to be above-50-percent vendors.
7. Each vendor must state on the application whether the vendor is a regular or an above-50-percent vendor. The 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 WIC 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 WIC redemptions as a percent of total food sales in existing WIC-authorized stores owned by the vendor applicant. If other stores are classified as above 50% vendors, the store the vendor is applying for will also be classified as above 50%.
 - ii. requesting from the vendor applicant the percentage of anticipated food sales by type of payment, i.e., cash, Nutrition Assistance Program, WIC, 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 WIC authorization is required in order for the store to open for business.
8. 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.
9. The Puerto Rico WIC Program reserves the right and discretion to review and modify and/or use additional methods, with the approval of FNS, to determine if a vendor is a regular or Above 50% vendor.
10. 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 Puerto Rico WIC Program will use eligible NAP food sales, which are equivalent to SNAP food sales.
11. WIC will reassess the status of new vendors within six months after authorization by calculating WIC redemptions as a percent of total WIC and NAP redemptions to determine whether or not the vendors are above-50-percent vendors, and will reclassify in accordance with §246.
12. The Puerto Rico 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 Puerto Rico WIC Program has established a vendor peer group system, and a distinct competitive price criteria and allowable reimbursement levels for each peer group.
2. In accordance with 7 CFR 246, the Puerto Rico WIC Program has established a vendor peer group system approved by FNS.
3. The Puerto Rico WIC Program must reevaluate its peer group system at least every three years and may make changes to the peer group system to reflect any changes in store classification, geographic area, demographics, and/or other changes as deemed reasonable, subject to FNS approval. The Puerto Rico WIC Program will inform all vendors of the criteria for peer groups, and notify each individual vendor of its peer group assignment.

Section A3 Competitive Price Criteria

1. The Puerto Rico WIC Program must also establish a distinct competitive price criteria and allowable reimbursement levels for each peer group, pursuant to 42 U.S.C. 1786(h)(11)(A)(i) and 7 CFR 246.12.
2. The Puerto Rico WIC Program must use 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. The Puerto Rico WIC Program must consider a vendor applicant's shelf prices for supplemental foods. In establishing competitive price criteria and allowable reimbursement levels, the Puerto Rico WIC Program will consider participant access.
3. The Puerto Rico WIC Program reserves the right and sole discretion to modify the competitive price calculation and the competitive price eligibility criterion as deemed reasonable, subject to FNS approval. The Puerto Rico WIC Program will include the competitive price calculation in the corresponding Policy and Procedure. Any changes to the competitive price criteria will be notified to all vendors prior to implementation.

Section A4 Cost Neutrality

1. Per 7 CFR 246 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 Puerto Rico 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 Puerto Rico 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 Puerto Rico WIC Program must adjust payment levels to ensure compliance.

Section A5 Maximum allowable reimbursement levels

Per 7 CFR 246, 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.

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 prices charged by regular vendors as per the cost containment methodology approved by FNS.

The Puerto Rico 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 using prices charged by regular vendors only. The Puerto Rico WIC Program reserves the right and discretion to reassess its methodology and criteria at any time, subject to FNS approval. Changes to the Puerto Rico WIC Program maximum allowable reimbursement level will be included in the corresponding policy and procedure as authorized by FNS, before 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 previously approved by FNS, which may be modified.
- b. Shelf prices shall be obtained from authorized vendors every six 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

- a. When using paper food instruments: Vendors who charge amounts that exceed the average amounts charged by regular vendors for a representative group of food instrument types in each quarter, will be determined to be non-competitive. The price competitiveness of each vendor based on the average prices actually charged will be performed quarterly.
- b. When using EBT: Once EBT is established, prices for each food item will be obtained from the prices actually submitted by vendors. Price competitiveness for each vendor will be calculated from the prices submitted by each vendor in their redemptions during the previous three month period by a method authorized by FNS. This method will be described in a Policy and Procedure to be approved by FNS before its implementation.
- c. If the vendor's prices are determined to be non-competitive, the vendor will be notified.
- d. According to §246.12 a vendor's failure to remain price competitive during the vendor agreement period is cause for termination of the same, even if actual payments to the vendor are within the maximum reimbursement amount.
- e. Therefore, if a vendor's prices are determined to be noncompetitive during two consecutive quarters, the vendor agreement may be terminated for cause, even if the reimbursements or payments for the redeemed food instruments do not exceed the maximum allowable reimbursement amount.

The Puerto Rico WIC Program reserves the right and discretion to reassess its competitive price criteria at any time, subject to FNS approval. Changes to the Puerto Rico WIC Program competitive price criteria will be included in the corresponding policy and procedure as authorized by FNS, before implementation, and will be notified to all vendors.

Section B – Vendor Authorization

Vendors that are interested in participating in the Puerto Rico WIC Program must apply within the application period determined by the Puerto Rico WIC Program. The Puerto Rico WIC Program will announce the term for filing application, the information required and the process for filing applications.

All Vendors must comply with the eligibility requirements determined by the Puerto Rico WIC Program in order to be authorized and maintain authorization throughout the term of the agreement. Non-compliance with any eligibility requirement is basis for termination of the Vendor Agreement.

