

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

**Proposing rule making related to the WIC program
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 73, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC),” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 135.11 and 135.16A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 135.11 and 135.16A and 42 U.S.C. Section 1786.

Purpose and Summary

The State of Iowa WIC Program now has a Program Integrity Coordinator who monitors all aspects of WIC fraud within the Iowa WIC Program. Federal regulations require state WIC agencies to establish procedures designed to control participant violations and establish sanctions for participant violations. Federal regulations include specific requirements for mandatory participant disqualifications.

Updates to the rules about participant violations/sanctions are proposed to help ensure that violations/sanctions are handled in the most efficient manner. It was determined that it would be beneficial to make changes to how participant violations and sanctions are given. Instead of receiving points for violations, participants will be given a specific sanction depending on the violation. Violations and sanctions are now investigated and given by the Program Integrity Coordinator instead of handled by local WIC agencies. More information regarding restitution requirements is added to the rules. Updating the violation and sanction process for program participants is important to ensure efficient monitoring of any fraud or abuse that occurs within the program and to ensure program integrity. The vendor violation/sanction process is different than the participant violation/sanction process and works well, and there is not a need to change the vendor violation point structure at this time.

A few changes are proposed regarding the WIC food package information. Iowa now approves WIC-eligible foods more frequently than every three years. These proposed amendments reflect this change in practice. A few other updates are also made to the eligibility requirements for certain foods. Finally, new definitions for “conventional eggs,” “eggs,” and “specialty eggs” are added, and subrule 73.8(3) is amended to incorporate the language in Iowa Code section 135.16A that requires grocery vendors participating in the WIC Program to stock conventional eggs. These changes will help to ensure that participants have the best variety and availability of WIC-eligible foods possible.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the

discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Kimberly Stanek
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: kimberly.stanek@idph.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 641—73.2(135) as follows:

641—73.2(135) Adoption by reference. Federal regulations in 7 CFR Part 246 found at <http://www.fns.usda.gov/sites/default/files/wic/WICRegulations-7CFR246.pdf> www.gpo.gov/fdsys/pkg/CFR-2018-title7-vol4/pdf/CFR-2018-title7-vol4-part246.pdf (effective as of February 13, 1985, as amended through January 1, 2016 2018, and any additional amendments), WIC EBT operating rules found at <http://www.fns.usda.gov/sites/default/files/wic/WIC-EBT-Operating-Rules-September-2014.pdf> (effective as of November 2009, as amended through September 2014, and any additional amendments), the WIC EBT technical implementation guide found at <http://www.fns.usda.gov/sites/default/files/WICEBT-TechnicalImplementationGuide.pdf> (as amended through September 30, 2012, and any additional amendments), FNS Handbook 901 v2 found at <http://www.fns.usda.gov/sites/default/files/2015-08-26-FNS-Handbook%20901-v1-8-1.pdf> fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf (as amended through ~~May 28, 2015~~ January 2017, and any additional amendments), and FNS Instruction 113-1 found at <http://www.fns.usda.gov/sites/default/files/113-1.pdf> (effective as of November 8, 2005, and any additional amendments) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. The Iowa WIC Policy and Procedure Manual, which provides procedural guidance in the implementation of these regulations to contract agencies administering the WIC programs and which contains policies and procedures as approved by the United States Department of Agriculture, is incorporated herein by reference.

ITEM 2. Amend rule 641—73.3(135) as follows:

641—73.3(135) Availability of rules and policy and procedure manual. Copies of the federal rules and the Iowa WIC Policy and Procedure Manual adopted by reference in 641—73.2(135) are available from: Chief, Bureau of Nutrition and ~~Health Promotion~~ Physical Activity, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; (515)281-7095 or 1-800-532-1579.

ITEM 3. Amend rule **641—73.4(135)**, definitions of “Nutrition education,” “Postpartum woman,” “Vendor overcharge,” “Vendor violation,” “WIC program” and “WIC Vendor Instructions and Agreement Booklet,” as follows:

“*Nutrition education*” means an individual or group education session and the provision of ~~information and educational~~ materials designed to improve health status, achieve positive change in dietary and physical activity habits, and emphasize relationships between nutrition, physical activity, and health, all in keeping with the individual’s personal, and cultural, ~~and socioeconomic~~ preferences of the individual.

