

Regulatory Analysis Form		This space for use by IRRC RECEIVED 2003 FEB -9 PM 3: 37 REGULATORY REVIEW COMMISSION IRRC Number: Mizner #2097	
(1) Agency Department of Health			
(2) I.D. Number (Governor's Office Use) 10-161			
(3) Short Title Supplemental Nutrition Program for Women, Infants and Children (WIC Program)			
(4) PA Code Cite 28 Pa. Code Part VIII, Chapters 1101-1113		(5) Agency Contacts & Telephone Numbers Primary Contact: Greg Landis (717) 783-1289 Secondary Contact: Lesa Tressler (717) 783-2500	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and non-technical language. These regulations govern the authorization and management of retail grocery stores in the WIC Program, and set forth procedures for administrative appeals of WIC applicants and participants, and local agencies and retail grocery stores.			

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(9) State the statutory authority for the regulation and any relevant State or Federal court decisions.

The WIC Program was authorized by an amendment to the Children Nutrition Act of 1966 (Act), 42 U.S.C. § 1786. Through this Act, Congress charged the United States Department of Agriculture, Food Nutrition Services (USDA-FNS) with the responsibility for administering the WIC Program and distributing funding for its operation. The Act further provided that the USDA-FNS is to contract with State agencies for the establishment of the WIC Program. In the Commonwealth, the USDA contracts with the Department for the operation of the WIC Program. As a prerequisite for receiving funding, the Federal regulations governing the WIC Program require that the State agency with which the USDA-FNS contracts for the administration of the WIC Program submit on an annual basis a State agency plan of operations (42 U.S.C. § 1786(f)(1) (A)); 7 C.F.R. § 246.4 (relating to state plan)) setting forth how the State intends to administer the program. The regulations further require that the State agency establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan. In compliance with that requirement, the Department publishes notices in the *Pennsylvania Bulletin* and newspapers of general circulation, as well as sends notices to interested parties and holds meetings for the purpose of seeking comment on the State agency plan. All state agency plans, as well as any changes thereto, must be approved by the Secretary of the USDA. The State agency may not deviate from the plan without USDA approval.

(10) Is the regulation mandated by any Federal or State law or court order, or Federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

There is no federal requirement for the establishment of State regulations.

However, as a result of the Commonwealth Court's decision in Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health, 713 A.2d 177 (Pa. Cmwlth. 1998), the State regulations governing the WIC Program were developed and published by the Department of Health on July 24, 1999.

The proposed regulatory changes are necessitated by changes to Federal regulations, 7 C.F.R. § 246, as published in the March 18, 1999 Federal Register. The Federal regulatory changes must be implemented by the Commonwealth by May 17, 2000.

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(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Most of these regulatory changes are necessitated by changes to Federal regulations at 7 C.F.R. §246.12 which must be implemented by May 17, 2000. The remainder of the changes were developed through input of stakeholders in two public meetings which are intended to improve and streamline retail store applications and the store application and review process. The proposed changes will potentially increase the number of retail stores available to WIC participants.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

These regulations enable the WIC Program to authorize grocery stores to participate in the Program. These stores provide access to the much needed supplemental, nutritious foods to participants through the retail delivery system.

Without the proposed changes to the regulations by May 17, 2000, the Commonwealth would face sanctions by the USDA-FNS, and possible loss of funds.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulations will benefit approximately 243,000 WIC participants monthly by ensuring an adequate number of qualified retail stores for WIC participants to make their purchases. In addition, the grocery store industry will benefit from the proposed changes in that the number of stores which may be potentially authorized to participate in the program, will increase.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There is no population that will be adversely affected by this regulation. An indeterminate number of retail stores will be denied authorization to participate in the WIC Program. Every interested store will have an equal opportunity to seek authorization.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

- Approximately 1,700 authorized vendors
- Approximately 30 WIC retail store personnel at the State and local agency level
- Approximately 243,000 WIC participants monthly

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(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Public meetings were held on September 23, 1999 and November 5, 1999, for the purpose of seeking comment on regulatory revisions. The Department published a notice in the *Pennsylvania Bulletin*, sent individual notices to approximately 1700 grocery stores participating in the WIC program, solicited participation from WIC participants and sent notices to other interested organizations, such as the Pennsylvania Food Merchants Association (PFMA). These public meetings provided valuable input from various stakeholders ranging from WIC local agency personnel, store representatives, PFMA, State legislative staff, the USDA and the Pennsylvania Hunger Action Center.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There will be no new costs incurred by the regulated community as a result of these regulatory changes.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No fiscal impact on local governments.

(19) Provide a specific estimate of the costs and/or savings to State government associated with the implementation of the regulation, including and legal, accounting, or consulting procedures which may be required.

The potential increase in the number of stores authorized to participate in the WIC Program will increase the federally mandated monitoring costs incurred by the Department by approximately \$96,000 annually.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government and State government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$ 0	0	0	0	0	0
Local Government	\$ 0	0	0	0	0	0
State Government	\$ 0	0	0	0	0	0
Total Savings	\$ 0	0	0	0	0	0
COSTS:						
Regulated Community	\$ 0	0	0	0	0	0
Local Government	\$ 0	0	0	0	0	0
State Government	\$ 96,000	\$ 96,000	\$ 96,000	\$ 96,000	\$ 96,000	\$ 96,000
Total Costs	\$ 96,000	\$ 96,000	\$ 96,000	\$ 96,000	\$ 96,000	\$ 96,000
REVENUE LOSSES:						
Regulated Community	\$ 0	0	0	0	0	0
Local Government	\$ 0	0	0	0	0	0
State Government	\$ 0	0	0	0	0	0
Total Revenue Losses	\$ 0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Average annual cost per year per retail store of retail store management functions times the number of new store slots generated.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY - 3	FY - 2	FY - 1	Current FY
Program Budget	\$170,443,105	\$169,864,041	\$168,709,938	\$170,299,331
Vendor Monitoring Expenditures	\$677,831	\$647,970	\$677,000	\$773,000 (est.)

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The anticipated increase in vendor monitoring costs is necessary to provide adequate participant access to additional retail store outlets.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Non-regulatory alternatives are not available.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Consideration was given to having no limit on the number of stores authorized to participate in the WIC Program. This was dismissed because there are federally mandated limits on the expenditure of funds for administrative purposes and this alternative would drastically increase potential vendor management costs and would not allow for the effective and efficient administration of the WIC Program.

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(24) Are there any provisions that are more stringent than Federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Selection criteria is mandated by Federal regulation but is not prescriptive as to what the specific criteria must be. Selection criteria set forth in the regulations mirror those used in past non-regulatory administration of the WIC Program. Limitation criteria is encouraged, but not mandated, by Federal regulations to ensure fiscal and administrative responsibility in the operation of the WIC Program. The proposed regulatory changes lessen some requirements of the selection criteria.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These regulatory changes compare favorably with those of other states and will not place Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other State agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or information meetings be scheduled? Please provide the dates, times, and locations, if available.

No further public hearings or information meetings are scheduled.

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><i>Cristina S. Quinn</i> BY <u>DEPUTY ATTORNEY GENERAL</u> FEB 02 2000 DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>DEPARTMENT OF HEALTH</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>10-161</u></p> <p>DATE OF ADOPTION: _____</p> <p><i>Robert S. Zimmerman, Jr.</i> BY: <u>Robert S. Zimmerman, Jr.</u></p> <p>TITLE: <u>Secretary of Health</u></p>	<p>Copy below is hereby approved as to form and legality. Executive or independent Agencies</p> <p><i>Towanda G. Smith</i> BY _____</p> <p><u>1/13/00</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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DEPARTMENT OF HEALTH

PROPOSED RULEMAKING
Department of Health

28 Pa.Code Part I, Chapters 1101 -1113
Supplemental Nutrition Program for Women, Infants and Children (WIC Program)

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A. Introduction

The Department of Health (Department) proposes to amend 28 Pa. Code Chapters 1101 - 1113, as set forth in Annex A. Those regulations govern the authorization and management of stores participating in the WIC Program and the procedures for administrative appeals of WIC applicants and participants, and local agencies and stores.

B. Purpose of the Amendments

The majority of the proposed changes to the Department's regulations are necessitated by recent amendments to the Federal regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) found at 7 C.F.R. §246. The Federal amendments adopted on March 18, 1999, mandate uniform sanctions for the most serious violations of WIC Program regulations by grocery stores authorized to participate in the WIC Program. The purpose of these changes, as explained in the preamble to the Federal amendments, is to curb vendor related fraud and abuse in the WIC Program and to promote coordination between the WIC Program and the Food Stamp Program in the disqualification of stores which violate either WIC Program or Food Stamp Program rules. In accordance with the mandates of the United States Department of Agriculture, Food and Nutrition Services (USDA-FNS), which provides

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100% of the funds for the operation of the WIC Program in the Commonwealth, the Department must implement these mandatory changes no later than May 17, 2000.

The Department has engaged in a full and thorough review of the existing State regulations pursuant to the Governor's Executive Order 1996-1. The Department has held public meetings for the purpose of soliciting comments from those affected by the State regulations. Notices of these public meetings were published in the *Pennsylvania Bulletin* on September 4, 1999 and October 16, 1999, sent to approximately 1400 grocery stores in the Commonwealth and their trade associations, posted in WIC clinics and sent to other interested coalitions, such as the Pennsylvania Hunger Action Center. In addition to those changes required as a result of the Federal amendments, the Department has proposed revisions to the State regulations as a result of discussions held during those public meetings.

The State regulations are a part of the State Plan of Operations required to be submitted to the USDA-FNS pursuant to 7 C.F.R. §246.4 (relating to state plan). Therefore, in addition to the Commonwealth's statutory requirements for amending regulations, the Department must submit any changes to the State regulations to the USDA-FNS for approval

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following the Commonwealth's proposed rulemaking process and prior to submitting them in final form. 7 C.F.R. 246.4(c).

C. Summary of Amendments

§1101.2 Definitions

The Department proposes to include the definition of "premises" as that area within the building housing the store. The WIC Program has proposed to change the requirements for the location of the minimum inventory that a WIC authorized store must maintain. Previously, a vendor was required to have available on the sales floor at all times, the minimum inventory requirement of WIC allowable foods set forth in §1103.5 (relating to minimum inventory). The Department has proposed to change this requirement to permit the store to meet the requirement if the inventory is maintained on the premises, not just on the sales floor. Therefore, if a store does not have the minimum inventory available for sale to a WIC customer on the sales floor, but would easily be able to provide the allowable foods immediately from the stockroom on the premises, the minimum inventory requirements would be satisfied. The Department proposes to substitute the term "premises" for "sales floor" in certain regulations to ensure that the stock, although not on the sales floor, is immediately and readily accessible to the WIC participants to

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ensure accessibility to prescribed foods and prevent the loss of supplemental food benefits or inconvenience for the participant. The definition of "sales floor" remains in this section to define the areas that WIC Program officials will survey WIC allowable foods for staledating requirements. The reviews will encompass the sales floor and will exclude areas not accessible to the general public.

The Department proposes to redefine the term "store slot" so that a store slot is assigned based upon the density of participant population in a county and the actual number of participants in a county. This will make the definition consistent with the proposed change to §1103.3 (relating to the authorization of store slots) regarding the method of assigning the number of store slots to a particular area. The Department proposes to assign store slots based upon actual WIC participant density per county instead of expected participant population per trade area. The density of the participants per square mile will determine which tier the Department will use to allocate the number of store slots. The actual number of participants in the county will determine how many store slots will be assigned to the county based upon the criteria of the particular tier the participant population density falls under. The proposed change in this definition reflects the change in the method of assigning store slots.

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§1103.1. Certification and recertification reviews.

The Federal amendments require the Department to take into consideration the issue of “participant access” in making decisions relative to the authorization and participation of stores in the WIC Program. In current State regulations, the term “participant hardship” is used. To be consistent with terminology used in the Federal regulations governing the WIC Program, the Department proposes to change the term “participant hardship” in subsection (a) to “inadequate participant access.” This substitution is proposed throughout the remaining State regulations.

The Department proposes to clarify the store slot criterion employed in the certification and recertification review process by referencing, in subsection (b), §1103.4(a)(12) and (b). These provisions provide that, not only must a store slot be available in a particular trade area, there must be a sufficient number of WIC participants shopping in a one-mile radius to demonstrate a need to authorize the applying store within one mile of another WIC authorized store. The term “sufficient participant shopping” is defined in §1103.4(a)(13). This criterion ensures that there is an appropriate geographic distribution of stores throughout the trade area where there is a demonstrated need based upon participant shopping.

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Subsection(b)(6), as currently written, states that the purpose of the onsite review is to determine if the store meets all selection and limitation criteria in §1103.4(a) and (b).

The local agency conducts the review to determine if the store meets the selection criteria; the limitation criteria is only used when the Department must limit, based upon the regulations, the number of WIC authorized stores in a trade area. The Department proposes deleting language to make the provisions consistent with the actual procedure being used.

Subsection (c) pertains to the durations of a certification or recertification. The Department proposes to change the length of time for notification of the expiration of WIC certification from 15 days to 30 days for a store failing to apply for recertification. It also proposes to increase from 15 days to 30 days the advance notice required for termination of authorization for cause by either the Department or the store.

Subsection (g) pertains to the eligibility of a store that participates in the WIC Program if it has been denied certification or recertification. The Department proposes to add the word "effective" before the word "date" to clarify that the six-month period which a store denied certification or recertification must wait before being considered eligible to

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reapply for participation in the WIC Program runs from the date the denial decision becomes enforceable.

§1103.2. *Probationary certification.*

The citations in subsections (b)(1) and (2) are corrected to reflect the change in numbering due to proposed changes to the regulations affecting the citations of the provisions that are referenced.