The Puerto Rico WIC Program reserves the right and discretion to reassess, add or eliminate eligibility requirements at any time, subject to FNS approval. Changes to the

Puerto Rico WIC Program eligibility requirements and criteria will be notified to vendors via electronic means before implementation.

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 Puerto Rico WIC Program.

Section B1- Eligibility Requirements

Vendors must meet all the eligibility criteria in order to be authorized, and must continue to meet this criteria throughout the term of the agreement to continue being authorized. Meeting the eligibility criteria will not guarantee authorization. Authorization is based exclusively on WIC determined criteria.

The minimum eligibility requirements are listed but not limited to the ones below, additional eligibility requirements may be included in the invitation to request authorization.

1. To be a Bona Fide food retailer for a period of no less than six months with a permanent fixed establishment located in Puerto Rico.
2. Must have access to Internet and a valid electronic e-mail address on file in order to receive Program notifications.
3. Must have filed all required Federal, State and Municipal taxes and have no outstanding debts, or must have proof of a current payment agreement and submit the documentation thereof required in the application instructions.
4. Have been established for at least six months of the previous year and have filed tax returns. An established store means that it has to be open, serve customers, and comply with all permit requirements imposed by the Commonwealth of Puerto Rico in order to operate a food retailer business/store. Any or all documents may be required for authorization.
5. Provide tax returns documenting total gross sales for the previous year or any other documents required during the term of the agreement within the time limits established by the WIC Program including but not limited to shelf prices, purchase orders, gross sales, food sales. Failure to do so will result in the denial of the authorization or termination of the agreement.
6. Submit current shelf prices for the authorized supplemental foods included in the food list, and that such prices are legitimate.
7. Be open at least 8 hours a day for at least 6 days a week, except holidays. Opening on a holiday is at the vendor's discretion.
8. Have the Puerto Rico WIC Program's minimum mandatory stock requirement available for sale on the store shelves, and refrigerators as per the type of food at the time of preliminary inspection. A vendor may not be authorized unless it meets minimum mandatory stock requirements at the time of preliminary on-site inspection in accordance with 246.12. Back orders will not be accepted. Any vendor applicant not meeting these requirements at the time of the on-site visit will be denied authorization.

9. Vendor; including owner, director, officials or share holders; must comply with Business Integrity criteria:
 - a. must have not been convicted of or had a civil judgment entered against them during the last six years for any activity indicating a lack of business integrity, per §246.12 of the CFR.
 - b. must not be disqualified from the Puerto Rico WIC Program at the time of application.
 - c. must not have a civil money penalty for hardship imposed by the NAP in lieu of a disqualification, which would not have expired.
 - d. Prior history of sanctions, violations, fines, terminations, disqualifications and/or civil money penalties imposed by the Puerto Rico WIC Program during any prior contract term will be taken into account when selecting vendors.
10. The vendor must be currently authorized by the Nutrition Assistance Program (NAP).
11. Must not have a conflict of interest, or the appearance of a conflict of interest, with the Puerto Rico WIC Program.
12. Submit legitimate information on the application. Submitting false or misleading information on the application or required documents will be cause for immediate termination.
13. Possess all permits and certifications required to operate the business in Puerto Rico. Vendor must submit the required permits and certifications described in the application Instructions with filing.
14. Representatives of authorized vendors must attend mandatory training sessions, as scheduled by the Puerto Rico WIC Program before authorization, as established in application instructions.
15. Must comply with Competitive Price Criteria.
16. Must have an Employer Identification Number (EIN).
17. Failure to make available to the Puerto Rico WIC Program, the USDA, and/or any law enforcement agency, upon request and at a reasonable time and place for inspection and audit, all food instruments in the Vendor's possession and all program related records will result in termination.
18. Failure to provide the Puerto Rico WIC Program legible copies, within 15 calendar days of the written request, of all required program related records including purchase and inventory records for WIC authorized foods will result in termination.
19. Failure to submit within established time period any documents, surveys or inquiries requested by the Puerto Rico WIC Program during the term of authorization will result in termination.

Section B2: Vendor Application for Authorization

Applications will be made available as specified by the 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 Puerto Rico 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 Puerto Rico WIC Program will provide orientations on the requirements and process before the start of the authorization process. Participation of the orientation is mandatory in order to participate of the authorization process.
4. Incomplete applications will be denied and are not subject to administrative review.