“*Postpartum woman*” means a woman up to six months ~~postpregnancy who is not breastfeeding~~ after termination of pregnancy.

“*Vendor overcharge*” means intentionally charging the department more for authorized supplemental foods than is permitted under the WIC vendor agreement. It is not a vendor overcharge when a vendor submits a food instrument for redemption and the department makes a price adjustment to the food instrument.

“*Vendor violation*” means any intentional or unintentional action of a vendor’s current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the WIC vendor agreement or federal or state statutes, regulations, policies, or procedures governing the WIC program.

“*WIC program*” means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

“*WIC Vendor Instructions and Agreement Booklet*” means the grocery vendor application, grocery vendor application guidance, special purpose vendor application, special purpose vendor application guidance, and ~~vendor agreement~~ WIC Vendor Agreement and Handbook.

ITEM 4. Adopt the following new definitions of “Conventional eggs,” “Dual participation,” “Eggs,” “Exempt infant formula,” “Participant violation,” “Proxy,” “Specialty eggs,” “WIC-eligible nutritionals” and “WIC vendor agreement” in rule **641—73.4(135)**:

“*Conventional eggs*” means eggs other than specialty eggs.

“*Dual participation*” means simultaneous participation in the WIC program in one or more than one WIC clinic, or participation in the WIC program and in the commodity supplemental food program (CSFP) during the same period of time.

“*Eggs*” means shell eggs that are graded as “AA,” “A,” or “B” pursuant to 7 CFR Part 56, Subpart A, and that are sold at retail in commercial markets.

“*Exempt infant formula*” means an infant formula that meets the requirements for an exempt infant formula under Section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR Parts 106 and 107.

“*Participant violation*” means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts to obtain benefits; selling or offering to sell WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange WIC benefits, including cash value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, nonfood items, or unauthorized food items, including supplemental foods in excess of

those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

"Proxy" means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact food instruments or cash-value vouchers or to obtain supplemental foods on behalf of a participant.

"Specialty eggs" means eggs produced by domesticated chickens, and sold at retail in commercial markets, if the chickens producing such eggs are advertised as being housed in any of the following environments:

1. Cage-free.
2. Free-range.
3. Enriched colony cage.

"WIC-eligible nutritionals" means certain enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible nutritionals must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme. WIC-eligible nutritionals include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

"WIC vendor agreement" means the WIC Vendor Agreement and Handbook.

ITEM 5. Amend subrule 73.5(1) as follows:

73.5(1) The competent professional authority (CPA) shall conduct ~~either the diet history or the health history part of the certification process or both histories~~ the nutrition interview and shall attest to the applicant's eligibility for services after the certification process is completed.

ITEM 6. Amend subrule 73.6(3) as follows:

73.6(3) *Time frame for services.*

a. The date of initial visit shall be the day on which an applicant first requests services from a contract agency. A visit to another WIC program office to complete a common application form does not constitute an initial visit.

b. Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum. Pregnant women precertified with referral data require a full certification within 30 days.

~~c. Priority II infants precertified with referral data require a full certification within 30 days of the infant's birth.~~

ITEM 7. Amend paragraph **73.7(1)"b"** as follows:

b. *Claiming food instruments and benefits.* Enrolled participants are required to appear in person to claim food instruments and benefits when they have appointments to certify or have face-to-face, scheduled nutrition education contacts. ~~Missed attendance may entitle contract agencies to deny that month's benefit.~~ Enrolled participants who complete their nutrition education contacts via a state-approved Internet nutrition education platform are not required to appear in person to claim food instruments and benefits. A proxy may pick up food instruments as described in the Iowa WIC Policy and Procedure Manual.