§1103.3. *Authorization of store slots.*

The Department proposes to change the method for allocating store slots. Previously, the Department used a two tier method based upon expected WIC participant in a particular area. This method recognized a difference between Philadelphia and the rest of the Commonwealth due to population density of the area. Less stores were authorized in the Philadelphia area because of the density of the population and the proximity of the population to the stores. However, as a result of discussions during the public meetings and a thorough review by the Department of the allocation of store slots, the Department proposes to change the method for allocating store slots to a three-tier method, rather than a two-tier method, based upon the density of WIC participant population per county.

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This method recognizes the differences in rural and urban areas throughout the Commonwealth, not just Philadelphia, and would have the effect of more evenly distributing store slots allocations to areas which may need additional stores to participate. The density of the participants per square mile will determine which tier the Department will use to allocate the number of store slots. The actual number of participants in the county will determine how many store slots will be assigned to the county based upon the criteria of the particular tier the participant population density falls under.

In addition to a more even geographic distribution of stores, it is anticipated that an additional 200 stores may be authorized to participate in the WIC Program. The reallocation, however, will not cause the loss of authorization to a store currently authorized.

The Department proposes to reallocate store slots annually to take into consideration shift in WIC participation to ensure that an adequate number of stores are authorized in areas where they are needed.

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§1103.4. Selection and limitation criteria; authorization process.

The Department proposes to replace the term “sales floor” with “premises” in subsection (a)(5). As noted earlier, the Department proposes to change the requirements for the location of the minimum inventory that a WIC authorized store must maintain. Current regulations require a vendor to have available on the sales floor, at all times, the minimum inventory requirement of WIC allowable foods set forth in §1103.5 (relating to minimum inventory). The purpose of this was to ensure that the foods prescribed to a WIC participant were readily available for purchase on the sales floor. The Department established this requirement because of the concern that many participants would not ask if additional quantities of foods were available in the stock room if the foods were not available on the sales floor. As a result, the participants would not purchase the prescribed foods because they believed those foods were unavailable.

At public hearings, grocery store owners and managers disagreed. They noted that many times patrons do ask if foods are not available on the sales floor. The owners and managers felt that the requirement to have minimum inventory available at all times on the sales floor was not only burdensome, but impracticable, and that many times sufficient inventory is available in stockrooms to meet the needs of the participants.

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As a result of discussions with store owners, the Department proposes to change this criterion to permit the store to meet the requirement if the inventory is maintained on the premises, not just on the sales floor. Therefore, if a store does not have the minimum inventory available for sale to a WIC customer on the sales floor, but would easily be able to provide the allowable foods immediately from the stockroom on the premises, the minimum inventory requirements would be met.

In subsection (a)(6)(i)(F) the Department proposes to change the word “cans” to “containers” for the single strength juice requirement in Food Prescription One. This change would permit a participant to purchase single strength juice in a variety of 48 ounce containers.

In subsection (a)(6)(ii) the Department proposes to change the requirements of Food Prescription Two from 24 13-ounce cans of concentrated contract brand milk or soy based infant formula to 31 13-ounce cans of concentrated contract brand milk or soy based infant formula. The reason for this proposed change is that the most prescribed infant formula food package prescribed to WIC participants no longer contains 24 cans, but rather contains 31 cans of concentrated formula.

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The Department has proposed to add subsection (a)(13). The Department proposes to move the standard that a store shall not be located within one mile of another WIC authorized store within the trade area unless there is sufficient participant shopping from a limitation criteria set forth under subsection (b)(2), to a selection criteria. The reason for this move is that the criterion is used a method for selecting stores, rather than limiting stores. In addition, the Department has added language which sets forth three different tiers for determining what is “sufficient participant shopping” for the purpose of assigning store slots for which stores may be selected to fill.

§1103.5. Minimum inventory.

The Department proposes to substitute “premises” for “sales floor” in subsection (a) to accommodate the proposed change for the requisite location of minimum inventory requirements, as discussed earlier.

In subsection (b)(5)(i) the Department proposes to change the minimum inventory requirements of single strength juice from three varieties with a total of nine 46 ounce cans to three varieties with a total of nine 46 ounce containers. The change in the word

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“cans” to “containers” would allow the WIC participant to purchase juice in any 46 ounce form of container, and not restrict the purchase to only cans.

In subsection (b)(5)(ii) the Department proposes to change the word “concentrate” following the word “frozen” to reflect the appropriate terminology. In addition, the Department has added shelf stable concentrated juice as a choice for inventory requirements. This reflects the new available form of juice (shelf stable concentrate) which meets the nutritional requirements set forth in the Federal regulations governing the WIC Program.

§1103.6. *Waiting list.*

The Department proposes the addition of subsection (a)(4) to permit the Department to place a store on a waiting list, notwithstanding that a store slot is open, if there is not sufficient participant shopping within a one mile area to support an additional store. This facilitates an appropriate geographic distribution of stores. It also may work to the advantage of the store by not requiring that the store wait six months before it is eligible to reapply for authorization. It will allow the store to immediately be considered if there is an increase in participation to warrant authorization of an additional store or if a store

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slots becomes open due to other circumstances, such as a store closing or being disqualified from the program.

§1103.7. *Participant hardship.*

The Department proposes to change the title of this section from “Participant hardship” to “Inadequate participant access” to be consistent with the Federal regulatory language.

Throughout this section the term “participant hardship” has been changed to “inadequate participant access.”

The Department proposes to add subsection (b) to clarify that inadequate participant access may also be considered, in limited circumstances, when there is a change of ownership of a WIC authorized store.

The Department proposes to revise the inadequate participant access criteria in subsection (c) to correlate differences in urban versus rural population density. In densely populated areas there should be greater accessibility to stores. Therefore, the Department proposes that the more densely populated an area the less distance between stores needs to be

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shown to establish inadequate participant access when a core number of participants would need to travel that distance if a store is removed from the WIC Program. The Department proposes to switch paragraphs (3) and (4) so that the two paragraphs pertaining to travel distances for ten or more participants are numbered consecutively.

§1105.1. Training.

In subsection (b)(5) the Department proposes to change the citation mentioned in the paragraph from §1107.1 to 1107.1a(d)(16) to accommodate a proposed change in the location of the regulatory provision containing the relevant subject matter.

§1105.2. Overcharge recovery system.

In subsection (h) the Department proposes to change a citation mentioned in the paragraph to reflect a proposed change in the location of the regulatory provision containing the relevant subject matter.

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§1105.3 Terms and conditions of participation.

In subsection (a) the Department again proposes to change the citation used in the regulation.

In subsection (a)(4) the Department proposes the addition of the words “on the premises,” which correlates to the proposed change the Department has made elsewhere to allow a store to maintain minimum inventory on the premises instead of on the sales floor exclusively.

§1105.4 Change of ownership of a WIC authorized store.

In subsection (c) the Department proposes to change the term “participant hardship” to “inadequate participant access.”

§1105.6 Monitoring of WIC authorized stores.

In subsection (c)(1)(vi) the Department proposes to insert the words “imposition of” in front of the word “sanctions” to correct the title of section §1107.1. The change is necessitated as a result of the proposed changes set forth herein.

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Chapter 1107. Sanctions.

The majority of the proposed changes resulting from the mandatory Federal regulatory changes are set forth in §1107.1 (relating to imposition of sanctions), §1107.1a (relating to disqualifications), and §1107.2 (relating to civil money penalties). Because there were so many changes necessitated as a result of the Federal changes, the Department proposes to delete the prior text of §§1107.1 and 1107.2 completely. The proposed new text of these sections contain some of the material previously contained in the sections, as well as the changes proposed to meet the Federal regulatory requirements.

§1107.1. Sanctions.

The Department proposes to change the title of this section from “Sanctions” to “Imposition of sanctions”. This title would be more descriptive of the text contained in the section. The proposed text of this section would describe the circumstances under which the Department will impose different types of sanctions, and whether the Department will offer civil money penalties in lieu of disqualifications.

This section identifies when the Department will impose a sanction, and when a sanction is not appealable. The requirements in this section are consistent with Federal regulatory

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requirements in 7 C.F.R. §246.12(f)(2)(xviii). In particular, the Federal changes published on March 18, 1999, specifically make non-appealable both the Department's determination of inadequate participant access and the disqualification of a store from the WIC Program as a result of a disqualification of the store from the Food Stamp Program. Although §1113.1(relating to right to appeal) sets forth the types of decisions that are appealable, and the text of that section is consistent with the proposed text of this section, the language was included here to ensure clarity that some issues decisions are non-appealable.

The Federal regulatory changes in 7 C.F.R. §246.12(f)(2)(ix) and (k)(1)(ix) provide that the Department may impose a civil money penalty against a store disqualified from the Food Stamp Program in lieu of a WIC Program disqualification if it determines that inadequate participant access would result. The proposed text of subsection (b) explains this option.

The proposed text of subsection (c) would permit the Department to impose a civil money penalty in lieu of a Federally prescribed disqualification set forth in §1107.1a(b)-(d) (relating to disqualifications) if the Department determines that such disqualification

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would result in inadequate participant access. This is an option permitted under the 7 C.F.R. §246.12(f)(2)(xx). The Department has chosen to exercise this option to ensure that there is adequate access to supplemental foods for WIC participants.

This proposed text of subsection (d) provides notice to WIC authorized stores that disqualification from the WIC Program may result in disqualification from the Food Stamp Program and will not be subject to administrative or judicial review under the Food Stamp Program. The proposed text is identical to that contained in 7 C.F.R. §246.12(f)(2)(xxii).

The proposed text of subsections (e), (f) and (g) currently appear in §1107.1(b), (c) and (d), and is consistent with the requirements of 7 C.F.R. §246.12(k)(10). These subsection designations would change as part of the proposed revision and reorganization of this section.

§1107.1a. Disqualifications.

The Department proposes the addition of this new section to identify the Federally mandated disqualifications published in the *Federal Register* on March 18, 1999. Prior to

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these changes, the Federal regulations permitted the State agency operating the WIC Program to determine the type and level of sanction based upon the nature and severity of the program violation, provided that the disqualification did not exceed a period of three years. The Federal regulations now require not only specific sanctions for certain program violations, but also permanent disqualification of a store which is convicted in trafficking in food instruments (defined as WIC check under State regulations) or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments pursuant to 7 C.F.R. §246.12(f)(2)(xx). The proposed text of subsection (a) recognizes this requirement. The Department proposes to set forth the other Federally mandated sanctions in subsections (b)-(d)(1).

The new Federal regulatory requirements, however, permit the State agency to impose sanctions in addition to those Federally mandated. This requirement recognizes that State programs subject to the Federal regulations operate differently and provide the State agency the ability to require compliance with individual State program requirements. The Federal regulations do set limits on such disqualifications, however, in that any sanction not mandated by Federal regulation may not exceed one year in duration.

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The one-year disqualification proposed in subsection (d), for the conduct listed in subsection (d)(2)-(16) is based upon the Department's assessment of punitive measures it needs to impose to effectively operate the WIC Program. All of these disqualifications are currently set forth in State regulation. As a result of the changes to the Federal regulations, the disqualification period proposed for some of these violations would be significantly less than authorized in current regulation.

This proposed text of subsections (e), (f), (g), (h) and (i) is required pursuant to 7 C.F.R. §246.12(k)(1)(v), (vi), (xii), (vii) and (viii), respectively.

The text of subsection (j) is currently in §1107.1(i). The proposed language, which states that any disqualification imposed as a result of this subsection shall not exceed one year, recognizes the Federally mandated limits upon which a state may impose a sanction not specifically set forth in the Federal regulations. The proposed text would reference subsections different than those now referenced in §1107.1(i) to be consistent with the reorganization that is being proposed.

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The text of subsection (k) is currently contained in §1107.1(j). The Department proposes to change the time period for providing advance notice of disqualification from 15 days to 30 days.

The text of subsection (l) is currently in §1107.1(k).

§1107.2. *Civil money penalties.*

Prior to the changes in the Federal regulations published on March 18, 1999, there were no specific requirements relating to the imposition of civil money penalties in lieu of disqualification. The Department had chosen to use civil money penalties in lieu of disqualification of WIC authorized stores when such disqualification would result in participant hardship (what is now called inadequate participant access). The purpose of this was to further the purpose of the WIC Program in ensuring participant access to supplemental food benefits, while enabling the Department to impose some sanctions for an authorized store's failure to comply with WIC Program requirements.

Federal regulations now specifically set forth when civil money penalties may be used in lieu of disqualifications and the formula which must be used for calculating the civil

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money penalty. The Department proposes to replace the current text of this section with the proposed new provisions due to the magnitude of the proposed revisions. There proposed text does contain, however, some of the requirements previously set forth.

In subsection (a) the first sentence of the proposed text of this paragraph is identical to that contained under current subsection (a). The second sentence, noting that the Department will not offer a civil money penalty in lieu of Federally mandated disqualifications for third or subsequent violations, is required under 7 C.F.R. §246.12(k)(1)(vi).

The proposed text of subsection (b) (1) sets forth the formula for calculating civil money penalties for those Federally mandated disqualifications enumerated in proposed §1107.1a(b)-(d)(1) (relating to disqualifications). The formula for calculating civil money penalties for these disqualifications may be found in 7 C.F.R. §246.12(k)(1)(x).

In subsection (b)(2) the Department proposes to prescribe the formula for calculating civil money penalties for violations enumerated in proposed §1107.1a(d)(2)-(16). The Department is permitted, pursuant to 7 C.F.R. §246.12(k)(2), to impose civil money

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penalties in lieu of disqualifications which are not specifically set forth in the Federal regulations. The Department proposes to exercise this option in lieu of imposing the disqualifications pursuant to §1107.1a(d)(2)-(16), which are the disqualifications that are not Federally mandated. There is no formula mandated by the new Federal requirements for these type of disqualifications. The Department proposes to use the same formula it currently using for calculating civil money penalties. This formula is identical to that set forth in proposed §1107.2(b)(1) and 7 C.F.R. §246.12(k)(xx), with one exception. The Department proposes to use 5% of the average monthly sales, and not 10% of the average monthly sales, multiplied by the period of disqualification, to calculate the civil money penalty.