Section B2(a) : Selection Process

1. The Puerto Rico WIC Program will verify each vendor application to validate that the vendor meets the regulatory requirements and documentation.
2. The Puerto Rico WIC Program will determine whether current vendors meet the above-50-percent vendor criterion, by calculating WIC 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 verified according to a procedure approved by FNS.
5. Vendors' shelf prices will be utilized to determine if the vendor complies with Puerto Rico WIC Program's competitive price selection criterion.
6. Vendor application will be ranked utilizing the shelf prices and history of violations and non-compliance. WIC reserves the right to use additional criteria to rank vendors. Vendors will be authorized from among those that offer the most competitive prices according to the calculation for competitive prices.
7. Vendors that do not meet requirements will be notified of the specific requirements not met including required documentation and will be provided the opportunity to request a hearing.
8. 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 Puerto Rico 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 being met, verify shelf prices, and determine compliance with the eligibility criteria. The Puerto Rico 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 Puerto Rico 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 Puerto Rico 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. In accordance with §246.12the Puerto Rico WIC Program shall inform all vendors of the WIC Program's peer group criteria and must inform each individual vendor of its peer group assignment. Per §246.18the peer group and above-50-percent criteria are not subject to review; only the application of that criteria in determinations of peer group and above-50-percent status are subject to review.
3. The Puerto Rico 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 Puerto Rico WIC Program of no more than three (3) years.
3. The Puerto Rico 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 authorized vendor employees must comply with the federal regulations contained in 7 CFR Part 246, this regulation and the vendor agreement.
2. The training offered to vendors prior to signing agreements, as well as the annual vendor training, is mandatory. At least one representative of the vendor must participate in training annually.
3. Annual vendor training may be provided by the Puerto Rico WIC Program in a variety of formats, including newsletters, videos, and interactive training.
4. The Puerto Rico WIC Program will have the sole discretion to designate the date, time, and location of all interactive training.
5. If the vendor or an authorized representative cannot attend, the vendor must notify the Puerto Rico WIC Program, which will provide at least one alternative date on which to attend such training.
6. For violations that require it, the vendor must comply with re-training and immediate corrective actions.

Article V – Vendor Obligations and Responsibilities

Authorized vendors must comply with the obligations and responsibilities included in the federal regulations, these regulations and the vendor agreement such as, but not limited to:

Section A – General

1. The vendor must provide current physical, postal and electronic mail addresses to the Puerto Rico 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 the WIC Program notifies regarding to 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 Puerto Rico WIC Program.
5. Authorized vendors cannot accept altered food instruments or cash-value vouchers. The Puerto Rico 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 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 employees, or exhibit any other conduct that has the appearance that a special business relationship exists between the authorized vendor and the Puerto Rico WIC Program.
8. In accordance with §246.12, the Puerto Rico WIC Program shall not authorize an above-50-percent vendor that provides or intends to provide prohibited incentive items to customers. Regular vendors may provide participants incentive items that are being offered to all customers.

9. In accordance with 7 CFR §246.12, the vendor must offer WIC 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 days per week, eight (8) hours per day, except holidays. Vendors must notify the Puerto Rico WIC Program if store services cannot be provided during the required schedule.
12. In case of an emergency or natural disaster the authorized stores that are not affected must collaborate with the Puerto Rico WIC Program and offer their services and carry out the contingency plans delineated 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. Personal hygiene accessories, such as bathroom tissue, paper towels, and soap must be available.

Non-compliance with Vendor Obligations and Responsibilities will result in just cause for termination of the Vendor Agreement Contract. The Puerto Rico WIC Program reserves the right and discretion to reassess its Vendor Obligations and Responsibility criteria at any time, subject to FNS approval. Changes to the Puerto Rico WIC Program criteria will be included in the corresponding policy and procedure and authorized by FNS, before implementation, and will be notified to all vendors.

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

The Puerto Rico WIC Program will establish the minimum inventory and brand requirements. The vendor will receive a list of all authorized food products, the minimum inventory and 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 WIC vendor 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 Puerto Rico 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 Puerto Rico 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 or permit 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 Puerto Rico WIC Program, in exchange for food instruments specifying the infant formula. The list is obtained from the Puerto Rico 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 §246.12.

Section C–Alcoholic Beverages

1. The Puerto Rico 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 and its immediate premises.
3. Allowing the consumption of alcoholic beverages in and/or within the premises of WIC Program authorized vendor store will be just cause for immediate termination.

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

Section A – General

In accordance with 7 CFR §246, 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 day of use” and “last day of use” of the food instrument.
2. The Puerto Rico 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.
3. Disputes concerning food instrument or cash-value voucher payments and vendor claims are not subject to administrative review. Cash-value vouchers cannot be redeemed for a dollar amount greater than the amount shown on the cash-value voucher.
4. The vendor must pay any claims assessed by the Puerto Rico WIC Program. The Program shall provide written notification of the reasons for the claim.
5. 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.
6. The vendor must request the WIC identification card from participants and their authorized representatives at the time they redeem food instruments and cash-value vouchers.
7. The vendor must verify that the person transacting the food instruments or cash-value vouchers is the participant or authorized representative.
8. The vendor must verify that the name and number on the participant’s WIC-ID corresponds to the name and the ID number on the food instrument or cash-value voucher.
9. The vendor must verify that the name of the participant, identification number, date, amount of food items, and signature are not altered.
10. If a vendor receives an altered food instrument or cash-value voucher, he/she must notify the Puerto Rico 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.

11. The vendor must verify that the food instruments or cash-value vouchers are within the effective dates.

12. The vendor must not accept food instruments or cash-value vouchers before their "first day to use" or after their "last day of use," except when previously authorized by the Puerto Rico WIC Program Director regarding specific instances, such as emergencies, contingency plans, and natural disasters.