ITEM 8. Amend paragraph **73.7(2)"b"** as follows:

b. *Mailing of WIC food instruments.* Mailing of food instruments to participants is allowed only in specific situations as described in the Iowa WIC Policy and Procedure Manual. Any mailing of WIC food instruments ~~on a clinicwide basis~~ must have prior approval from the state.

ITEM 9. Amend paragraph **73.7(4)"a"** as follows:

a. ~~Grocery~~ WIC vendor agreement. To qualify for a grocery WIC vendor agreement with the Iowa WIC program, a retail outlet shall meet all of the following criteria:

- (1) to (6) No change.

(7) A vendor shall charge a price to WIC participants that is equal to or less than the price charged to all other customers. ~~The prices charged to WIC participants for the average of all WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 105 percent of the average prices of all other WIC vendors in the same peer group.~~ The vendor's average price for any category of WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 115 percent of the average price charged for the same category by all other WIC vendors in the same peer group. Categories refer to the broad groupings of items rather than specific brands. For purposes of making the price comparisons, the average price for all other WIC vendors in the peer group shall be computed from the most recent Price Assessment Reports on file from those vendors. If a vendor intends to comply with this provision by charging WIC participants a lower price than the price charged to other customers, the WIC price for each approved item must be identified on the package or shelf front.

(8) to (15) No change.

ITEM 10. Amend paragraph 73.7(4)**"d"** as follows:

d. Reauthorization. If ownership of an authorized vendor changes during the agreement period, the agreement becomes void. The new owner must file an application and be approved prior to accepting WIC food instruments. ~~Vendor agreements are~~ The WIC vendor agreement is valid only for the period of time specified, and a vendor may not continue accepting food instruments past the expiration date unless a new agreement is signed. When a currently authorized vendor makes application for a subsequent agreement, an agreement shall be signed only if the vendor has been assessed less than 60 violation points under paragraph 73.19(2)**"b"** during a contract period.

Vendors must complete a new application and sign a new WIC vendor agreement at least every three years to continue accepting WIC food instruments.

The department shall send the vendor written notice at least 30 days prior to the expiration of the agreement that it does not intend to offer the vendor a new agreement if the vendor has been assessed 60 or more violation points under paragraph 73.19(2)**"b"** during a contract period or if any of the following conditions are in effect:

- (1) No change.
- (2) Any of the selection criteria listed in 73.7(4)**"a"** and **"b"** above are no longer met.

Expiration of a WIC vendor agreement is not subject to appeal. A vendor who is not offered a new agreement by the department has the right to file a new application. If that application is denied, the vendor has the right to appeal.

ITEM 11. Amend paragraph 73.7(5)**"a"** as follows:

a. Routine or representative monitoring is used for vendors for which there is no record of violations or complaints or other indication of problems. It may include any or all of the following: use of a food instrument or observation of a participant, educational buys, review of inventory levels, review of vendor policies on return items, and review of employee training procedures. The results of the monitoring are reviewed with the owner or manager on duty, and a follow-up letter confirming the findings is sent from the department. Routine monitoring may be performed by the department or by contract agency staff under the direction of the department. Depending on the nature and severity of violations noted, the department may schedule additional visits, initiate a compliance investigation, or apply sanctions.

Educational buy monitoring is a specialized type of routine monitoring. Department or contract agency staff attempt to use a WIC food instrument to purchase unauthorized types or brands of foods to test the level of training of vendor employees. At the conclusion of the transaction, the results of the buy are discussed with the vendor owner or manager on duty. ~~The transaction is then voided, and the merchandise returned to the shelves.~~ After an educational buy is conducted, the purchased food may be donated. Educational buys are used on authorized vendors selected by the department. If unauthorized items are allowed to be purchased, the vendor shall agree to a corrective action training plan. A follow-up educational buy is scheduled within 30 to 90 days. A letter is sent from the department documenting the violation. By signing a WIC vendor agreement, a vendor gives consent for educational buys by the

department or contract agency. Vendors are not notified in advance that an educational buy is scheduled. The protocol for educational buys, including procedures, appropriate items to purchase, and forms to be used, is specified in the Iowa WIC Policy and Procedure Manual.