The proposed text of subsection (c) sets forth the limitations imposed pursuant to 7 C.F.R. §246.12(k)(1)(x) and (2)(i).

The proposed text of subsection (d) currently appears in subsection (c).

The proposed text of subsection (e) is required pursuant to 7 C.F.R. §246.12(k)(6).

The proposed text of subsections (b) and (g) currently appear in subsections (e) and (f).

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1113.1. Right to appeal.

The Department proposes to revise and reorganize this section into five subsections. The Department proposes to add the language “during the period of authorization” following the words “adverse action” in proposed subsection (a). This would clarify that the expiration of an authorization to participate in the WIC Program as a result of denial of a recertification application is not an adverse action which will be postponed until such time as an adjudication and order is issued by the hearing examiner.

The Department proposes to add subsection (b) to set forth specific actions which are not subject to appeal. In addition to the expiration of a WIC authorization, this paragraph recognizes the two additional actions not subject to appeal pursuant to the recent amendment of the Federal regulations.

§1113.2. Appeal procedures.

The Department proposes the addition of language to this section to clarify that only when an adverse action is appealable, will the Department provide notice to the store of its right to an administrative appeal.

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D. Fiscal Impact

The WIC Program is 100% Federally funded. No State dollars are involved in the operation of the WIC Program. The proposed regulatory changes to §1103.3 (relating to authorization of store slots) which would change the method of allocating store slots based upon WIC population density has the potential for increasing by approximately 200 the number of stores authorized to participate in the WIC Program. As a result, the Department anticipates an increase of approximately \$96,000 annually in store related monitoring costs.

E. Paperwork Requirements

The proposed amendments to the regulations will not increase paperwork for the Department, WIC Program participants or those grocery stores voluntarily participating in the WIC Program.

F. Effective Date/ Sunset Date

The effective date of the regulations shall be May 17, 2000. These regulations will be monitored continually and will be updated as required by changes in Federal statute or Federal regulations governing the WIC Program. Therefore, no sunset date has been set.

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G. Statutory Authority

The WIC Program was authorized through an amendment to the Child Nutrition Act of 1966 (42 U.S.C. §1786). Congress authorized the USDA-FNS to contract with and make funds available to States to administer the program. In Pennsylvania, the WIC Program receives 100% of its funding from the USDA-FNS.

There are no State statutes governing the operation or administration of the WIC Program. There is a State statute found at 62 P.S. §2951 which authorizes additional State funding for the expansion of the WIC Program. The Commonwealth, however, has not provided funding for the expansion of the program since State Fiscal Year 1996..

The existing State regulations were developed and published on July 24, 1999, following the decision of the Commonwealth Court decision in Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health, 713 A.2d 177(1998). The Court held that the Department was required to promulgate regulations governing the selection and management of grocery stores to participate in the WIC Program. The State regulations added a new part to Title 28, Part VIII, and chapters 1101-1113. The

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regulations also repealed 28 Pa. Code §§8.41 - 8.74, the Department's then existing regulations pertaining to the WIC Program's administrative appeals.

The proposed regulations contained herein are submitted under the Department's general power and duty to protect the health of the people of the Commonwealth (71 P.S. §532), and pursuant to the Giant decision.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act, 71 P.S. §745.1 et seq., the Department submitted a copy of the proposed regulations on February 9, 2000, to the Independent Regulatory Review Commission and to the Chairman of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the regulation, the Department has provided the Commission and the Committees with a copy of a Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." a copy of this material is available to the public upon request.

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If the Commission has any objections to any portion of the proposed regulations, it will notify the Department within 30 days of the close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly, and the Governor, of objections raised.

I. Contact Person

Interested persons are invited to submit all comments, suggestions or objection regarding the proposed amendments to Greg Landis, Chief, Grants and Retail Store Management Unit, WIC Program, Room 604, Health and Welfare Building, Harrisburg, Pennsylvania 17109, (717) 783-1289, within thirty days after publication of this notice in the *Pennsylvania Bulletin*. If you are a person with a disability, comments, suggestions or objections regarding the proposed regulations may also be submitted to Mr. Landis in alternative formats, such as by audio tape, braille, or by using TDD: (717) 783-6514. If you are a person with a disability and require an alternative format of this document (i.e. large print, audio tape, braille), please contact Mr. Landis so that he may make necessary arrangements.

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Annex A
TITLE 28: HEALTH AND SAFETY

* * *

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

CHAPTER 1101. GENERAL PROVISIONS

- §1101.1. Background and scope.
- §1101.2. Definitions.
- §1101.3. Administration.

CHAPTER 1103. AUTHORIZATION OF STORES

- §1103.1. Certification and recertification reviews.
- §1103.2. Probationary certification.
- §1103.3. Authorization of store slots.
- §1103.4. Selection and limitation criteria; authorization process.
- §1103.5. Minimum inventory.
- §1103.6. Waiting list.
- §1103.7. [Participant hardship] Inadequate participant access.

CHAPTER 1105. REQUIREMENTS OF WIC AUTHORIZED STORES

- §1105.1. Training.
- §1105.2. Overcharge recovery system.
- §1105.3. Terms and conditions of participation.
- §1105.4. Change of ownership of a WIC authorized store.
- §1105.5. Changes in availability or location of WIC authorized stores.
- §1105.6. Monitoring of WIC authorized stores.

CHAPTER 1107. SANCTIONS

- §1107.1. [Sanctions] Imposition of sanctions.
- §1107.1a. Disqualifications.
- §1107.2. Civil money penalties.

CHAPTER 1109. ADMINISTRATIVE APPEALS

- §1109.1. Applicability of general rules.
- §1109.2. Scope and purpose.
- §1109.3. Time limits for action.

CHAPTER 1111. APPLICANT AND PARTICIPANT APPEALS

- §1111.1. Applicant and participant appeal rights.
- §1111.2. Notification of appeal rights.
- §1111.3. Appeal of a local agency decision.
- §1111.4. Time for appeal of a local agency decision.
- §1111.5. Scheduling the hearing.
- §1111.6. Denial or dismissal of appeal.
- §1111.7. Continuation of benefits.
- §1111.8. Rights of the appellant.
- §1111.9. Hearing record.
- §1111.10. Hearing examiner decisions.
- §1111.11. Appeal to the Secretary.
- §1111.12. Adjudication and order procedures.
- §1111.13. Judicial review.

CHAPTER 1113. LOCAL AGENCY AND STORE APPEALS

- §1113.1. Right to appeal.
- §1113.2. Appeal procedures.
- §1113.3. Adjudication and order.
- §1113.4. Continuing responsibilities.
- §1113.5. Judicial review.

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

CHAPTER 1101. GENERAL PROVISIONS

§1101.1 Background and scope.

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

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

(2) In addition to providing supplemental foods, the WIC Program refers applicants and participants to health services and offers nutrition education so that the food will be properly used and will improve the dietary and health habits of the entire family. The Department uses a retail purchase system to provide the majority of food benefits to participants.

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

§1101.2. Definitions.

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

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

Applicant - An individual applying to become a participant.

Authorized representative - For an applicant or participant, an adult applicant or participant, a parent or guardian of an applicant or participant who is an infant or child or an individual designated by that person to represent the applicant or participant in administrative proceedings involving the WIC Program. For a local agency or store, an individual designated by the local agency or store to represent it in administrative proceedings involving the WIC Program.

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

Certification - For purposes of Chapters 1101-1109 and 1113, the term means the Department's acceptance of a store, not currently authorized to participate in the WIC Program, as a WIC authorized store. For purposes of Chapter 1111 (relating to applicant and participant appeals), the term means the Department's acceptance of an applicant to participate in the WIC Program as a participant.

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

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

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

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

Competent professional authority - An individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the Department will authorize to serve as a competent professional authority: physicians, nutritionists (Bachelor's or Master's Degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis on nutrition), dieticians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials. The term also applies to an individual who is not on staff at the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on staff of the local agency.

Department - The Department of Health of the Commonwealth.

Disqualification - For the purposes of Chapters 1101-1109 and 1113 of this part, the term means the action by the Department to end participation of a WIC authorized store in the WIC Program for reasons of fraud, abuse or other violations of this part governing the store's participation in the WIC Program. For purposes of Chapter 1111 (relating to applicant and participant appeals), the term means action by the Department or local agency to end participation of a participant who no longer meets the qualifications necessary to participate in the WIC Program or for reasons of fraud, abuse or violation of standards governing the participant's enrollment in the WIC Program.

Division of WIC - Division of WIC in the Department.

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

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

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

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

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

Infant - A person under 1 year of age.

Inventory audits - A comparison of a WIC authorized store's inventory levels and purchases of a particular WIC product over a specific period of time, to actual WIC purchases of the same product during the same period of time, to determine if the store had adequate product

quantities available to satisfy claims made for WIC reimbursement of the product during the same period of time.

Limitation criteria - Criteria in §1103.4(b) (relating to selection and limitation criteria; authorization process) which the Department has established to limit the number of WIC authorized stores in a particular area to assure that State and local officials can effectively manage, review and monitor WIC authorized stores.

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

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

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

Onsite review - An overt visit to a store by Federal, Department or local agency personnel to determine if the store meets the selection criteria necessary to be certified or recertified as a WIC authorized store, or a visit to a WIC authorized store after certification or recertification, to

determine whether the store is complying with this part governing the store's participation in the WIC Program.

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

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

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

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

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

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

Recertification - The Department's authorization of a WIC authorized store, following a review process, to continue as a WIC authorized store.

Redeem - A WIC authorized store submitting a WIC check to its bank for the purpose of securing a money payment for the amount appearing in the "Pay Exactly" box on the WIC check.

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

Sanction - A penalty imposed by the Department upon a WIC authorized store for violation of this part governing the store's participation in the WIC Program. The term does not include a decision to deny certification or recertification following a certification or recertification on-site review process.

Secretary - The Secretary of Health of the Commonwealth.

Selection criteria - Criteria in §1103.4(a) which the Department has established which a store seeking to be certified or recertified is required to satisfy.

Standard formula - Infant formula products that do the following:

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

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

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

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

Store slot - A slot established by the Department for a WIC authorized store in a particular geographic area. The number of store slots the Department authorizes for a geographic area assigned to a local agency is based on the [expected] density of participant population [of that area] in the county and the actual number of participants in the county.

Trade area - A designated geographic area within the geographical area assigned to a local agency, which is organized to serve the participant populations in that designated area through an assigned number of store slots.

Training buy - The presentation of a WIC check by a Federal, Department or local agency representative to purchase foods at a WIC authorized store, which does not result in the actual tender of the WIC check or the purchase of the foods, to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

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

WIC authorized store - A retail food store which is authorized through certification or recertification to provide allowable foods to participants by accepting WIC checks.

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

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

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

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

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

§1101.3. Administration.

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

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

CHAPTER 1103. AUTHORIZATION OF STORES

§1103.1. Certification and recertification reviews.

(a) *Qualifying for certification or recertification.* To be certified or recertified as a WIC authorized store, a store shall meet the selection criteria in §1103.4(a) (relating to selection and limitation criteria; authorization process) at the time of the onsite review. If the number of applicants satisfying the selection criteria exceeds the number of stores the Department permits to participate in the WIC Program in a trade area under the limitation criteria in §1103.4(b), the Department will determine which store to certify or recertify under the process in §1103.4(c). The Department will exempt a store from satisfying the selection and limitation criteria only if there is a finding of [participant hardship] inadequate participant access, as set forth in §1103.7 (relating to [participant hardship] inadequate participant access).

(b) *Certification or recertification review process.* The certification or recertification review process is as follows:

- (1) A person authorized on behalf of a store to make an application for certification or recertification shall contact the local agency responsible for the county in which the store is located to request an application.
- (2) The local agency shall determine if a store slot is available [in the trade area in which the store seeking certification or recertification is located] in

accordance with §1103.4(a)(13) and (b) (relating to selection and limitation criteria; authorization process).

- (3) If a store slot is available, the local agency shall send the WIC Program information and an application to the store.

- (4) A store that is not certified shall complete the application in accordance with the instructions therein and return it to the local agency. If the local agency is apprised by a certified store that it wants to be recertified, the local agency shall collect the application from the store at the time of the onsite review. The Department will not accept an application for certification or recertification from a store that has been provided notice of disqualification or is disqualified from the WIC Program. The WIC Program disqualification period shall be completed before an application will be accepted by the Department. The Department may deny an application for certification from a new owner of a recently purchased store if the Department determines that the purpose of the sale of the business was a sham transaction to avoid a WIC disqualification.

- (5) A person authorized on behalf of a chain of stores to make an application for certification or recertification shall complete a separate application for each store in the chain that seeks certification or recertification.
- (6) The local agency shall schedule an onsite review of the store for the purpose of determining if the store meets the selection [and limitation] criteria set forth in §1103.4(a) [and (b)]. The local agency will notify the store of the approximate date of the review.
- (7) The local agency shall conduct the onsite review and forward the results to the Department for a decision on the store's application for certification or recertification.
- (8) The Department will notify the store of its decision on the store's application for certification or recertification.

(c) *Duration of certification or recertification.* The certification or recertification of a store shall remain in effect until the store is disqualified, changes ownership, withdraws from the WIC Program, its application for recertification is denied or its certification expires if it fails to apply for recertification. The Department will provide [15] 30 days written notice to the store prior to expiration of WIC [authorization] certification for any store failing to apply for recertification. Either the Department or the WIC authorized store may terminate the [authorization] certification for cause after providing at least [15] 30 days advance written notice.