13. If the vendor receives food instruments or cash-value vouchers before the "first day to use" and after the "last day of use", he/she must immediately notify the Puerto Rico 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.

14. 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.

15. The vendor must verify that the signature of the authorized representative coincides with the signature on the identification card.

16. The vendor must check that the food products to be dispatched are authorized by the Puerto Rico WIC Program.

17. The vendor must accept a food instrument or cash-value voucher regardless of the location of the clinic that issued it to the participant.

18. The vendor must process each food instrument separately, and must provide all the food products prescribed on it.

19. 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.

20. Participants can exchange any or all food instruments and the cash value voucher within the 30-day period from the "first day of use" and the "last day of use."

21. 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.

22. 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.

23. The vendor must stamp their stamp on 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.

24. The vendor must redeem the food instruments and cash-value vouchers within seven (7) days counted from “last date to use” of the food instrument.

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

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

27. The Puerto Rico 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 WIC food instruments and cash-value vouchers within 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 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 the cost containment measures established in 7 CFR § 246, the Puerto Rico WIC Program must receive a rebate for each unit of infant formula under agreement that is prescribed to participants.
2. Obligations and responsibilities of vendors for the implementation of the infant formula rebate system will be included in the Policies and Procedures of the Puerto Rico WIC Program and notified to vendors.
3. The Puerto Rico WIC Program reserves the right and discretion to reassess its Infant Formula Credit Rebate System at any time, subject to FNS approval. Changes to the Puerto Rico WIC Program rebate system or criteria will be included in the corresponding policy and procedure and authorized by FNS, before implementation, and notified to all vendors.

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

Pursuant to § 17 (h)(8)(A) of the Child Nutrition Act of 1966, 42 U.S.C. § 1786, as amended and by 7 CFR §246:

1. The Puerto Rico 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).
 2. Vendors may only provide participants with the authorized infant formula that they have obtained from a source included on the list authorized by the Puerto Rico WIC Program.
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Article VIII – Vendor Account Reconciliation

Section A – Vendor Account Reconciliation Process

1. Vendor shall have up ten (10) 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 Puerto Rico WIC Program Director. No oral requests will be considered.
3. Failure to raise any objection as described in this section, within the ten (10) calendar-day period, shall be interpreted as an acceptance of the payment and will bar further claims.
4. The Puerto Rico 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 Puerto Rico 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 questionable food instruments or cash-value vouchers, suspected vendor overcharges, charges in excess of the maximum allowable reimbursement level, and other errors.

- 1) The Puerto Rico WIC Program may adjust charges in excess of the established maximum reimbursement level from the vendors' deposits.
- 2) When the Puerto Rico WIC Program determines the vendor has committed a vendor violation that affects the payment to the vendor, the Program 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 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) Opportunity to justify or correct. When payment for a food instrument or cash-value voucher is delayed or a claim is established, the State agency 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 State agency will provide payment or adjust the proposed claim accordingly.

- 4) Timeframe and offset. The State agency must deny payment or initiate claims collection action within 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.

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

Section A – Introduction

Pursuant to 7 CFR §246, the vendor must provide advanced written notification and obtain authorization from the Puerto Rico WIC Program for any change in vendor ownership, store location, or cessation of operations. In such instances, the vendor agreement will be terminated.

The Puerto Rico 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 three (3) miles from the currently authorized store location.

The Puerto Rico 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 Puerto Rico WIC Program as an authorized vendor, as established in this Regulation. Failure to comply with this requirement will result in the immediate revocation of the vendor authorization in compliance with federal regulations.

Section B – Relocation due to Expropriation

Vendors must notify the Puerto Rico 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 his/her intention to relocate, within a reasonable period, taking into consideration the magnitude of the event, and if he/she complies with the requirements in Section D of this Article. The reasonable period shall not exceed one year.

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.

All documents, licenses, permits, certifications and endorsements necessary to operate a food store in Puerto Rico, including but not limited to:

- 1) Municipal license (“Patente Municipal”)
 - 2) Use Permit or government issued document authorizing the intended use for the proposed location.
 - 3) Sanitary license
 - 4) Sworn statement attesting that the relocation request does not imply a conflict of interest as defined in Article I of this regulation.
2. The Puerto Rico WIC Program shall accept provisional permits for the period established by the issuing agencies. The program reserves the right to request other documents as deemed necessary.
 3. The Puerto Rico WIC Program will deny the requests for relocation of vendors who do not provide the documents requested. Once the documents are provided, the Puerto Rico WIC Program shall evaluate the application and make a determination within thirty (30) days.
 4. The Puerto Rico WIC Program shall terminate the Agreement and disqualify a vendor who relocates the business without the 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 to operate, 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. The certificate of negative criminal record of the owner and store manager must be current and available in the store at all times. If there is any change in these documents, the vendor must submit the documents to the Puerto Rico WIC Program within 10 days from the date of the change.