ITEM 12. Amend subrule 73.8(3) as follows:

73.8(3) Criteria for approving products for inclusion in the WIC food package.

a. and *b.* No change.

c. ~~Changes to the approved food list take effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire to be guaranteed consideration can be submitted at any time. Food items that are required to be listed by brand on the approved food list will be reviewed and approved on a quarterly basis. Food items that are not required to be listed by brand on the approved food list will be reviewed and approved as they are received.~~ The state reserves the right to change the food list more frequently if necessary.

d. Cereals shall meet federal guidelines for content and shall also meet the following conditions:

~~(1) If a group of cereals from one manufacturer have similar names and package designs and some of the cereals do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.~~

~~(2) (1) The brand is carried by current Iowa WIC-approved vendors. Any private-label (store) brands that meet the selection criteria will also be considered.~~

~~(3) (2) The department reserves the right to limit the number of approved cereals for administrative efficiency.~~

e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:

(1) Juices are 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.

~~(2) The brand is carried by current Iowa WIC-approved vendors. Any private-label (store) brands that meet the selection criteria will also be considered.~~

~~(3) The product form and marketing approach are consistent with the promotion of good nutrition and education.~~

~~(4) If a group of juices from one manufacturer have similar names and package designs and some of the juices do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Single-strength and concentrated varieties of juice with the same brand name will be evaluated separately.~~

~~(5) Frozen fruit juices must be single flavors.~~

f. The following conditions apply to dairy products:

(1) to (3) No change.

(4) Yogurt shall meet federal guidelines for content and shall also meet the following conditions:

1. The brand or any private-label (store) brand is carried by current Iowa WIC-approved vendors.

2. Nonfat, lowfat, and whole yogurts cannot contain artificial sweeteners. No frozen yogurt, yogurt tubes, or drinkable yogurts are allowed.

g. and *h.* No change.

i. Eggs shall be fresh, Grade A large chicken eggs. Eggs which have a retail value of 115 percent or higher than the state average for this product shall may not be approved.

j. If a vendor offers specialty eggs for retail sale, the vendor shall maintain an inventory of conventional eggs for retail sale sufficient to meet federal and state requirements for participation in the WIC program.

~~*k.* Any brand of tuna or salmon qualifies if it is either water- or oil-packed, in cans or pouches, chunked, solid, or flaked. Fish packaged with other items such as crackers, relish or other flavorings may not be purchased. Albacore tuna is not allowed.~~

~~*l.* Commercial infant formula shall meet the following conditions:~~

~~(1) to (4) No change.~~

~~*m.* At least two whole grain options that meet federal guidelines will be provided.~~

~~*n.* Infant food fruits, vegetables and meats must meet the federal guidelines.~~

~~o.~~ Fresh and frozen vegetables and fruits that meet federal guidelines will be available for purchase with cash-value benefits specifically for fruits and vegetables.

~~p.~~ Soy beverages shall meet federal guidelines.

~~q.~~ Tofu shall meet federal guidelines.

~~r.~~ Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost and participant preference. The state reserves the right to limit the number of foods, infant formulas, exempt infant formulas, and WIC-eligible nutritionals for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.

s. The approved food list provides more specifics on what is allowed or not allowed for each of the WIC-approved foods.

~~t.~~ In addition to the criteria specified above, the department reserves the right to further restrict the number and types of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

~~u.~~ The department reserves the right to discontinue specific brand names and products if the cost is 115 percent or more higher than the state average for that particular product. ~~The department reserves the right to add or delete products pursuant to federal regulations.~~

v. If a group of food products within a food category from one manufacturer have similar names and package designs and some of the food products do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.

w. The department reserves the right to make changes to the criteria for approving products for inclusion in the WIC food package.

x. The department reserves the right to add or delete products pursuant to federal regulations.

ITEM 13. Amend paragraph 73.9(1)“c” as follows:

~~c.~~ Nutrition education shall be based on information obtained through the diet and health histories nutrition interview and shall be tailored to the specific nutrition need of the participant.