(d) *Periodic reviews.* At least once every 2 years, the Department will conduct contemporaneous certification and recertification reviews in a trade area for the purpose of filling store slots in that trade area with WIC authorized stores. Both stores that are certified, and stores that are not certified but want to become WIC authorized stores, shall make an application for certification or recertification. The Department will send a notification of the contemporaneous certification/recertification review process to each WIC authorized store and each store on the waiting list. The notice shall include information advising the store of the procedure for being reviewed for the purpose of receiving certification or recertification. The Department will notify a store which fails to seek recertification or is denied recertification under this subsection of the date the store's current certification expires. Expiration of the certification shall be no less than 30 days after the mailing date of the notice.

(e) *Moratorium on applications.* The Department will not accept applications, or schedule or conduct certification reviews in a trade area 90 days or less prior to the scheduled start date of the contemporaneous certification/recertification reviews in that trade area. The Department will grant an exception to this moratorium only if the Department finds that there would be [participant hardship] inadequate participant access, as set forth in §1103.7, if it does not consider the application. A store granted certification under this exception shall be exempt from the contemporaneous certification/recertification review if it has been certified for less than 60 days prior to the date the contemporaneous reviews begin in the trade area.

(f) *No opportunity to correct problems.* When the Department is making a decision on an application for certification or recertification, it will deny the application if the criteria for certification or recertification set forth in §1103.4(a) and (b) are not satisfied. The Department will make its decision on the application without providing a warning or an opportunity to correct problems identified during the certification or recertification review.

(g) *Eligibility for stores denied certification or recertification.* A store which has been denied certification or recertification shall wait 6 months from the effective date of the Department's decision to reapply, except a store denied certification or recertification under §1103.4(c)(2) will be placed on a waiting list and will be considered immediately for certification if a store slot becomes open.

§1103.2. Probationary certification.

(a) *Criteria for probationary certification.* If during the certification or recertification review, the store fails to meet one or more of the qualifications in §1103.4(a) and (b) (relating to selection and limitation criteria; authorization process), the Department may grant probationary certification to the store for a period not to exceed 6 months when either of the following applies:

- (1) [Participant hardship] Inadequate participant access would occur if the store is not certified or recertified.

(2) A store is reviewed prior to opening to the public and the store has not stocked its dairy section or its frozen juice section at the time of the review.

(b) *Probationary certification reviews.*

(1) If a store receives probationary certification, except in situations of [participant hardship] inadequate participant access identified in [§1103.7 (b)(8) (relating to participant hardship) § 1103.7(c)(8) (relating to inadequate participant access)], the Department will conduct an unannounced onsite review during the probationary certification period to determine if regular status should be granted to the store. The Department may rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(2) If a store receives probationary certification due to [participant hardship] inadequate participant access as identified in [§1103.7 (b)(8)] §1107.3(c)(8), the Department will conduct a certification review of the store and any other stores on the waiting list within the store's trade area. The Department may rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection or limitation criteria during this review.

(c) *Extension of probationary certification.* If the store fails the review conducted during the probationary certification period, and [participant hardship] inadequate participant access exists as determined by the Department, the Department may extend probationary certification for an additional 3 months during which time at least one representative of the store who is responsible for training store personnel on the WIC Program shall attend corrective training.

(d) *Extended probationary certification reviews.* The Department will conduct an unannounced onsite review during the extended probationary certification period after the store representative has attended corrective training, to determine if certification should be granted to the store. The Department will rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(e) *Rescission of probationary certification.* If the Department rescinds the probationary or extended probationary certification of a store, the store is not eligible to reapply for certification for 6 months from the date of the Department's rescission of such certification.

§1103.3. Authorization of store slots.

[The Department will assign one store slot for every 160 participants anticipated by the Department to participate in the WIC Program, except in Philadelphia, where the Department

will assign one store slot for every 260 participants anticipated by the Department to participate in the WIC Program.]

(a) Assignment of store slots. The Department will assign store slots based upon WIC participant density according to the following:

(1) In counties with WIC participant density greater than 100 participants per square mile, the Department will assign one store slot for every 175 WIC participants.

(2) In counties with WIC participant density of 25 to 100 participants per square mile, the Department will assign one store slot for every 150 WIC participants.

(3) In counties with WIC participant density less than 25 participants per square mile, the Department will assign one store slot for every 125 WIC participants.

(b) Yearly allocation of store slots. By October 1 of each year, the Department will evaluate WIC participant population to determine store slot allocations per county for each Federal Fiscal Year.

§1103.4. Selection and limitation criteria; authorization process.

(a) *Selection criteria.* The Department will use the following selection criteria to identify stores that meet the operational criteria to serve as a WIC authorized store:

- (1) The store shall be located within this Commonwealth.
- (2) A store shall serve or reasonably expect to serve at least 25 participants per month.
 - (i) The Department will provide a store seeking certification which has not been certified previously, an 8-month period to determine if the store is serving 25 participants. The Department may disqualify a store for a period of no less than 6 months in accordance with §1107.1(i) (relating to imposition of sanctions) if it is not serving 25 participants at the end of the 8-month period.
 - (ii) The Department may deny recertification if the store is not serving 25 participants per month in the most recent month for which the Department has participant data at the time the recertification review is conducted.
- (3) The store may have allowable foods properly stored and refrigerated.
- (4) The store shall not have stale-dated allowable foods on its sales floor.

- (5) The store shall have available on the [sales floor] premises at all times the minimum inventory requirements in §1103.5 (relating to minimum inventory) of allowable foods.
- (6) The store shall have shelf prices less than the maximum allowable cost established by the Department for Food Prescription One and Food Prescription Two. The highest price of each allowable food available at the store, regardless of brand, shall be recorded to determine if the store's prices are within the maximum allowable prices established by the Department. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the maximum allowable prices for Food Prescription One and Food Prescription Two. Revisions to the maximum allowable prices will be published in the same manner. Food Prescription One and Food Prescription Two are as follows:
- (i) Food Prescription One consists of the following:
- (A) Eighteen quarts or nine half gallons of milk.
 - (B) One pound of cheese.
 - (C) One dozen eggs.
 - (D) One 15 to 18 ounce container of peanut butter.
 - (E) One pound of dried beans or peas.
 - (F) Four 11.5 to 12 ounce containers of frozen concentrated juice or four 46 ounce [cans] containers of single strength juice.
 - (G) Thirty ounces of cereal.

(ii) Food Prescription Two consists of: [24] ~~Thirty-one~~ 13 ounce cans of concentrated contract brand milk or soy based infant formula.

- (7) The store shall be open for business at least 8 hours per day, 6 days per week.
- (8) The store shall be sanitary. There may not be evidence of unremoved rubbish, vermin, or general lack of cleanliness.
- (9) The store shall operate in a permanent fixed location where participants may purchase allowable foods with their WIC checks.
- (10) The store may not be currently disqualified from participation in the Food Stamp Program [or have had a sanction imposed by the USDA-FNS for Food Stamp Program violations within 2 years prior to the application to participate in the WIC Program].
- (11) The store may not be currently disqualified from the WIC Program or have been denied certification or recertification by the WIC Program within the past 6 months unless the conditions of §1103.6 (a) (2)(relating to waiting list) are met.

(12) The store shall have implemented all required corrective actions resulting from monitoring by the Department, including repayment of any overcharges to the WIC Program, and shall be in compliance with all applicable Federal and State regulations.

(13) The store shall not be located within one mile of another WIC authorized store within the same trade area unless the Department determines that there is sufficient WIC participant shopping within the one mile area to support an additional WIC authorized store or stores. For the purpose of this paragraph , in order to support the authorization of each additional WIC authorized store within the one mile radius, sufficient WIC participant shopping shall be determined by the following:

(i) For counties with WIC participant density greater than 100 participants per square mile, there shall be at least 175 WIC participants shopping within the one mile of the applying store for each store slot authorized.

(ii) For counties with WIC participant density of 25 to 100 participants per square mile, there shall be at least 150 WIC participants shopping within the one mile of the applying store for each store slot authorized.

(iii) For counties with WIC participant density less than 25 participants per square mile, there shall be at least 125 WIC participants shopping within the one mile of the applying store for each store slot authorized.

(b) *Limitation criteria.* [The Department will use the following criteria to limit the number of WIC authorized stores in a trade area:

(1)] A store slot shall be available in the trade area in which the store is located.

[(2) The store may not be located within 1 mile of another WIC authorized store unless the Department determines that there is sufficient WIC participant shopping within the 1 mile area to support an additional WIC authorized store. For the purpose of this section, in order to support the authorization of each additional WIC authorized store within the 1-mile radius, sufficient WIC participant shopping shall mean that the Department has documentation that at least 160 WIC participants per store slot authorized are currently making WIC purchases within the 1-mile radius, except in Philadelphia where sufficient WIC participant shopping shall mean that the Department has documentation that at least 260 participants per store slot authorized are currently making WIC purchases within the 1-mile radius.]

(c) *Authorization process.*

(1) If the total number of stores meeting all selection criteria are less than or equal to the total number of store slots assigned to the trade area, all stores meeting the selection criteria shall be authorized to participate in the WIC Program.

- (2) If the total number of stores meeting all selection criteria are greater than the total number of store slots assigned to the trade area, the Department will certify or recertify the stores having the lowest weighted prices for the two food prescriptions, until the store slots in the trade area have been filled. For determining the weighted food prices for the two food prescriptions, the Department will add 80% of the total of the store's highest price for Food Prescription One to 20% of the store's highest price for Food Prescription Two.
- (3) The criteria in paragraph (2) also apply when more than one store applies for certification or recertification within 1 mile and there is not a sufficient number of participants shopping in the area to support an additional WIC authorized store or stores.

§ 1103.5. Minimum inventory.

(a) A store shall have available on the [sales floor] premises at the time of the certification or recertification onsite review, and maintain at all times thereafter while participating as a WIC authorized store, minimum inventory requirements of allowable foods.

(b) Minimum inventory requirements of allowable foods are as follows:

(1) *Formula.*

(i) Contract milk-based formula with iron:

- (A) Sixty-two 13 ounce cans of liquid concentrate.
- (B) Twenty-five 32 ounce cans of ready-to-feed.

- (C) Six 14.1 ounce cans of powdered.
 - (ii) Contract soy-based formula:
 - (A) Thirty-one 13 ounce cans of liquid concentrate.
 - (B) Twenty-five 32 ounce cans of ready-to-feed.
 - (C) Six 14 ounce cans of powdered.
 - (iii) Other standard formulas specified on the WIC check are not minimum inventory requirements. The store shall be able to provide these within 72 hours after a participant makes a request for the formula.
- (2) *Milk.*
- (i) Fluid whole, vitamin D fortified, fourteen 1/2 gallons or quart equivalent.
 - (ii) Fluid skim or low fat, vitamin A and D fortified, four 1/2 gallons or quart equivalent.
 - (iii) Nonfat dry, 2 pounds, in 1 or 2 pound containers.
 - (iv) Evaporated, twelve 12 ounce cans.
- (3) *Natural domestic cheese.* One pound each of three varieties prepacked in 8 or 16 ounce packages.
- (4) *Grade "A" eggs.* Five, 1 dozen containers.
- (5) *Juices.*
- (i) [Canned, three] Three varieties with a total of nine 46 ounce [cans] containers.
 - (ii) Frozen [concentrate] concentrated or shelf stable concentrated. two varieties with a total of nine 11.5 to 12 ounce containers.
 - (iii) Infant, three varieties with a total of fifteen 4 ounce individual containers.
- (6) *Cereal.*
- (i) Adult, five varieties in 8 ounce or larger packages totaling at least 72 ounces.
 - (ii) Infant, two varieties, totaling at least 32 ounces.
- (7) *Peanut butter.* Five 15 to 18 ounce containers.
- (8) *Dried peas and beans.* Two varieties, 1 pound each.

- (9) *Tuna*. Four 6 to 6.5 ounce cans, chunk, light, packed in water.
- (10) *Carrots*. Two pounds of whole, unpeeled fresh carrots in 1 or 2 pound cello pack, or two cans of sliced carrots in 14 to 20 ounce cans.

(c) *Annual publication of WIC food list*. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the name of the contract brand of formula and, if applicable, the names of allowable brands of foods, and the maximum price permitted for those allowable foods for which the Department establishes a maximum price.

(d) *Waivers*. The Department may grant minimum inventory waivers for allowable foods listed in subsection (e) under the following circumstances:

- (1) For a WIC authorized store, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the store.
- (2) For a store seeking certification, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the WIC authorized store closest to the store applying for certification.
- (3) The store occupies the same physical location as a prior WIC authorized store, the waiver was granted to the prior WIC authorized store, and the application for certification from the new owner is received by the

Department within 3 months after the date the prior WIC authorized store's certification to participate in the WIC Program terminated.

(e) *Waiverable allowable foods.* These foods are:

- (1) Contract milk based with iron ready-to-feed infant formula.
- (2) Contract milk based with iron powdered infant formula.
- (3) Contract soy based ready-to-feed infant formula.
- (4) Contract soy based powdered infant formula.
- (5) Nonfat dry milk.
- (6) Evaporated milk.
- (7) Carrots.
- (8) Tuna.

(f) *Expiration of waivers.* A minimum inventory waiver of an allowable food granted by the Department shall expire upon the presentation to the store, on behalf of a participant, of a WIC check for the purchase of that allowable food. The WIC authorized store shall provide the food item within 72 hours after presentation of the WIC check.

§1103.6. Waiting list.