Section E – Voluntary Withdrawal and Change of Ownership

1. The Vendor’s Agreement, vendor authorization and stamp are not transferable.
2. The vendor agreement will be terminated and will no longer remain in effect once the vendor transfers ownership of the authorized store. This restriction applies to individual vendors, partnerships, or corporations.

3. The vendor must provide the Puerto Rico WIC Program thirty (30) days advanced written notification of any change in ownership, store location, or cessation of operations.
4. The written notice must contain the date that the store will be transferred, or any other action indicative that the owner will no longer be the party authorized by the Puerto Rico WIC Program.
5. The notice must be addressed to the Puerto Rico WIC Program Director and must include the name, address, and circumstances of the person who intends to acquire the authorized store.
6. The new owner must file request, comply with all eligibility requirements and criteria as described in this regulation and be authorized by a new vendor agreement in order to participate as an authorized WIC vendor.
7. The Puerto Rico 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.
8. 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.
9. 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 Puerto Rico WIC Program of the intention to incorporate the business thirty (30) days in advance of such action. In the case of an intimate corporation, where the authorized vendor is the sole shareholder, the agreement with the Puerto Rico WIC Program shall remain in force until its termination, and the program shall make the corresponding change of owner under the same qualification that the owner had as a natural person.
2. In the event that 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 ten (10) calendar days of the effective date of the change.
3. Notwithstanding the foregoing, upon the occurrence of any of the following events, 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, Compliance Investigations, and Audits

Section A – General

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

1. The Puerto Rico 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. A pattern of violations as defined by this regulation will be configured if during the course of a single inventory audit investigation that covers a time period of more than one month the agency determines a vendor has committed multiple violations.
3. When during the course of a single investigation the agency determines a vendor has committed multiple violations; 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. 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 Puerto Rico WIC Program in order to be authorized for a new term with a new agreement.

If a vendor is disqualified, the Puerto Rico 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 Puerto Rico WIC Program's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication. The Puerto Rico WIC Program has no obligation to authorize the disqualified vendor and will exercise its discretion when taking a determination as to authorization to participate as a WIC vendor.

Section B – Termination

1. The vendor must comply with the vendor eligibility requirements throughout the agreement period, including any changes to the criteria. Using the current vendor eligibility requirements, the State agency may reassess the vendor at any time during the agreement period. The State agency will terminate the vendor agreement if the vendor fails to meet the current vendor eligibility requirements.

Section C – Resolution

1. In the event the Puerto Rico WIC Program intends to terminate the vendor's agreement for cause, written notification shall be made thirty (30) days in advance.
2. If the vendor wants to terminate the agreement, the written notification must be addressed to the Puerto Rico WIC Program Director, not less than thirty (30) days in advance.

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

Section A. Type A Violations

Sanctions for Type A violations include administrative fines, disqualification from the WIC Program or civil money penalties (CMP) in lieu of disqualification. If during the course of a single investigation the Puerto Rico WIC Program determines that a vendor has committed multiple violations the administrative fine shall be imposed for the amount of the most serious violation. Vendors' who fail to pay a required administrative fine within the time frame provided by the Puerto Rico WIC Program will be terminated.

The Puerto Rico WIC Program will send the Vendor a single warning letter after the first incident of a Type A violation, unless the Puerto Rico WIC Program, in its sole discretion, determines that a warning letter would compromise an investigation. Subsequent incidents of a Type A violation will result in administrative fines, disqualification or CMP in lieu of disqualification. For procedural violations that require it, the vendor must comply with re-training and immediate corrective action after every incident.

The Puerto Rico WIC Program, in its sole discretion, may continue an investigation of a violation beyond the number of incidents necessary to impose a sanction. The number of incidents that will constitute a pattern for Administrative and Procedural violations is two. The first incident will be determined by the warning letter. The Fourth incident of an administrative or procedural violation will result in disqualification.

Warning letters, second and third incident sanctions are NOT subject to an administrative hearing review as described in Article XIV of this regulation.

If the Puerto Rico WIC Program determines that disqualification of the Vendor for a Type A violation would result in inadequate participant access, a CMP may be imposed in lieu of disqualification.

Violation	Second Incident Sanction	Third Incident Sanction	Fourth Incident Sanction and Length of Disqualification
1. Failure to identify the authorized WIC store with the signage/poster provided by the Puerto Rico WIC Program.	\$250.00	\$500.00	Six month disqualification.