ITEM 14. Amend rule 641—73.12(135) as follows:

641—73.12(135) Right to appeal—participant.

73.12(1) and 73.12(2) No change.

73.12(3) Request for hearing. A request for hearing by an individual or the individual’s parent, guardian, or other representative must be made in writing or verbally. The request for hearing shall be made to the contract agency within ~~90~~ 60 days from the date the individual receives notice of the decision or action that is the subject of appeal.

73.12(4) Denial or dismissal of request. The request for hearing shall not be denied or dismissed unless:

a. The request is not received within the required time frame;

b. The request is withdrawn in writing by the appellant or a representative of the appellant; or

c. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to WIC program eligibility have changed in such a way as to justify a hearing.

73.12(4) 73.12(5) Receipt of benefits during appeal. ~~Participants who are involuntarily terminated from the WIC program prior to the end of the standard certification period shall continue to receive WIC program benefits while the decision to terminate is under administrative appeal, provided that subsequent certifications are completed as required. Participants who appeal the termination of benefits within the 15-day advance adverse action notice period must continue to receive WIC program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first, provided that subsequent certifications are completed as required. Participants who are terminated because of categorical ineligibility (e.g., a child over five years of age) shall not continue to receive benefits during the administrative appeal period. Participants who are terminated at the end of a certification period for~~

failure to reapply, following notice of expiration of certification, shall not continue to receive benefits during the administrative appeal period. Applicants who are denied WIC program benefits at the initial certification or at subsequent recertifications, due to a finding of ineligibility, shall not receive benefits during the administrative appeal period.

~~73.12(5)~~ 73.12(6) *Hearing officer.* The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. If the party filing the appeal objects prior to a scheduled hearing to a contract agency director serving as a hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the state WIC office in the appointment of a hearing officer.

~~73.12(6)~~ 73.12(7) *Notice of hearing.* The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be scheduled within three weeks from the date the contract agency received the request for a hearing, or as soon as possible thereafter, unless a later date is agreed upon by the parties.

~~73.12(7)~~ 73.12(8) *Conduct of hearing.* The hearing shall be conducted in accordance with federal regulations found at 7 CFR 246.23. Copies of these regulations are available from the contract agency and the department.

a. and b. No change.

~~73.12(8)~~ 73.12(9) *Decision.* Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 45 days of the receipt of the request for a hearing, unless a longer period is agreed upon by the parties.

~~73.12(9)~~ 73.12(10) *Appeal of decision to the department.* If either party to a hearing receives an unfavorable decision, that decision may be appealed to the department. Such appeals must be made within 15 days of the mailing date of the decision. Appeals shall be sent to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

~~73.12(10)~~ 73.12(11) *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the Iowa department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the Iowa department of inspections and appeals.

73.12(12) *Receipt of benefits during appeal to the department.* If the decision being appealed concerns disqualification from the WIC program, the appellant shall not continue to receive benefits while an appeal to the department of a decision rendered on appeal at the local level is pending.

~~73.12(11)~~ 73.12(13) *Hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the Iowa department of inspections and appeals found in 481—Chapter 10, ~~Iowa Administrative Code.~~

~~73.12(12)~~ 73.12(14) *Decision of administrative law judge.* The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule ~~73.12(13)~~ 73.12(15).

~~73.12(13)~~ 73.12(15) *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the

appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

~~73.12(14)~~ **73.12(16)** *Record of hearing.* Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. to f. No change.

~~73.12(15)~~ **73.12(17)** *Decision of director.* An appeal to the director shall be based on the record of the hearing before the administrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

~~73.12(16)~~ **73.12(18)** *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

~~73.12(17)~~ **73.12(19)** *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

~~73.12(18)~~ **73.12(20)** *Benefits after decision.* If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the contract agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for benefits.