(a) *Placement of stores on the waiting list.* The Department will place on a waiting list eligible stores as follows:

- (1) A store that seeks to become a WIC authorized store if no store slots are open in the trade area where the store is located .
- (2) When the total number of stores seeking certification or recertification is greater than the total number of store slots available for the trade area, and the store meets all selection criteria and has prices within the maximum allowable costs of Food Prescription One and Food Prescription Two, but is denied authorization because its weighted price is higher than other stores meeting all selection and limitation criteria.
- (3) A store that seeks to apply during a moratorium as set forth in §1103.1(c)(relating to certification and recertification reviews).
- (4) When a store slot is open and the store seeking certification is located within one mile of a WIC authorized store, if the Department determines that there is not sufficient WIC participant shopping within the one mile area to support an additional WIC authorized store.

(b) *Certification review of stores on waiting list.* The Department will ensure that all stores on the waiting list in a trade area will be reviewed when a store slot becomes available in the trade area, or when stores in the trade area are reviewed during the next contemporaneous certification/recertification review process. The only exception to reviewing all stores on the waiting list is when a store slot opens as a result of a change of ownership of a store and the

store, under new ownership, applies for certification under section §1105.4(c)(relating to change of ownership of a WIC authorized store). The Department will review the store under its new ownership to determine if the store should receive certification.

§ 1103.7. [Participant hardship] Inadequate participant access.

(a) The Department will consider whether there is [participant hardship] inadequate participant access when considering whether to place a store on probation, rather than deny [certification or] recertification, for failure to meet selection and limitation criteria in §1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) during [certification and] recertification reviews [or change of ownership reviews].

(b) The Department may also consider whether there is inadequate participant access when deciding whether to place on probation a store undergoing a change of ownership pursuant to §1105.4(b) and (c) (relating to change of ownership of a WIC authorized store).

[b](c) **[Participant hardship] Inadequate participant access** is any of the following:

- (1) Ten or more participants whose specific nationality, ethnicity or religious dietary needs can not be served properly by another WIC authorized store located [within three miles of the store, except in Philadelphia, where the distance of one mile to the next closest WIC authorized store will be used for the determination.] in accordance with one of the following:

- (i) Less than 3 miles of the store for counties with WIC participant density less than 25 participants per square mile.
 - (ii) Less than 2 miles of the store for counties with WIC participant density of 25 to 100 participants per square mile.
 - (iii) Less than 1 mile of the store for counties with WIC participant density greater than 100 participants per square mile.
- (2) Ten or more participants will be required to travel [three or more miles to the next closest WIC authorized store, except in Philadelphia, where the distance of one mile to the next closest WIC authorized store will be used for the determination.] according to the following:
- (i) Three or more miles to the next closest WIC authorized store for counties with WIC participant density less than 25 participants per square mile.
 - (ii) Two or more miles to the next closest WIC authorized store for counties with WIC participant density of 25 to 100 participants per square mile; or
 - (iii) One or more miles to the next closest WIC authorized store for counties with WIC participant density greater than 100 participants per square mile.
- (3) [Ten or more people are affected by physical barriers or conditions which make normal travel to another WIC authorized store impractical.

(4)] A participant has a physical disability that cannot be accommodated by another WIC authorized store [within 3 miles, except in Philadelphia, where the distance of one mile to the next closest WIC authorized store will be used for the determination.] in accordance with one of the following:

(i) Within 3 miles of the store for counties with WIC participant density less than 25 participants per square mile.

(ii) Within 2 miles of the store for counties with WIC participant density of 25 to 100 participants per square mile.

(iii) Within 1 mile of the store for counties with WIC participant density greater than 100 participants per square mile.

(4) Ten or more participants are affected by physical barriers or conditions which make normal travel to another WIC authorized store impractical.

(5) One hundred or more participants but less than 200 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 2 miles.

(6) Two hundred or more participants but less than 300 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 1 mile.

- (7) Three hundred or more participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 3/10 of a mile.

- (8) A WIC authorized store changes ownership without the Department receiving prior notice sufficient to arrange other accommodations for participants.

CHAPTER 1105. REQUIREMENTS OF WIC AUTHORIZED STORES

§ 1105.1. Training.

(a) *Initial training.* Following certification, the local agency shall provide initial training for the personnel a certified store designates. The training shall be mandatory and shall occur within 30 days after the date of certification. A store receiving certification may not accept WIC checks prior to having its designated personnel attend the initial mandatory training.

(b) *Annual training.* The Department will provide for WIC authorized stores annual training which is designed to prevent WIC Program errors and abuses and to improve WIC Program services. The following apply to annual training:

- (1) A WIC authorized store shall ensure that at least one representative from the store who is responsible for training store personnel on the WIC Program shall attend.
- (2) Attendance is mandatory.
- (3) The Department will offer each WIC authorized store two opportunities to attend.
- (4) The Department will ensure that annual training is offered to a WIC authorized store either within the county in which it is located or in an adjoining county within the appropriate local agency's jurisdiction.
- (5) Failure to have at least one representative attend training shall result in the Department imposing sanctions against the WIC authorized store as in [§1107.1 (relating to sanctions)] §1107.1a(d)(16) (relating to disqualifications).

(c) *Corrective training.* The Department will provide corrective training as set forth in §§1103.2 and 1105.6 (relating to probationary certification; and monitoring of WIC authorized stores). Attendance is mandatory.

§1105.2. Overcharge recovery system.

(a) *Quarterly price reports.* A WIC authorized store shall provide to the Department, in a format prescribed by the Department, the highest prices the store charged for allowable foods during the previous quarter for which the Department collects prices. The report shall be known as the Quarterly Price Report. A store may submit its Quarterly Price Report by mail or fax. If submitted by mail, the Quarterly Price Report shall be postmarked no later than the 15th of the month following the end of the calendar quarter. If submitted by fax, the Quarterly Price Report must be received by the Department by the 15th of the month following the end of the calendar quarter.

(b) *Department review.* The Department will review WIC check amounts redeemed by a WIC authorized store against the prices reported on the store's Quarterly Price Report to determine and collect overcharges owed to the Department.

(c) *Determination of maximum redemption amount of each WIC check.* For each WIC check redeemed for which the store was reimbursed for the sale of foods for which the Department collects prices, the Department will determine the maximum amount for which the WIC authorized store could have redeemed the check based upon prices provided in the Quarterly Price Reports supplied by the store.

(d) *Determination of overcharges.* The Department will compare the maximum amount for which a WIC authorized store could have redeemed a WIC check based upon the prices in the store's Quarterly Price Report, against the actual amount for which each WIC check

accepted by the store during a reporting quarter was redeemed, to determine any overcharge owed to the Department.

(e) *Pursuit of reimbursement.* The Department will seek reimbursements from a WIC authorized store for the store's overcharges totaling \$10 or more for a calendar quarter.

(f) *Reimbursement of overcharges.* A WIC authorized store shall submit reimbursement of overcharges to the Department within 20-calendar days of the date on the Department's billing notice for the overcharge, unless the WIC authorized store disputes the overcharge determination.

(g) *Overcharge disputes.* A WIC authorized store that disputes an overcharge billing shall submit the basis for its dispute in writing to the Department, postmarked within 15-calendar days of the date on the Department's billing notice. Upon resolution of an overcharge dispute, any overcharge the Department determines to be owing shall be due within 15-calendar days of the mailing date on the Department's notification of its resolution of the dispute.

(h) *Sanctions.* The Department will impose a sanction against a WIC authorized store under [§1107.1 (relating to sanctions)] §1107.1a(d)(14) (relating to disqualifications) if the store fails to pay overcharges due within the time required under subsections (f) and (g).

(i) *Disqualification.* The Department may disqualify a WIC authorized store if the store's reported prices on the Quarterly Price Report exceed the current maximum allowable cost as published by the Department for Food Prescription One or Food Prescription Two, set forth in §1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

§1105.3. Terms and conditions of participation.

(a) *General terms and conditions.* A WIC authorized store shall adhere to this subsection. Failure to do so shall result in the imposition of sanctions as set forth in [§1107.1 (relating to sanctions)] §1107.1a (relating to disqualifications). A WIC authorized store shall:

- (1) Adhere to all applicable statutes and State and Federal regulations regulating the WIC Program, including the non-discrimination provisions of 7 CFR Parts 15, 15a, 15b and 246 , and this part.
- (2) Inform the public of its participation in the WIC Program by displaying at least one WIC decal supplied by the Department in a place conspicuously visible to the general public.
- (3) Monitor, supervise and be accountable for the actions of employees in the handling of WIC checks, the selling of allowable foods, and the performance of other conduct related to the WIC Program.
- (4) Maintain the minimum inventory of allowable foods on the premises.

- (5) Ensure that allowable foods are properly stored and refrigerated.
- (6) Ensure that there are no stale dated allowable foods on the sales floor.
- (7) Provide the Department, on the Quarterly Price Report form provided by the Department, the highest prices of allowable foods specified on the report form.
- (8) Maintain a clean and sanitary store.
- (9) Provide orientation and training to employees regarding applicable regulations governing the WIC Program.
- (10) Maintain a copy of the current WIC food list at each check-out aisle.
- (11) Send at least one representative who is responsible for training store personnel on the WIC Program to WIC Program training annually, or more often if required by the Department under § 1105.1(c) (relating to training).
- (12) Immediately notify the Department when store ownership changes, when store operations cease on a permanent or temporary basis, or when any other circumstance impacting service to participants occurs.

- (13) Allow Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, to visit the store to observe its procedures for accepting and handling WIC checks and to conduct announced or unannounced onsite reviews to determine compliance with applicable Federal and State regulations.
- (14) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to [a] all WIC checks accepted by the store and on its premises at the time of an onsite review.
- (15) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to price and inventory records during an onsite review.
- (16) Agree that neither the Department nor the WIC authorized store has an obligation to renew the store's authorization to participate in the WIC Program.

- (17) Agree that the store's authorization to participate in the WIC Program shall become null and void when ownership of the store changes.
- (18) Display the current shelf price of each allowable food either on the allowable food, on the shelf immediately above or below the allowable food, or prominently on an allowable food price list easily located by participants and clearly visible to them.
- (19) Not transfer or assign its WIC certification or recertification to another person or entity.
- (20) Reimburse the Department for funds received through transactions involving WIC checks which were not conducted in accordance with this part.
- (21) Maintain price and inventory records for allowable foods for a minimum period of six months from the date of receipt of the inventory.

(b) *Terms and conditions of participation with regard to participants.* A WIC authorized store shall serve participants as set forth in this subsection. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in §1107.1. A WIC authorized store shall:

- (1) Provide allowable foods to participants only as authorized on the WIC food list and as specified on the WIC check.
- (2) Not encourage or discourage a participant from purchasing allowable food specified on the WIC check.
- (3) Provide allowable foods to participants at or below the current price the store charges other customers.
- (4) Not seek restitution or payment from participants for WIC checks not reimbursed by the Department, or contact participants concerning WIC transactions that occur in the store.
- (5) Not seek restitution or payment from participants for allowable foods when the price the store charges for the allowable foods exceeds the "Not to Exceed" amount on the WIC check.
- (6) Not request personal addresses, telephone numbers or other personal identification of participants.
- (7) Offer participants the same courtesies offered other customers, and not distinguish or identify participants from other customers.

- (8) Provide services to participants without regard to race, color, age, sex, religion, national origin or disability.
- (9) Give trading stamps to participants for purchases made with WIC checks if trading stamps are given for cash purchases.
- (10) Accept cents-off coupons, a store discount card or other discounts from participants for allowable foods, and deduct the savings in calculating the total purchase price entered into the "Pay Exactly" amount on WIC checks.
- (11) Accept "buy one get one free" coupons and manufacturers' promotional free product offers from participants.

(c) *Terms and conditions of participation with regard to WIC check processing and redemption.* A WIC authorized store shall adhere to the requirements of this subsection with regard to WIC check processing and redemption. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in §1107.1. A WIC authorized store shall:

- (1) Treat the acceptance of a WIC check as a financial transaction between only the Department and the WIC authorized store, not the participant.

- (2) Accept a WIC check only if the WIC check is made payable to that specific WIC authorized store, unless the Department has provided written authorization otherwise to the store.
- (3) Accept a WIC check only if the participant, endorser or proxy presents the WIC check on or between the "First Day to Use" and the "Last Day to Use" designations on the WIC check.
- (4) Accept a WIC check only if a valid WIC identification card is presented at the time of redemption.
- (5) Accept a WIC check only if the signature of the participant, endorser or proxy is obtained, at the time of purchase, on the WIC check, and the signature on the WIC check matches the signature on the WIC identification card.
- (6) Accept a WIC check only if there is no visible alteration on the WIC check.
- (7) Charge the WIC Program only for the types and quantities of allowable foods specified on the WIC check and selected for purchase by the participant, endorser or the participant's proxy.

- (8) Record in ink, on each WIC check immediately after completion of the WIC transaction and prior to the participant, endorser or proxy signing the WIC check, the actual purchase amount of the transaction net of any cents-off coupons or other discounts.
- (9) Properly correct an error made in recording the "Pay Exactly" amount of a WIC check by drawing a single line through the incorrect amount and writing the correct amount above or below the error and having the participant, endorser or proxy initial next to the corrected amount. No other corrections are permissible.
- (10) Not alter any information on the WIC check as presented by the participant, endorser or proxy.
- (11) Not provide substitute items, rainchecks, or cash reimbursement for allowable foods that are unavailable.
- (12) Not provide cash or credit for a WIC check.
- (13) Not provide change for the difference between the "Not to Exceed" and the "Pay Exactly" amounts on the WIC check nor for any coupons tendered during the WIC transaction.