2. Failing to identify correctly WIC food item and/or authorized products.	\$250.00	\$500.00	Six month disqualification.
3. Failing to display the current price of an authorized WIC food item on the item, shelf, or nearby sign.	\$250.00	\$500.00	Six month disqualification.
4. Failure to keep in the cash register area a copy of the Puerto Rico WIC Vendor Regulations; the authorized products list and the vendor's stamp.	\$250.00	\$500.00	Six month disqualification.
5. Failure to submit any documents requested by the Puerto Rico WIC Program within the specified time frame.	\$250.00	\$500.00	Six month disqualification.
6. Failure to keep posted in a visible place at the authorized store copies of documents required to operate the authorized vendor store and requested by the Puerto Rico WIC Program.	\$250.00	\$500.00	Six month disqualification.
7. Failure to extend to WIC Program participants any special offers carried out in the store.	\$500.00	\$1000.00	Six month disqualification.
8. Failing to offer program participants the same courtesies offered to other customers.	\$500.00	\$1000.00	Six month disqualification.
9. Accepting food instruments or cash-value vouchers that are not validated with the WIC clinic official payer's stamp.	\$500.00	\$1000.00	One year disqualification.
10. 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.	\$500.00	\$1000.00	One year disqualification.
11. Accepting a food instrument that is outside valid dates, post-dated or missing a signature.	\$500.00	\$1000.00	One year disqualification.
12. Failing to allow WIC participants to use coupons or other promotional specials.	\$500.00	\$1000.00	Six month disqualification.
13. Failing to record the individual food item prices and /or the total actual price on the WIC food instrument before obtaining the WIC participant's signature.	\$500.00	\$1000.00	One year disqualification.

14. The vendor accepts food instruments or cash-value vouchers before the participant or proxy receives the authorized food products.	\$500.00	\$1000.00	One year disqualification.
15. The vendor does not stamp the vendor authorization seal on the food instrument or cash value voucher immediately after providing the food to the participant.	\$500.00	\$1000.00	One year disqualification.
16. The Vendor alters or accepts altered food instruments.	\$500.00	\$1000.00	One year disqualification.
17. Failing to maintain required minimum stock and/or minimum variety of authorized brands.	\$500.00	\$1000.00	One year disqualification.
18. Approaching, soliciting, or leaving advertisements or other promotional items for WIC applicants or participants at the WIC State agency or WIC clinics.	\$500.00	\$1000.00	One year disqualification.
19. Failure to provide service to participants for at least eight (8) hours a day for a minimum of six days a week, except holidays.	\$500.00	\$1000.00	One year disqualification.
20. Requiring other purchases as a condition to use WIC food instruments.	\$500.00	\$1000.00	One year disqualification.
21. Collecting sales tax on a WIC food purchase.	\$500.00	\$1000.00	One year disqualification.
22. Contacting WIC participants to attempt to collect funds that will not be or were not paid to the Vendor by the WIC Program.	\$500.00	\$1000.00	One year disqualification.
23. Allowing the purchase of less than the total amount of infant formula as specified on the food instrument.	\$500.00	\$1000.00	One year disqualification.
24. Using the WIC logo or the acronym "WIC" without written approval from the Puerto Rico WIC Program and the USDA.	\$500.00	\$1000.00	One year disqualification.

Section B. Type B Violations

1. Violations listed below are Type B violations. The Puerto Rico WIC Program will sanction authorized vendors for Type B Violations with an administrative fine, disqualification or CMP in lieu of disqualification. If during the course of a single investigation the Puerto Rico WIC Program determines that a vendor has committed multiple violations, the corresponding administrative fine shall be imposed for the most severe violation. Vendors who fail to pay a required administrative fine within the time frame provided by the Puerto Rico WIC Program will be terminated.

The Puerto Rico WIC Program will send the Vendor a **single** warning letter after the **first** incident of a fraud or abuse violation, unless the Puerto Rico WIC Program, in its sole discretion, determines that a warning letter would compromise an investigation.

The Puerto Rico WIC Program will NOT send any additional warning letters for subsequent incidents of the same Type B violation or before imposing the sanction. The Puerto Rico WIC Program, in its sole discretion, may continue an investigation of a violation beyond the number of incidents necessary to impose a sanction.

A Type B violation that results in a Puerto Rico WIC Program sanction will remain on the Vendor's record as a violation incident for term of the agreement and will be used when determining how many incidents of that violation have occurred. If the Puerto Rico WIC Program is able to determine that the Vendor is no longer committing the previously sanctioned violation, then any subsequent incident of that violation will be considered an initial incident of that violation.

The warning letter and second incident fines are NOT subject to an administrative hearing review as described in Article XIV of this Regulation.

The number of incidents that will constitute a pattern for Type B violations is two. The first incident will be determined by the warning letter. The third incident of a fraud and abuse violation will result in disqualification.

If the Puerto Rico WIC Program determines that disqualification of the Vendor for fraud or abuse would result in inadequate participant access, a CMP **may** be imposed in lieu of disqualification.

Violation	Second Incident Sanction	Third Incident Sanction and Length of Disqualification
1. 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.	\$5,000.00	One Year disqualification
2. Providing false, inconsistent, or misleading information on the WIC Price/Stock Survey, gross sales, food sales or any other inquiry/survey documents required by the WIC Program. .	\$5,000.00	One Year disqualification
3. Failing to maintain, due to suspension, revocation, or denial, any licenses, permits, or certifications necessary to operate a food store in the Commonwealth of Puerto Rico.	\$5,000.00	One Year disqualification
4. Failing to maintain inventory records or other records required by the Puerto Rico WIC Program for a period of five years.	\$5,000.00	One Year disqualification
5. Discriminating on the basis of race, color, disability (handicap), age, national origin, or sex.	\$5,000.00	One Year disqualification.
6. 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.	\$5,000.00	One Year disqualification

Section C. Federally Mandated WIC Vendor Sanctions

246.12 *Permanent disqualification.* 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. If reflected in its State Plan, the State agency may impose a civil money penalty in lieu of a disqualification for this violation 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) *Six-year disqualification.* The State agency must disqualify a vendor for six years for:

(A) One incidence of buying or selling food instruments for cash (trafficking); or
(B) 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.