ITEM 15. Amend subrule 73.13(1), introductory paragraph, as follows:

73.13(1) *Right of appeal.* The right of appeal shall be granted when a vendor's application to participate is denied. The right to appeal shall also be granted when, during the course of the contract or agreement period, a vendor is disqualified or any other action which affects participation is taken. For participating vendors, a minimum of ~~30~~ 15 days' advance notice will be given before the effective date of the action. The right to appeal shall not be granted in the following circumstances:

ITEM 16. Amend subrule 73.19(1) as follows:

73.19(1) *Participant violation.* Violations may be ~~detected~~ reported by contract agency staff, by vendors, the public, FNS staff, or by department staff. ~~Information obtained by the department is forwarded to the contract agency for appropriate action.~~ All suspected cases of fraud will be investigated by the department. All sanctions will be administered by the department. Contract agencies will be notified of any actions taken against WIC participants by the department.

a. Whenever possible, the participant is ~~counseled in person~~ contacted via telephone concerning the violation. Documentation is maintained according to procedures set forth in the Iowa WIC Policy and Procedure Manual.

b. Participants who violate WIC program regulations are subject to sanction in accordance with the schedule below:

Violation	Points Per Event
1. Attempting to purchase unauthorized brands/types of foods (i.e., incorrect brands of cereal, juices, etc.).	3
2. Attempting to cash food instruments outside of valid dates.	4
3. Attempting to redeem WIC food instruments at an unauthorized vendor.	4
4. Redeeming WIC food instruments that were reported as lost or stolen.	5
5. Attempting to purchase more than the quantity of foods specified in the food benefits.	5
6. Verbal abuse or harassment of WIC or vendor employees.	5
7. Verbal abuse or harassment on social media.	5
8. Threat of physical abuse of WIC or vendor employees.	10
9. Threat of physical abuse of WIC or vendor employees on social media.	10
10. Attempting to sell, return, or exchange foods for cash or credit.	10
11. Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc.	10
12. Attempting to purchase items that are not food.	10
13. Sale or exchange of WIC food instruments for cash or credit or giving away WIC foods.	10
14. Attempting to redeem food instrument issued to another participant.	10
15. Receiving more than one set of benefits for the same time period.	10
16. Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility).	10
17. Attempting to steal WIC food instruments from a contract agency or participant.	10
18. Physical abuse of WIC contract agency or vendor employees.	10
19. Attempting to pick up food instruments for a child that is not currently in their care.	10
20. Other violations of this chapter or the Iowa WIC Policy and Procedure Manual.	

Violation	Sanction Action
1. <u>Intentional false statement(s) or misrepresentation of income, name, residence, family size (including receiving and using benefits for children no longer in the family), medical data, pregnancy, and/or date of birth to obtain WIC benefits.</u>	<u>One-year disqualification and pay full restitution</u>
2. <u>Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount less than \$100.</u> <u>Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell, or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer or sell eWIC card/benefits for unapproved food items, nonfood items, cash or favors. Claim amount less than \$100.</u>	<u>Two-month disqualification and pay full restitution</u> <u>Subsequent violation of any claim amount: one-year disqualification and pay full restitution</u>
3. <u>Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount greater than \$100.</u>	<u>One-year disqualification and pay full restitution</u>

Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer, or sell WIC foods for unapproved food items, nonfood items, cash or favors. Claim amount greater than \$100.