- (14) Not refund money or provide exchanges to replace allowable foods returned by participants, endorsers or proxies.
- (15) Not accept a WIC check as payment for items other than allowable foods specified on the WIC check.
- (16) Not charge the WIC Program for allowable foods not received by the WIC participant or for allowable foods provided in excess of those listed on the WIC check.
- (17) Not charge the WIC Program for the sale of an amount of an allowable food which exceeds the store's documented inventory of that food item covering the period of time under review and in which the sale was made.
- (18) Deposit WIC checks accepted by it directly to its bank account no later than 45 days after the "First Day to Use" date on the WIC check.
- (19) Not receive, transact, redeem or otherwise dispose of a WIC check outside of check redemption procedures set forth in this section.
- (20) Not use a WIC check for the purchase of any commodity or the payment of any debt.

(21) Not collect sales tax on allowable food purchases.

(22) Reimburse the Department for payments the store has received for improperly executed WIC checks.

(d) The Department will deny payment to a WIC authorized store for WIC checks which the store did not process under subsection (c).

§1105.4. Change of ownership of a WIC authorized store.

(a) A certification or recertification is null and void when a change of ownership of a WIC authorized store occurs.

(b) To allow uninterrupted service to participants subsequent to a change of ownership, the Department may accept an application for certification from the prospective new owner of a WIC authorized store prior to a change of ownership.

(c) When a change of ownership occurs and [participant hardship] inadequate participant access as defined in [§1103.7 (relating to participant hardship)] §1103.7(c)(8) (relating to inadequate participant access) would result, the store under the new ownership may receive probationary certification for a period not to exceed 6 months if the State conducts an immediate onsite visit followed by a complete certification visit at the store. Until the immediate

onsite visit is conducted, the new owner may not accept WIC checks. As soon as possible within the 6 month probationary period or during the next recertification process, whichever occurs first, the store under the new ownership shall compete with stores on the waiting list in the trade area for the store slot.

(d) The Department will not accept an application for certification from a store that has been provided notice of disqualification or is serving a disqualification if an individual who had at least a 10% ownership interest in the store has at least a 10% ownership interest in the applicant or such ownership interest has been transferred or sold to immediate family members of the individual.

§ 1105.5. Changes in availability or location of WIC authorized stores.

(a) *Notification of store closing.* A WIC authorized store shall notify the Department at least 15 days prior to a temporary or permanent closing of the store, and of the reason for closing and the expected duration of a temporary closing, if it has at least 15 days prior knowledge. Otherwise, it shall provide this information to the Department immediately after it acquires the information.

(b) *Temporary store closing.* The Department may permit a WIC authorized store to temporarily close for reasons such as a natural disaster, death in immediate family or personal illness, without imposing a sanction against the store. In making a determination to permit a temporary closure, as well as the length of time of the closure, the Department will consider

circumstances such as the nature of the disaster, number of WIC authorized stores affected by the disaster, nature and expected duration of illness, length of closing anticipated by the WIC authorized store, number of and distance to other WIC authorized stores, number of participants served by the store, number of stores on the waiting list or any other information that the Department may determine to be relevant.

(c) *Store closing for remodeling.*

- (1) A WIC authorized store that closes for more than 24 hours but less than 3 days for remodeling shall not lose its certification, provided it notifies the Department at least 15-calendar days prior to the day the store closes for remodeling.
- (2) A WIC authorized store that closes in excess of 3 store operation days for remodeling, shall lose its WIC authorization and shall reapply for and secure certification before it may again serve as a WIC authorized store.

(d) *Store relocations.*

- (1) A WIC authorized store that relocates 1 mile or less from its current location, and reopens within 3-calendar days at its new location, shall provide the Department with written notification of its new address. The store will not lose its certification, provided it notifies the Department at least 15-calendar days prior to the day the store closes for relocating.

- (2) A WIC authorized store relocating in excess of 1 mile of its current location shall lose its WIC authorization and shall reapply for certification at its new location.
- (3) A WIC authorized store that closes in excess of 3 store operation days for relocating, without applying for and securing permission from the Department to do so, shall lose its WIC authorization and shall reapply for certification.

(e) *Temporary authorization to accept WIC checks redeemable at other stores.* The Department will temporarily authorize alternate WIC authorized stores to accept WIC checks designated on the face of the check to be used at another WIC authorized store, to provide participants with access to allowable foods when a WIC authorized store has permanently or temporarily closed, the store's authorization has been terminated, or the store has been disqualified as a WIC authorized store.

§ 1105.6. Monitoring of WIC authorized stores.

(a) *Purpose and types of monitoring of WIC authorized stores.* Federal, State or local representatives will conduct announced and unannounced onsite reviews of WIC authorized stores to determine compliance with applicable Federal and State regulations, and to investigate complaints regarding a store. The types of onsite reviews that may be conducted for monitoring purposes are high risk reviews, routine reviews and training buys.

(b) *High risk reviews.* The Department will monitor all high risk stores. The Department will use either compliance investigations or inventory audits as methods to monitor high risk stores. The Department also may conduct compliance buys and inventory audits on stores that have not been identified as high risk stores.

(1) *Compliance investigations.* The following standards shall apply:

- (i) The Department will conduct at least two compliance buys during a compliance investigation.
- (ii) The Department will not notify the WIC authorized store that a compliance buy is scheduled.
- (iii) The Department will provide written notification to the WIC authorized store of the results of each compliance buy, including the store's violation of a statute or regulation governing its participation in the WIC Program, unless subparagraph (viii) applies.
- (iv) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program.

- (v) The Department will conduct a third compliance buy at the WIC authorized store after store personnel have attended mandatory corrective training.

- (vi) The Department will disqualify the store if three compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the compliance investigation, in accordance with §1107.1 (relating to imposition of sanctions). If multiple violations are found during the compliance investigation, the Department will disqualify the store for the term corresponding to the most serious violation.

- (vii) The Department will close the compliance investigation on a WIC authorized store if no violations of a statute or regulation governing the store's participation in the WIC Program are discovered after two consecutive compliance buys.

- (viii) The Department may withhold notification of compliance buy results, and may withhold providing training or conducting further compliance investigations, when fraudulent activities by the WIC authorized store are indicated during a compliance investigation or by local agency or participant complaint.

(2) *Inventory audits.* The Department will disqualify the WIC authorized store when an inventory audit establishes the claim of reimbursement for authorized food in excess of documented inventory. No warning letters will be issued.

(c) *Routine reviews.* The Department will use reviews as follows to determine whether a WIC authorized store is in compliance with the selection and limitation criteria in §1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) and terms and conditions of participation in §1105.3 (relating to terms and conditions of participation):

- (1) The Department will not notify the WIC authorized store that a routine review is scheduled.
- (2) The Department will provide written notification to the WIC authorized store of the results of each routine review, including violation of a statute or regulation governing the store's participation in the WIC Program.
- (3) The Department will conduct a second routine review of the WIC authorized store if the first routine review detects violations of a statute or regulation governing the store's participation in the WIC Program.

- (4) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two routine reviews detect violations of a statute or regulation governing the store's participation in the WIC Program.
- (5) The Department will conduct a third routine review of a WIC authorized store after store personnel have attended mandatory corrective training.
- (6) The Department may disqualify a store if a third routine review detects violations of a statute or regulation governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the routine reviews, in accordance with §1107.1. If multiple violations are found during the routine reviews, the Department will disqualify the store for the term corresponding to the most serious violation.

(d) *Training buys.* The Department will use training buys to monitor WIC check transaction procedures and compliance with statutes and regulations governing the store's participation in the WIC Program. The following standards shall apply:

- (1) The Department will not notify the WIC authorized store that a training buy is scheduled.

- (2) The Department will provide written notification to the WIC authorized store of the results of each training buy, including violations of a statute or regulation governing the store's participation in the WIC Program.
- (3) The Department will conduct a second training buy at the WIC authorized store if the first training buy detects violations of a statute or regulation governing the store's participation in the WIC Program.
- (4) The Department will provide the personnel of the WIC authorized store mandatory corrective training after two training buys detect violations of a statute or regulation governing the store's participation in the WIC Program.
- (5) The Department will conduct a third training buy at the WIC authorized store after store personnel have attended the mandatory corrective training.
- (6) The Department may disqualify a store if a third training buy detects violations of a statute or regulation governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the training buys, in accordance with §1107.1. If multiple violations are found during the training buys, the Department will disqualify the store for the terms corresponding with the most serious violation.

(e) *Use of law enforcement agency.* The Department may utilize a law enforcement agency in the investigation of a WIC authorized store or other store suspected of trafficking WIC checks or other fraud or abuse of the WIC Program.

(f) *Reimbursement.* The Department will seek reimbursement from a WIC authorized store that received funds improperly due to a violation of regulations governing the store's participation in the WIC Program discovered during monitoring reviews. The Department will send notice to the store of the amount of money to be reimbursed to the WIC Program. The store shall make payment within 20 days from the date of the notice.

CHAPTER 1107. SANCTIONS

§1107.1. [Sanctions] Imposition of sanctions.

(a) The Department will impose a sanction against a store based upon the severity and nature of the violation of the statute or regulation governing the store's participation in the WIC Program.

(b) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral for prosecution of the WIC authorized store to a criminal prosecution agency for prosecution under applicable Federal, State, or local laws.

(c) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for items other than those specified on the WIC check shall also reimburse the Department for moneys received for the purchase of such items with the WIC check.

(d) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame set forth in §1105.2(f) and (g) (relating to overcharge recovery system) or the notice given by the Department under §1105.6(f) (relating to monitoring of WIC authorized stores).

(e) Upon receiving notification that a WIC authorized store has been disqualified from another USDA-FNS program, such as the USDA Food Stamp Program, the Department will disqualify the WIC authorized store for an equivalent period of up to 3 years.

(f) The Department may disqualify from participation in the WIC Program a WIC authorized store if the store incurs a civil money penalty in lieu of disqualification from another USDA-FNS program, such as the USDA Food Stamp Program. If the Department finds that participant hardship would result from the disqualification of the store from the WIC Program, the Department may, at its option, offer the store the option of paying a civil money penalty in lieu of disqualification.

(g) The Department will notify the USDA-FNS of a store's disqualification from the WIC Program. Disqualification from the WIC Program may result in the store's disqualification from the USDA Food Stamp Program.

(h) *Specific sanctions.* The Department will determine the type and level of sanction to be imposed against a WIC authorized store for a violation of a statute or regulation governing the store's participation in the WIC Program.

(1) *Class A abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for a period of 1 year for the following violations:

- (i) Redeeming a WIC check for an item that is in a food category authorized by the WIC Program but is not an allowable food or is not specified on the WIC check.
- (ii) Having stale-dated allowable food on the sales floor.
- (iii) Failing to maintain minimum inventory requirements of an allowable food.
- (iv) Failing to request the participant's WIC identification card prior to accepting a WIC check.
- (v) Accepting a WIC check made payable to another store without prior written approval from the Department.
- (vi) Failing to maintain a clean and sanitary store.
- (vii) Failing to properly store and refrigerate allowable foods.
- (viii) Closure of the store by a city, local or county health department.

- (ix) Charging or demanding that a participant pay for an allowable food with the participant's own money or with another WIC check for purchases made with a WIC check.
 - (x) Securing the signature of the participant, endorser or proxy prior to completing the "Pay Exactly" box on the WIC check.
 - (xi) Overcharging the WIC Program by charging sales tax or allowing the purchase with a WIC check of more of an allowable food than authorized on the WIC check.
 - (xii) Having or charging prices which exceed the current maximum allowable costs established by the Department and published in the *Pennsylvania Bulletin* for either Food Prescription One or Food Prescription Two set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).
- (2) *Class B abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for a period of 2 years for the following violations:
- (i) Redeeming a WIC check for food that is not in a food category authorized to be purchased with a WIC check.

- (ii) Charging the WIC Program more for an allowable food than a customer who is not a participant is charged for the same item.
 - (iii) Charging the WIC Program more than the current price for an allowable food.
 - (iv) Giving monetary change to an authorized individual who tenders a WIC check.
 - (v) Failing to remit payment for an overcharge within the specified time frame.
 - (vi) Charging the WIC Program for an allowable food which was not purchased with a WIC check.
 - (vii) A repeated Class A violation.
- (3) *Class C abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for a period of 3 years for the following violations:
- (i) Accepting a WIC check for cash, credit or a nonfood item.

- (ii) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date or printed dollar amount.
- (iii) Redeeming WIC checks for the sale of an amount of an allowable food over a period of time which exceeds the WIC authorized store's documented inventory for the same allowable food for the same period of time.
- (iv) A repeated Class B violation.

(i) For any violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified as a Class A, Class B or Class C sanction as provided for in subsection (h), the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation.

(j) The Department will provide a WIC authorized store at least a 15 day advance notice of the effective date of any disqualifications and an opportunity to appeal the disqualification in accordance with §1113.1 (relating to right to appeal).

(k) A store which has been disqualified from the WIC Program may apply for certification following expiration of the disqualification period. If the store chooses to apply for certification after expiration of the disqualification, the Department will not consider the prior

disqualification from the WIC Program when determining eligibility, and the store will be considered in accordance with §1103.4 if a store slot is available, or placed on a waiting list in accordance with §1103.6 (relating to waiting list) if no store slot is available.]

(a) The Department may disqualify a store or impose a civil money penalty in lieu of disqualification for reasons of program abuse. The Department will not provide the store with prior warning that violations were occurring before imposing such sanctions. The store may appeal a Department decision pertaining to disqualification, denial of application to participate, or other adverse actions that affect participation during the agreement performance period in accordance with §1113.1 (relating to right to appeal); except that, expiration of an agreement with a store, disqualification of a store as a result of disqualification from the Food Stamp Program, and the Department's determination regarding participant access are not subject to review.