(iii) *Three-year disqualification.* The State agency must disqualify a vendor for three years for:

(A) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash-value vouchers;
(B) 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;
(C) A pattern of vendor overcharges;
(D) 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;
(E) A pattern of charging for supplemental food not received by the participant; or
(F) 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.

(iv) *One-year disqualification.* The State agency must disqualify a vendor for one year for:

(A) 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; or
(B) 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.

(v) *Second mandatory sanction.* When a vendor, who previously has been assessed a sanction for any of the violations in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, 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 (l)(1)(x)(C) of this section.

(vi) *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 (l)(1)(ii) through (l)(1)(iv) of this section, 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 (l)(1)(ii) through (l)(1)(iv) of this section.

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

(viii) *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 (l)(1)(i) through (l)(1)(iv) of this section, 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 Puerto Rico WIC Program determines that disqualification of an authorized vendor would result in inadequate participant access, a CMP may be imposed in lieu of disqualification, according to Federal Regulation. The Puerto Rico 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 Puerto Rico 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 10 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.

2. The civil money penalty shall not exceed \$11,000 for each violation subject to mandatory sanctions, and/or \$5,000 for each violation subject to State agency-established sanctions.

3. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be \$11,000.
4. If during the course of a single investigation the Puerto Rico WIC Program determines that a vendor has committed multiple violations, a civil money penalty shall be imposed for each violation.
5. The total amount of civil money penalties imposed for violations investigated as part of a single investigation may not exceed \$49,000.

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 Puerto Rico 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 Puerto Rico 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 Puerto Rico 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, a disqualification, or a civil money penalty according to the administrative hearing procedures detailed in Article XV of this Regulation.

Warning letters and incident fines are not subject to administrative hearing process described in Article XV. A vendor may object a warning letter or incident fine by filing a letter before the Director of Vendors Division within 10 days of filing of the notification.

For those cases where a Vendor has timely appealed a termination or termination and disqualification action, and the Vendor will be allowed to continue on the program, all provisions of the WIC Vendor Contract will continue to apply, including sanctions for non-compliance, during the time period of the appeal process.

Vendors who are terminated and disqualified may file a new application to the Program after the disqualification period ends. The Vendor must meet all current requirements for a WIC Vendor Contract including the selection plan and limitation policy requirements in order to be authorized. The Puerto Rico WIC Program will not consider contracting with a Vendor during any disqualification period from the WIC program.

Article XIII – Notification of Violations

Section A – Notification of Violations

Notification will be procured to the current mailing address and/or electronic mail address as provided by the vendor to the Puerto Rico WIC Program.

1. The Puerto Rico WIC Program will issue a warning letter, in writing, 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 Puerto Rico WIC Program determines, at its discretion, that notifying the vendor would compromise an investigation.
2. A second or third incident letter that includes an administrative fine according to Article XII of this Regulation will be notified in writing to the current address as provided by the vendor to the Puerto Rico WIC Program.
3. The Puerto Rico WIC Program shall notify the adverse action resulting in termination and/or disqualification it intends to take 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 regular mail and electronic mail (e-mail) to the address in record provided by the authorized vendor.
4. The Puerto Rico WIC Program may continue its investigation after the violation is notified to the vendor, consistent with the Puerto Rico WIC Program's procedures for providing such notice.
5. It is the responsibility of each vendor to notify the Vendor Management division of any changes to their addresses. Addresses provided by the vendor will be considered correct. All notifications will be sent to the mailing address and/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 Puerto Rico 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, unless authorization is subject to the procurement procedures applicable to the Puerto Rico WIC Program.
2. Termination of the Vendor Contract.
3. Disqualification
4. Imposition of civil money penalty in lieu of disqualification.

Section B - Adverse Actions NOT Subject to Administrative Reviews

1. The validity or appropriateness of the Puerto Rico WIC Program Vendor limiting or selection criteria.
2. The validity or appropriateness of the Puerto Rico WIC Program participant access criteria and the Puerto Rico WIC Program participant access determination.
3. The validity or appropriateness of the Puerto Rico 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 Puerto Rico WIC Program prohibition of incentive items and the Puerto Rico 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 Puerto Rico 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. Denial of authorization if the Puerto Rico WIC Program Vendor authorization is subject to the procurement procedures applicable to the Puerto Rico WIC Program.

8. The expiration of the Vendor's Contract.

9. 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.

10. The Puerto Rico 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 Puerto Rico WIC Program shall make denials of authorization, termination and disqualifications effective on the date of filing of notice of the adverse action.