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| 4. | <u>Creating a public nuisance or disrupting normal activities through verbal misconduct or physical disruptions at the local WIC agency, farmers market, or vendor location.</u> | <p><u>First violation: Education/counseling</u></p> <p><u>Second subsequent violation: Warning letter</u></p> <p><u>Third subsequent violation: Two-month disqualification</u></p> <p><u>Fourth subsequent violation: Any subsequent violation(s) will result in a one-year disqualification.</u></p> |
| 5. | <u>Verbal abuse or harassment of WIC staff, vendors, farmers market vendors and/or other WIC participants. This includes verbal abuse or harassment in person, on social media, or over the telephone.</u> | <p><u>Two-month disqualification</u></p> <p><u>Subsequent violation will result in a one-year disqualification.</u></p> |
| 6. | <u>Physical abuse (directly or indirectly carrying out the actual harm or threatening to do harm) of WIC staff, vendors, vendor staff, farmers market vendors, farmers market vendor staff, and/or other WIC participants.</u> | <p><u>Any violation will result in a one-year disqualification.</u></p> |
| 7. | <u>Destruction of property, theft of eWIC card(s) or theft from a local WIC agency, vendor, vendor staff, farmers market vendor, farmers market vendor staff, and/or another WIC participant.</u> | <p><u>Any violation will result in a one-year disqualification.</u></p> |
| 8. | <u>Collusion with staff to improperly obtain benefits.</u> | <p><u>One-year disqualification and pay full restitution</u></p> |
| 9. | <u>Dual participation resulting from intentional misrepresentation.</u> | <p><u>One-year disqualification and pay full restitution</u></p> |
| 10. | <u>Trafficking WIC food benefits, WIC benefits, or WIC items and/or collusion with an authorized vendor.</u> | <p><u>One-year disqualification and pay full restitution</u></p> |
| 11. | <u>Other violations of this chapter or the Iowa WIC Policy and Procedure Manual.</u> | <p><u>As appropriate per this chapter or the Iowa WIC Policy and Procedure Manual</u></p> |

~~e. The accumulation of 10 violation points within a 12-month period will result in a 2-month disqualification.~~

~~The accumulation of 10 additional violation points within a 12-month period following the disqualification will result in a 3-month disqualification. The participant must then reapply for the WIC program and be scheduled for a certification.~~

c. Local law enforcement may be notified in appropriate cases.

d. Fifteen days' notice must be given prior to all disqualifications. In all cases, the participant must be informed of the reason for the disqualification, of the right to appeal the decision through the fair hearing process, and of eligibility to reapply for the WIC program receive WIC services at the end of the disqualification period.

e. A disqualification generally applies may apply to all members of a family who are on the WIC program. The competent professional authority may waive the disqualification for one or more members of the family if it is determined that a serious health risk may result from WIC program disqualification. The reason for this waiver must be documented in the participant's file.

f. Violations are cumulative. However, a participant will not have sanctions assessed for committing a second violation when the second violation occurs before the participant receives notice

of the first violation and the second violation is the same as the first. A participant who commits the same violation a second time following receipt of a notice for the first violation is subject to a one-year disqualification.

~~g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement statement(s) or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food instruments or sells or attempts to sell benefits the participant received from the WIC program and is disqualified from the WIC program, the participant may be required to make restitution of the cash value of the improperly received or used WIC benefits. Collection of overpayment is not required when the department determines it is not cost effective to do so~~ The department may establish a claim against the participant for the full value of the improperly received benefits.

~~The contract agency department shall issue a written notice of restitution and disqualification. The written notice lists the serial numbers and dollar value of the food instruments for which payment is required.~~

~~The participant is required to surrender any unspent food instruments and send payment to the department in check or money order for those food instruments that have been cashed.~~

~~If the participant chooses a repayment plan for claims, the department will assist in developing a payment schedule. If the participant has not paid the department directly within 30 days of the notice of restitution and disqualification, the department will pursue collection of the dollar amount owed and benefits will be discontinued until the claim is paid.~~

~~h. The department may decide not to impose a mandatory disqualification if a family makes full restitution for a monetary claim, establishes a repayment schedule within 30 days of receipt of the letter demanding repayment, makes full restitution or agrees to a repayment schedule or, in the case of a participant who is an infant, a child, or under the age of 18, the state or local agency approves the designation of a proxy. The department may permit the participant to receive WIC services before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, a child, or under the age of 18, the department or local agency approves the designation of a proxy. All decisions are at the discretion of the department.~~

~~i. When a disqualification period has ended, the individual disqualified may be reinstated if the individual's certification period is still current. If the individual's certification period is not current, the individual will need to complete a certification appointment.~~

~~h. j. Each contract agency~~ The department shall maintain a master list of all participant violation notices, disqualifications, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

ITEM 17. Amend paragraph **73.19(2)“b”** as follows:

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement that do not rise to the level of fraud against the WIC program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of a the WIC vendor agreement. It is in the department's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

One or more transactions prior to notification of the vendor constitute only one violation if they contain the same error.