(b) The Department will disqualify a store which has been disqualified from the Food Stamp Program unless the Department determines that the disqualification of the store would result in inadequate participant access pursuant to §1103.7 (relating to inadequate participant access). If the Department determines that disqualification of the store would result in inadequate participant access pursuant to §1103.7, the Department will give the store the option of paying a civil money penalty in lieu of WIC disqualification.

(c) The Department will disqualify a store for WIC Program violations listed in §1107.1a (relating to disqualifications) unless the Department determines that disqualification of

the store pursuant to §1107.1a(b)-(d) would result in inadequate participant access. In that case, the Department will give the store the option of paying a civil money penalty in lieu of disqualification, except that, the Department shall not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations.

(d) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(e) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral for prosecution of the WIC authorized store to a criminal prosecution agency for prosecution under applicable Federal, State, or local laws.

(f) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for items other than those specified on the WIC check shall also reimburse the Department for monies received for the purchase of such items with the WIC check.

(g) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame set forth in §1105.2(f) and (g) (relating

to reimbursement of overcharges) or the notice given by the Department pursuant to §1105.6(f) (relating to monitoring of WIC authorized stores).

§1107.1a. Disqualifications.

(a) Permanent disqualification. The Department will permanently disqualify a WIC authorized store convicted of trafficking in WIC checks 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 WIC checks. The Department will not compensate the store for revenues lost as a result of such violation.

(b) Six-year disqualification. The Department will disqualify a WIC authorized store for 6 years for either of the following:

- (i) One incidence of buying or selling WIC checks for cash (trafficking).
- (ii) One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802, in exchange for WIC checks.

(c) Three-year disqualification. The Department will disqualify a WIC authorized store for 3 years for any of the following violations:

- (1) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC checks.

- (2) A pattern of claiming reimbursement for the sale of an amount of a specific allowable food which exceeds the store's documented inventory of that specific allowable food item for a specific period of time. A pattern may be established during a single inventory audit encompassing a 2-month period where a WIC authorized store's records indicate that the WIC authorized store's redemptions for a specific allowable food exceed the WIC authorized store's documented inventory for that allowable food.

- (3) Two or more incidences of charging participants more for an allowable food than non-WIC customers or charging participants more than the current shelf price.

- (4) Two or more incidences of receiving, transacting and/or redeeming WIC checks outside of authorized channels, including the use of an unauthorized store and/or an unauthorized person

- (5) Two or more incidences of charging for allowable food not received by the participant.

- (6) Two or more incidences 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 WIC checks.

(d) One-year disqualification. The Department will disqualify a WIC authorized store for 1 year for any of the following violations:

- (1) Two or more incidences of providing unauthorized food items in exchange for WIC checks, including charging for allowable food provided in excess of those listed on the WIC check.
- (2) Having stale-dated allowable food on the sales floor.
- (3) Failing to maintain minimum inventory requirements of an allowable food.
- (4) Failing to request the participant's WIC identification card prior to accepting a WIC check.
- (5) Accepting a WIC check made payable to another store without prior written approval from the Department.
- (6) Failing to maintain a clean and sanitary store.
- (7) Failing to properly store and refrigerate allowable foods.
- (8) Closure of the store by a city, local or county health department.
- (9) Charging or demanding that a participant pay for an allowable food with the participant's own money or with another WIC check for purchases made with a WIC check.
- (10) Securing the signature of the participant, endorser or proxy prior to completing the "Pay Exactly" box on the WIC check.
- (11) Overcharging the WIC Program by charging sales tax.
- (12) Having or charging prices which exceed the current maximum allowable costs established by the Department and published in the *Pennsylvania*

Bulletin for either Food Prescription One or Food Prescription Two set forth in §1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

- (13) Giving monetary change to an authorized individual who tenders a WIC check.
- (14) Failing to remit payment for an overcharge within the specified time frame.
- (15) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date, or printed dollar amount.
- (16) Failing to have at least one representative of the store attend required training.

(e) Second mandatory sanction. When a WIC authorized store, which previously has been assessed a sanction for any of the violations in subsections (b) through (d), receives another sanction for any of these violations, the Department will double the second sanction. The Department will double civil money penalties up to the limits allowed under §1107.3(c) (relating to civil money penalties).

(f) Third or subsequent mandatory sanction. When a WIC authorized store, which previously has been assessed 2 or more sanctions for any of the violations listed in subsections (b) through (d), receives another sanction for any of these violations, the Department will double the third sanction and all subsequent sanctions. The Department will not impose civil money

penalties in lieu of disqualification for third or subsequent sanctions for violations listed in paragraphs (b) through (d).

(g) *Multiple violations during a single investigation.* When during the course of a single investigation the Department determines a WIC authorized store has committed multiple violations, the Department will disqualify the WIC authorized store for the period corresponding to the most serious violation. However, the Department shall include all violations in the notice of disqualification action.

(h) *Disqualification based on a Food Stamp Program disqualification.* The Department will disqualify a WIC authorized store which has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, but may begin at a later date than the Food Stamp Program disqualification. In accordance with 7 C.F.R. §246.12(k)(1)(vii) and §1113.1(b)(3) (relating to right to appeal) the disqualification shall not be subject to administrative or judicial review under the WIC Program.

(i) *Voluntary withdrawal or nonrenewal of agreement.* The Department will not accept voluntary withdrawal of the WIC authorized store from the WIC Program as an alternative to disqualification for the violations listed in subsections (a) through (d), but shall enter the disqualification on the record. The Department will not permit the store to use nonrenewal of a store agreement as an alternative to disqualification.

(j) For any violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified in subsections (a) through (d) of this section, the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation. A disqualification imposed under this subsection shall not exceed 1 year.

(k) The Department will provide a WIC authorized store at least 30 days advance notice of the effective date of any disqualifications and, if appropriate, an opportunity to appeal the disqualification in accordance with § 1113.1 (relating to right to appeal).

(l) A store that has been disqualified from the WIC Program may apply for certification following expiration of the disqualification period. If the store chooses to apply for certification after expiration of the disqualification, the Department will not consider the prior disqualification from the WIC Program when determining eligibility. The store will be considered in accordance with § 1103.4 (relating to selection and limitation criteria; authorization process) if a store slot is available, or placed on a waiting list in accordance with §1103.6 (relating to waiting list) if no store slot is available.

§1107.2. Civil money penalties.

(a) *Option available in lieu of a disqualification.* The Department may offer to a store the option of paying a civil money penalty in lieu of a denial of recertification or a

disqualification required to under §1107.1 (relating to sanctions), only if the Department finds participant hardship as set forth in §1103.7 (relating to participant hardship).

(b) *Calculation of civil money penalty.* The Department will calculate the civil money penalty the store shall pay by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under §1107.1. For stores which are denied recertification for which this option is available, the Department will multiply 5% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(c) *Written agreement.* If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. The terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement shall be effective upon the signature of the Director of the Division of WIC or the Director's designee.

(d) *Payment of the civil money penalty.* The store shall pay the civil money no later than 30 days from the effective date of the [penalty] agreement, as set forth in subsection (c).

Failure of the store to pay the civil money penalty when due shall be grounds for the Department to rescind the agreement and shall result in reinstatement of the disqualification.

(e) *Continued compliance with regulations.* A store which pays a civil money penalty is required to continue to comply with regulations governing the store's participation in the WIC Program. If the store commits additional violations of the regulations governing the store's participation in the WIC Program, the Department will consider the violations for which the store paid the civil money penalty in determining the type and magnitude of sanction to be imposed against the store.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, payment of outstanding overcharges or payments owed the Department for the unauthorized sale of foods.]

(a) *Option available in lieu of a disqualification.* The Department may offer to a store the option of paying a civil money penalty in lieu of a denial of recertification or a disqualification required under §1107.1 (relating to imposition of sanctions), only if the Department finds inadequate participant access as set forth in §1103.7 (relating to inadequate participant access). The Department will not provide this option for third or subsequent violations set forth in §1107.1a(b)–(d) (relating to disqualifications).

(b) Calculation of civil money penalty.

- (1) For civil money penalties in lieu of disqualifications pursuant to §1107.1a(b), (c) and (d)(1), the Department will calculate the civil money penalty for each violation identified by multiplying 10% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under §1107.1. For stores that are denied recertification, and for which this option is available, the Department will multiply 10% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

- (2) For disqualifications identified in §1107.1a(d)(2)-(15), the Department will calculate the civil money penalty for each violation identified the store shall pay by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified pursuant to §1107.1. For stores which are denied recertification for which this option is available, the Department will multiply 5% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the

monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(c) Limitation of penalties. The amount of the civil money penalty shall not exceed \$10,000 for each violation. When during the course of a single investigation, the Department determines a store has committed multiple violations, the Department shall impose a civil money penalty for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

(d) Written agreement. If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. Such terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement will be effective when it is signed by the Director of the Division of WIC or the Director's designee.

(e) Payment of the civil money penalty. If a WIC authorized store does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the Department will disqualify the WIC authorized store for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed. If a civil money penalty is assessed for more than one violation, the Department will impose the disqualification for the period corresponding to the most serious violation. The Department may permit payment

of civil money penalties by installments.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, payment to the Department of outstanding overcharges for the unauthorized sale of foods.

CHAPTER 1109. ADMINISTRATIVE APPEALS

§1109.1. Applicability of general rules.

1 Pa. Code Part II (relating to general rules of administrative practice and procedure) applies to proceedings under this part, except as otherwise provided in this part.

§1109.2. Scope and purpose.

Chapters 1111 and 1113 (relating to applicant and participant appeals; and local agency and store appeals) apply to hearings held under 42 U.S.C.A. §1786(f)(9), relating to the WIC Program. Those chapters supplement the Federal regulations, 7 CFR Part 246 (relating to special supplemental food program for women, infants and children) governing hearings afforded under this part to applicants, participants, stores denied certification or recertification and local agencies, and supplement or supersede regulations in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) when their application would be inappropriate or inadequate.

§1109.3. Time limits for action.

Time limits set forth in §§1111.10(d) and 1113.3(b) (relating to hearing examiner decisions; and adjudication and order) are directory.

CHAPTER 1111. APPLICANT AND PARTICIPANT APPEALS

§1111.1. Applicant and participant appeal rights.

This chapter applies to applicants, participants, and their authorized representatives, in pursuing appeals from decisions that adversely impact upon the participation of applicants and participants in the WIC Program.

§1111.2. Notification of appeal rights.

(a) At the time of the denial of an application to become a participant, removal from the WIC Program as a participant, or placement on a waiting list to become a participant, the local agency shall inform in writing the adult applicant or participant, or the parent or guardian of a child or infant applicant or participant, of the right to appeal the decision, of the method by which an appeal may be filed, and that any positions or arguments on behalf of the applicant or participant may be presented personally or by an authorized representative, such as a relative, friend, legal counsel or other spokesperson. The expiration of the participant's certification period occurs automatically and is not appealable.

(b) The local agency shall use forms provided by the Department to provide notice of appeal rights to the adult applicant or participant, or the parent or guardian of an infant or child applicant or participant.

§1111.3. Appeal of a local agency decision.

(a) An appeal is any clear expression by the applicant, participant or authorized representative, that the decision of the local agency is contested and that an opportunity to challenge the decision and to present the case of the applicant or participant to a higher authority is desired. The Department or local agency shall not limit or interfere with the freedom of the applicant, participant or authorized representative to appeal the decision and will provide whatever assistance is necessary to reduce an oral appeal to writing.

(b) When an appeal is made orally, the local agency shall docket it as being filed when the local agency receives the oral communication.

§1111.4. Time for appeal of a local agency decision.

The applicant, participant or authorized representative shall appeal within 90 days after the date the local agency mails or delivers to the adult applicant or participant, or parent or guardian of an infant or child applicant or participant, written notice of the action to deny or terminate benefits under the WIC Program. An appeal is timely filed if it is received by the local agency within the 90-day period.

§ 1111.5. Scheduling the hearing.

(a) *Appointment of a hearing examiner.* The local agency shall appoint a hearing examiner to preside over the appeal. The hearing examiner shall be an impartial official who does not have a personal stake or involvement in the decision, and who was not directly involved in the action being contested.

(b) *Notification of the appeal.* The local agency shall notify the hearing examiner of the appeal and the date on which it was docketed.

(c) *Time frame for scheduling a hearing.* The hearing examiner shall schedule the hearing within three weeks from the docketed date of the appeal. The hearing examiner shall provide the appellant participant or authorized representative with a minimum of 10 days advance written notice of the time and place of the hearing.

(d) *Standards for scheduling the hearing.* The hearing examiner shall use the following standards in scheduling a hearing:

- (1) The place of the hearing may not be further from the residence of the applicant or participant than the county seat of the county in which the applicant or participant resides. If the county seat is unsuitable due to the health of the applicant or participant, transportation problems, convenience of witnesses, or for other legitimate reasons, an alternative place of hearing shall be a location convenient to the home of the applicant or participant.
- (2) If the applicant, participant or authorized representative wants to postpone the hearing, that individual shall contact the hearing examiner, and the local agency and provide them with a reason for postponement. If the

hearing is postponed by the hearing examiner, the hearing examiner shall reschedule it as soon as possible.

- (3) An applicant, participant, or authorized representative may withdraw the appeal at any time before a decision is issued by the hearing examiner. This withdrawal shall be in writing and directed to the hearing examiner.
- (4) If the applicant or participant fails to appear at the scheduled hearing in person or by authorized representative, without good cause as determined by the hearing examiner, the appeal shall be considered abandoned and shall be discontinued.

(e) *Independent assessment.* The hearing examiner shall order, when relevant and necessary, an independent medical assessment or professional evaluation of the applicant or participant from a source mutually satisfactory to the applicant or participant or its authorized representative, and the local agency.