The Puerto Rico 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 15 days from the notice of the adverse action; the Puerto Rico WIC Program shall make effective the sanction no earlier than the date of notice of the reviewed decision.

Further appeal or judicial review by the vendor will not automatically postpone the effective date of the termination and/or disqualification.

The State agency 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.

Article XV – Administrative Hearings Procedure

1. A petition for administrative review shall be filed within 15 days of notice of adverse action at the Director's office of the PR WIC Program in order for the filing to be effective.
2. An Official examiner shall notify the date of the administrative hearing, on or before 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 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 an attorney may assist the parties even though it is not required.
 - f. Warning that the proceedings shall be continued in absence, should the vendor does not appear.
 - 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 five (5) days in advance of the date of the hearing.
 - b. The opportunity to cross-examine adverse witnesses. When necessary to protect the identity of WIC Program investigators, such examination may 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 Puerto Rico WIC Program's action is based, prior to the administrative hearing.

f. Receive written notice of the decision of the Examining Officer within ninety (90)-calendar days counted as of the date of the request for administrative hearing. These timeframes are only administrative requirements for the Puerto Rico WIC Program and do not provide a basis for overturning the Puerto Rico WIC Program's adverse action if a decision is not made within the specified timeframe.

g. Appealing an action does not relieve a vendor, who is permitted to continue in the 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 – Official Examiner

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

Section A – Authority of the Official Examiner

1. Take oaths.
2. Consider all the material evidence at the time of issuing interlocutory decisions.
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 on the parties in accordance with what is established in the Uniform Administrative Procedure Act, Law No. 170 of August 12, 1988, as amended, (3 L.P.R.A. § 2101 et. seq.). This does not prevent the imposition of civil money penalties or fines of greater amounts as required by or permitted by 7 CFR 246.

Section B – Contents of the Official Examiner’s Report

The Official Examiner’s report shall contain:

1. The caption that correctly identifies the case and its parties.
2. The correct 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 memorandum of law to support the findings and the recommendations.
5. The final recommendations on the case.

6. The Official Examiner 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 Puerto Rico 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 Health, or the official designated by him/her, shall issue a final resolution containing findings of facts and recommendations based on the record.

Section C – Contents and Disposition of the Case File

1. Content:

- a. Verbal transcript or recordings of the testimonies obtained under oath at the hearings.
- b. Exhibits received as evidence.
- c. Motions, allegations, petitions or requirements submitted in the case.
- d. Documents issued by the Puerto Rico WIC Program to the vendor that are pertinent to the case and have been admitted as evidence.
- e. Offer of proof, objections and rulings on the same.
- f. Any order or ruling given before the hearing.
- g. The notices of all proceedings.
- h. Report and recommendations of the case issued by the Official examiner.
- i. Final resolution of the case issued by the Secretary of the Department of Health or the official designated by him/her.

2. Disposition

- a. The Puerto Rico WIC Program will retain the administrative files for a minimum of three 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 Puerto Rico 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 Official examiner's Final Report and Recommendations shall be notified by the Puerto Rico WIC Program to the vendor on or before ninety days (90) as of the date in which the petition for an administrative hearing was received.

The Program will send copy of the decision to appellant and legal representative at the address of record. The decision will become final 30 days after notice.

Section E – Resolution of the Case

The resolution issued by the Secretary of Health shall be effective on the date of filing of the notice.

Section F – Reconsideration

1. A party that is adversely affected by an Order or ruling by the Official examiner may file a Motion for Reconsideration with the Agency within twenty (20) days following the notification of said order or ruling. If any decision is made regarding the reconsideration, the period for requesting judicial review begins from the date on which a copy of the notification of the agency's decision resolving the motion is filed. If the Agency fails to take any action regarding the Motion for Reconsideration within fifteen (15) days after it was presented, it shall be understood that the same has been rejected outright, and the period for the judicial review shall start as of that date.

Article XVII – Judicial Review

Section A – A party that is adversely affected by an order or resolution of the Official examiner, and that has exhausted all administrative remedies provided by the Agency, may file a request for judicial review before the Court of Appeals within the period of thirty (30) days as of the date of filing of the copy of the Official examiner’s final order or resolution.

Section B- The party interested in the judicial review shall notify of the filing to Puerto Rico WIC Program and all the interested parties, within the period to request said review.

Section C – Any party in an administrative proceeding may request the judicial review of any final order or resolution issued by the Official examiner, pursuant to the provisions of this regulation.

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. 170 of August 12, 1988, as amended, Article 13, codified in Title 3 of the Laws of Puerto Rico Annotated, Section 2140, better known as “The Uniform Administrative Procedure Code”.

Section B – Amendments

1. The Puerto Rico 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 Puerto Rico 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 Uniform Administrative Procedures Act, Law No. 170 of August 12, 1988, as amended, 3 L.P.R.A. §2101, et. seq.

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 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 as of _____ 2016.

In San Juan, Puerto Rico, _____, 2016.

Ana Rius Armendariz, MD
Secretary
Department of Health

Dana Miro Medina
Director
Puerto Rico WIC Program

This regulation was filed in the Puerto Rico Department of State on _____, 2016.