The assignment of violation points does not limit the department's right to effect stronger penalties and sanctions in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation	Points Per Event
1. Developing and using promotional materials including stickers, tags, labels, or channel strips with the WIC service mark to identify WIC-approved foods.	5
2. Developing and using vendor-created WIC vendor identification decals to indicate vendor is an authorized vendor.	5
3. Failure to allow WIC participants to leave the vendor with WIC foods that were debited/removed from their eWIC account during a WIC transaction.	5
4. Failure to post eWIC signs in the cash register lane that has a working WIC terminal if the vendor is not integrated.	5
5. Failure to provide vendor ECR system participant receipts to WIC participants during each WIC transaction.	5
6. Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.	10
7. Refusal to accept valid WIC food instruments from participants.	10
8. Discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification, or disallowing the use of coupons or other vendor discounts in WIC transactions that are allowed in non-WIC transactions.	10
9. Treating WIC customers differently by offering them incentive items, vendor discounts, coupons, or other promotions that are not offered to non-WIC customers.	10
10. Providing to WIC participants incentive items not prior authorized by the department.	10
11. Failure to carry out corrective action plan developed as a result of monitoring visit.	10
12. Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
13. Issuing “rain checks” or credit in exchange for WIC food instruments.	10
14. Stocking out-of-date, stale, or moldy WIC foods.	10
15. Failure to submit vendor price assessment reports as requested.	10
16. Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor’s current agreement and in the current publication of the Iowa WIC program’s vendor instruction booklet.	10
17. Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.	10
18. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	10
19. Requiring to enter the PIN for the participant and/or asking for the participant’s PIN.	10
20. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
21. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
22. Providing false information on the price assessment report.	15
23. Knowingly entering false information or altering information on the eWIC receipt/benefits.	10

Violation	Points Per Event
24. Requiring other cash purchases to redeem WIC food instruments.	15
25. Failure to obtain infant and/or special needs formula from an approved source listed by the <u>State Iowa</u> WIC program.	15
26. Offering incentive items with a value of more than \$1.99.	15
27. Scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant.	20
28. Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.	20
29. Other violations of this chapter or the <u>WIC</u> vendor agreement or the Iowa WIC Policy and Procedure Manual.	<u>As appropriate per this chapter, the WIC Vendor Agreement and Handout, or the Iowa WIC Policy and Procedure Manual</u>

ITEM 18. Amend paragraph **73.19(2)“g”** as follows:

g. The following ~~items do~~ does not have a point value, but shall result in or extend a disqualification period:

~~(1) Failure to return WIC vendor stamp(s) to the WIC program within ten days of effective date of disqualification, or expiration of agreement following denial of subsequent application, shall result in a 30-day extension of a disqualification period.~~

~~(2) For each month in which a vendor accepts WIC food instruments during a disqualification period, the disqualification period shall be extended by 30 days.~~

ITEM 19. Amend rules 641—73.23(135) and 641—73.24(135) as follows:

641—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services ~~shall~~ may be required to file a letter of intent to make application to the department no later than April 1 of the competitive year. Applications shall be to administer WIC services for a specified project period, as defined in the request for proposal, with an annual continuation application. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. The department will consider only applications from private, nonprofit or public agencies. ~~In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review.~~ Copies of review criteria are available from: Chief, Bureau of Nutrition and Health Promotion Physical Activity, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; (515)281-7095 or 1-800-532-1579.

641—73.24(135) Participant rights. The ~~special—supplemental—nutrition~~ WIC program for ~~women, infants and children~~ shall be open to all eligible persons regardless of race, color, sex, creed, age, mental/physical handicap or national origin. The USDA Nondiscrimination Statement can be found on the following USDA ~~Web—site~~ website: <http://www.fns.usda.gov/sites/default/files/cr/Nondiscrimination-Statement.pdf>.