(f) *Supersession.* Subsection (d)(3) supersedes 1 Pa. Code §35.51 (relating to withdrawal of pleadings).

§1111.6. Denial or dismissal of appeal.

The hearing examiner may not deny or dismiss an appeal unless one of the following occurs:

- (1) The appeal is not received by the local agency within the time limit in §1111.4 (relating to time for appeal of a local agency decision).
- (2) The appeal is withdrawn in writing by the applicant, participant or authorized representative.
- (3) The applicant, participant or authorized representative fails, without good cause, to appear at the scheduled hearing.

§1111.7. Continuation of benefits.

(a) If at any time during a participant's certification period, the local agency finds the participant to be ineligible to continue enrollment in the WIC Program, the local agency shall advise the participant in writing not less than 15 days before termination of the reason for ineligibility and of the right to appeal. If an appeal is received within 15 days after service of the notice of ineligibility, benefits shall continue until the hearing examiner reaches a decision or the certification period expires, whichever occurs first.

(b) An applicant denied initial enrollment, or an authorized representative of the applicant, may appeal the denial, but the applicant may not receive benefits while awaiting disposition of the appeal.

§1111.8. Rights of the appellant.

(a) When an appeal is filed, the local agency shall inform the applicant or participant denied benefits, or an authorized representative, of the rights set forth in subsection (b).

(b) An applicant or participant who files an appeal, or on whose behalf the appeal is filed, has the following rights:

- (1) To appear in person at the hearing.
- (2) To represent himself, or to be represented by an authorized representative such as an attorney, friend or other person at the hearing.
- (3) To receive an explanation that he may contact the local bar association for assistance in locating legal services.
- (4) To present oral or documentary evidence, witnesses and arguments to support the position of the applicant or participant in accordance with procedures established by the hearing examiner.
- (5) To request a subpoena from the hearing examiner for the production of evidence or witnesses that the applicant, participant or authorized representative, determines are important to establish necessary facts.

- (6) To request that the local agency provide an interpreter at the hearing if an adult applicant or participant, or the parent or guardian of an infant or child applicant or participant, does not understand English or is hearing impaired.
- (7) To examine upon request, both before and during the hearing, the materials which the Department or local agency has on file relative to the case which are not confidential.
- (8) To be provided with the names of the local agency staff members and witnesses who will be present at the hearing.
- (9) To question or refute any testimony or other evidence presented against the applicant or participant and to confront and cross-examine adverse witnesses.
- (10) To examine, prior to and during the hearing, documents and records that will be presented to support the decision under appeal.
- (11) To further appeal the final decision of the hearing examiner to the Secretary within 15 days of the mailing date of the hearing examiner's decision.

(12) To appeal the adjudication and order of the Secretary or agency head designated by the Secretary to the Commonwealth Court within 30 days of the mailing date of the adjudication and order.

(c) *Supersession.* Subsection (b)(1) supplements 1 Pa. Code §31.21 (relating to appearance in person). Subsection (b)(2) supersedes 1 Pa. Code §§31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings). Subsection (b)(5) supplements 1 Pa. Code §35.142 (relating to subpoenas).

§1111.9. Hearing record.

(a) *Contents of the record.* The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the hearing record. This record shall be available to the applicant, participant or authorized representative, for copying and inspection at any reasonable time.

(b) *Retention of the record.* This record shall be retained for 3 years.

(c) *Public inspection of the record.* Department and local agency hearing records and decisions shall be available for public inspection and copying, provided the names and addresses of participants and other members of the public are kept confidential.

(d) *Supersession.* Subsection (a) supersedes 1 Pa. Code §35.131 (relating to recording of proceedings).

§1111.10. Hearing examiner decisions.

(a) The hearing examiner shall render a decision based exclusively on the evidence contained in the hearing record.

(b) The decision of the hearing examiner shall comply with applicable Federal law, and Federal and State regulations.

(c) A decision by the hearing examiner shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record. A decision adverse to the position of the local agency shall be binding on the local agency.

(d) Within 45 days after the filing date of the appeal, the hearing examiner shall provide the applicant, participant, or authorized representative, and the local agency, a copy of the hearing examiner's decision.

(e) If the decision of the hearing examiner is in favor of the applicant or participant and benefits had been denied or discontinued, the local agency shall begin or resume providing benefits immediately upon the mailing date of the decision.

(f) If the decision is in favor of the local agency, the notice accompanying the decision of the hearing examiner to the applicant, participant or authorized representative shall include notice of the right to appeal to the Secretary. Immediately upon the date of the hearing examiner's decision, the local agency shall discontinue providing any benefits which had been continued pending issuance of the hearing examiner's decision.

(g) Subsection (a) supersedes 1 Pa. Code 35.201 (relating to certification of record without proposed report).

§1111.11. Appeal to the Secretary.

If the applicant, participant, or authorized representative, chooses to appeal the decision of the hearing examiner, that individual shall file a written appeal with the Secretary within 15 days of the mailing date of the decision of the hearing examiner. The appeal shall contain a statement of reasons for reversing the decision of the hearing examiner. If the appeal asks for permission to present additional evidence, it shall:

- (1) Identify the additional evidence.
- (2) Explain why it was not previously introduced.
- (3) Explain its materiality unless it is obvious.

§1111.12. Adjudication and order procedures.

(a) In reaching a decision on the appeal, the Secretary or an agency head designated by the Secretary may:

- (1) Reconsider the decision on the basis of the evidence in the record.

- (2) Admit additional evidence.
- (3) Order a new hearing.

(b) In cases in which the hearing examiner's decision has resulted in a termination of benefits to the participant, there shall be no reinstatement of benefits upon filing of an appeal to the Secretary. The reinstatement of benefits, if granted, shall be solely as a result of the adjudication and order of the Secretary or designated agency head.

§1111.13. Judicial review.

The Secretary or designated agency head will issue an adjudication and order after considering the appeal. If the adjudication and order is adverse to the interest of the applicant or participant, the adjudication and order shall state, or be accompanied by a notice stating, that the applicant or participant has the right to appeal the adjudication and order to Commonwealth Court within 30 days after the mailing of the adjudication and order.

CHAPTER 1113. LOCAL AGENCY AND STORE APPEALS.

§1113.1. Right to appeal.

(a) A store or local agency adversely affected by a Division of WIC action has the right to appeal. The right of appeal shall be granted when a local agency's or store's application to participate in the WIC Program is denied; or during the course of an agreement or period of authorization, when a local agency or store is disqualified; or when any other adverse action during the period of authorization which affects participation is taken against the store or local agency by the Division of WIC. [The expiration of a WIC authorization is not subject to appeal.]

(b) The following actions are not subject to appeal:

- (1) The expiration of a WIC authorization.
- (2) The Division of WIC's determination regarding participant access.
- (3) Disqualification of a store as a result of disqualification from the Food Stamp Program.

(c) The appeal process is designed to secure and protect the interest of both the store or local agency and the Division of WIC and to ensure equitable treatment for all involved. [The adverse action shall be postponed until the hearing examiner issues an adjudication and order.]

(d) Except for permanent disqualifications assessed in accordance with §1107.1a(a) (relating to disqualifications), the Department may take adverse action against a store after 30 days advance notification.

(e) In the case of a disqualification of a local agency, the Department shall provide not less than 60 days advance notice.

§1113.2. Appeal procedures.

(a) *Notification.* At the time the Division of WIC denies an application of a store, or disqualifies a WIC authorized store or takes an adverse action against a local agency or store during a period in which the local agency or store is authorized, the Division of WIC will notify the local agency or store of its right to an administrative appeal.

(b) *Form of Appeal.* The appeal shall be made by the local agency or store or its authorized representative, in writing, stating the reasons for the appeal.

(c) *Time for filing an appeal.* The appeal shall be filed with the Director of the Division of WIC within 30 days after any final decision by the Division of WIC.

(d) *Scheduling the hearing.*

(1) The Director of the Division of WIC shall forward the appeal to the office of the hearing examiner.

- (2) The hearing examiner shall set a time, date and place for the hearing.
- (3) The hearing examiner shall send notice to the local agency or store, or its authorized representative, at least 10 days in advance of the date of the hearing.
- (4) The hearing examiner shall schedule the hearing to be held within 21 days after the date of receipt by the Division of WIC of the local agency or store appeal.
- (5) The Department or the appellant may request in writing that the hearing be rescheduled for another time or date and the hearing examiner shall consider the request.

(e) *Hearing examiner.* The Secretary will appoint a hearing examiner to preside over the appeal. The person shall be an impartial decision-maker, whose decision as to the validity of the Department's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the program, and who may not have participated in the decision made by the Division of WIC or have any personal stake in the outcome.

(f) *Hearing procedures.*

- (1) The local agency or store may be assisted or represented by an attorney or other authorized representative.

- (2) The local agency or store, or its authorized representative, may examine, prior to and during the hearing, the documents and records considered by the Division of WIC in reaching its decision under appeal.
- (3) The hearing shall be open to the public.
- (4) Each party shall have the opportunity to present and cross-examine witnesses.
- (5) Each party may present oral or documentary evidence and arguments to support its position in narrative form.
- (6) Each party may object to or attempt to refute any testimony or other evidence presented by the other party.

(g) *Supersession.* Subsection (d) supersedes 1 Pa. Code §35.105 (relating to notice of nonrulemaking procedures). Subsection (e) supersedes 1 Pa. Code §35.185 (relating to designation of presiding officers). Subsection (f)(a) supplements 1 Pa. Code §31.21 (relating to appearance in person) and supersedes 1 Pa. Code §§31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings).

§1113.3. Adjudication and order.

- (a) The adjudication and order shall include findings of fact and conclusions of law.

The findings of fact shall be based only on the oral and documentary evidence in the hearing record.

(b) The hearing examiner shall provide the Director of the Division of WIC and the local agency or store, or its authorized representative, with the adjudication and order within 60 days after the date of the receipt by the Division of WIC of the appeal, adjusted for any continuance of the hearing that causes it to be held more than 21 days after the date the appeal was filed.

(c) The hearing examiner shall maintain a written record of the hearing. The record shall include a docket number and caption for the appeal, any documentary evidence submitted, the transcript of the testimony presented at the hearing, the adjudication and order of the hearing examiner, and a copy of the document transmitting the adjudication and order to the local agency or store, or its authorized representative.

- (d) Paragraphs (a)-(c) supersede 1 Pa.Code §§ 35.131, 35.201, 35.202 and 35.205.

§1113.4. Continuing responsibilities.

Appealing an action does not relieve the local agency or store from the responsibility of continued compliance with the terms of any written agreement or contract with the Department or certification or recertification by the Department.

§1113.5. Judicial review.

If the adjudication and order of the hearing examiner is rendered against the local agency or store, the hearing examiner will inform the local agency or store within the adjudication and order, or by notice accompanying the adjudication and order, of the right to pursue judicial review of the adjudication and order.

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

HARRISBURG

February 9, 2000

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, Pennsylvania 17101

RE: Department of Health Regulations
Women Infants and Children (WIC) Program
No. 10-161

Dear Mr. Nyce:

Attached are proposed regulations for review by the Commission in accordance with the Regulatory Review Act (71 P.S. §§745.1-745.15). The regulations govern the authorization and management of retail grocery stores in the Supplemental Food Program for Women, Infants and Children (WIC Program) administered by the Department of Health (Department). The regulations also set forth procedures for administrative appeals of WIC applicants and participants, and local agencies and retail grocery stores.

The majority of the proposed changes to the Department's existing regulations are necessitated by recent amendments to the Federal regulations governing the WIC Program. The purpose of the proposed regulations is to curb fraud and abuse in the WIC Program and to promote coordination between the WIC Program and the Food Stamp Program in the disqualification of stores which violate either WIC Program or Food Stamp Program rules. The Commonwealth must implement the Federal changes by May 17, 2000.

The Department has held public meetings regarding the mandated changes to the State regulations. In addition to discussions regarding the mandated Federal regulatory changes, the Department has engaged in a complete and thorough review of all State regulations governing the WIC Program. The Department has proposed further changes that have resulted from discussions with stakeholders at those public meetings.

Mr. Robert E. Nyce

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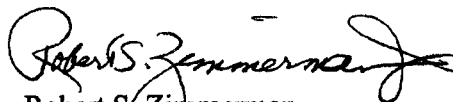
February 9, 2000

Section 5(g) of the Regulatory Review Act, 71 P.S. §745.5(g), provides that the Commission shall, within 10 days after the expiration of the Standing Committee review period, notify the proposing agency of any objections to the proposed regulations. The regulations are expected to be published February 19, 2000. A 30-day comment period is provided.

Section 5.1(a) of the Regulatory Review Act, 71 P.S. §745.5a(a), provides that upon completion of the agency's review of comments, the agency shall submit to the Commission a copy of the agency's response to the comments received and the text of the final-form regulations which the agency intends to adopt.

The Department will provide the Commission within 5 days of the receipt, a copy of any comment received pertaining to the proposed regulations. The Department will also provide the Commission with any assistance it requires to facilitate a thorough review of the proposed regulations. If you have any questions, please contact Deborah Griffiths, Director, Office of Legislative Affairs, at (717) 783-3985.

Sincerely,



Robert S. Zimmerman
Secretary of Health

Enclosures

RSZ:LET:kag

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 10-161
 SUBJECT: Supplemental Nutrition Program for Women, Infants & Children (WIC Program)
 AGENCY: DEPARTMENT OF HEALTH

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2000 FEB - 9 PM 3:38
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-9-00	<i>Lila Byrnes</i>	HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
2/9/00	<i>April Rucker</i>	
	<i>Kristi Krosen 2/9/00</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
	<i>John</i>	
2/9/00	<i>A. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
2/9/00	<i>Mary Garcia</i>	LEGISLATIVE REFERENCE BUREAU

February 4, 2000