



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

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Dec. 30 '15	Jan. 20 '16	Feb. 9 '16	Feb. 24 '16	Feb. 26 '16	Mar. 16 '16	Apr. 20 '16	July 18 '16
Jan. 15	Feb. 3	Feb. 23	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 29	Feb. 17	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 12	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 26	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sep. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sep. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
May 18	June 8	June 28	July 13	July 15	Aug. 3	Sep. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sep. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '17
June 29	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sep. 14	Oct. 19	Jan. 16 '17
July 15	Aug. 3	Aug. 23	Sep. 7	Sep. 9	Sep. 28	Nov. 2	Jan. 30 '17
July 29	Aug. 17	Sep. 6	Sep. 21	Sep. 23	Oct. 12	Nov. 16	Feb. 13 '17
Aug. 12	Aug. 31	Sep. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '17
Aug. 24	Sep. 14	Oct. 4	Oct. 19	***Oct. 19***	Nov. 9	Dec. 14	Mar. 13 '17
Sep. 9	Sep. 28	Oct. 18	Nov. 2	***Nov. 2***	Nov. 23	Dec. 28	Mar. 27 '17
Sep. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '17	Apr. 10 '17
Oct. 7	Oct. 26	Nov. 15	Nov. 30	***Nov. 30***	Dec. 21	Jan. 25 '17	Apr. 24 '17
Oct. 19	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '17	Feb. 8 '17	May 8 '17
Nov. 2	Nov. 23	Dec. 13	Dec. 28	***Dec. 28***	Jan. 18 '17	Feb. 22 '17	May 22 '17
Nov. 16	Dec. 7	Dec. 27	Jan. 11 '17	Jan. 13 '17	Feb. 1 '17	Mar. 8 '17	June 5 '17
Nov. 30	Dec. 21	Jan. 10 '17	Jan. 25 '17	Jan. 27 '17	Feb. 15 '17	Mar. 22 '17	June 19 '17
Dec. 14	Jan. 4 '17	Jan. 24 '17	Feb. 8 '17	Feb. 10 '17	Mar. 1 '17	Apr. 5 '17	July 3 '17
Dec. 28	Jan. 18 '17	Feb. 7 '17	Feb. 22 '17	Feb. 24 '17	Mar. 15 '17	Apr. 19 '17	July 17 '17

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 7, 2016	October 26, 2016
10	Wednesday, October 19, 2016	November 9, 2016
11	Wednesday, November 2, 2016	November 23, 2016

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 11, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Recognition of foreign accountant designations for CPA certification in Iowa; update of board address, 2.1(3), 9.5(2) Filed **ARC 2719C** 9/28/16

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pesticide applicator continuing instruction course—certificate of completion, 45.52(4)
Notice **ARC 2708C** 9/14/16
Iowa-foaled horse status—standardbred registration, 62.26(4) Notice **ARC 2720C** 9/28/16

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Emergency management employees—removal of prohibition from seeking elective office,
7.4(2) Notice **ARC 2713C** 9/14/16

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Requirements for surplus lines, risk retention groups and purchasing groups, amendments to ch 21 Filed **ARC 2727C** 9/28/16
Motor vehicle service contracts, rescind ch 23; adopt ch 104 Filed **ARC 2728C** 9/28/16
Iowa retirement facilities, rescind ch 24; adopt ch 102 Notice **ARC 2724C** 9/28/16
Regulation of securities offerings and those who engage in the securities business, 50.60, 50.70, 50.90 Filed **ARC 2731C** 9/28/16
Residential service contracts; rescind ch 54; adopt ch 103 Filed **ARC 2729C** 9/28/16
Sales of cemetery merchandise, funeral merchandise and funeral services, 100.1, 100.15(1), 100.19, 100.33(1)"f" Filed **ARC 2730C** 9/28/16
Burial sites and cemeteries, adopt ch 101; rescind ch 140 Notice **ARC 2718C** 9/14/16

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits, 12.1, 12.2 Filed **ARC 2723C** 9/28/16

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Written examination—exemption, 2.6 Filed **ARC 2709C** 9/14/16

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pain management resources, 13.2(8) Filed **ARC 2705C** 9/14/16
Hearing procedures—composition of panel, 25.18(1) Filed **ARC 2706C** 9/14/16

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Universal practice standards—opioid antagonists, epinephrine auto-injectors, 8.19, 8.31
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Polysomnographic technologists and respiratory care and polysomnography practitioners—fees, 5.17 Filed **ARC 2717C** 9/14/16
Licensing of barbers—continuing education, 21.16, 24.2 Filed **ARC 2722C** 9/28/16
Marital and family therapists and mental health counselors—licensure, continuing education, amendments to chs 31, 32 Notice **ARC 2738C** 9/28/16

PUBLIC HEALTH DEPARTMENT[641]

Immunization registry information system—meningococcal vaccine, confidentiality and release of information, access to system, 7.1, 7.4(1), 7.11(5), 7.12 Notice **ARC 2732C** 9/28/16
Backflow prevention assembly tester registration, 26.2, 26.4 to 26.8 Notice **ARC 2734C** 9/28/16
Minimum requirements for radon testing and analysis, amendments to ch 43 Notice **ARC 2726C** 9/28/16
Special supplemental nutrition program for women, infants, and children (WIC), amendments to ch 73 Notice **ARC 2735C** 9/28/16
Local boards of health—district board formation, city board dissolution, Iowa public health standards, 77.2, 77.3(2), 77.4 to 77.12 Notice **ARC 2725C** 9/28/16

County medical examiners—payment for services, 127.4(1), 127.7(5), 127.8(4) Notice **ARC 2733C** 9/28/16

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Bureau[193]
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Organization and administration; definitions; supervision by superintendent of banking,
amend chs 1, 2; adopt ch 17 Notice **ARC 2710C** 9/14/16

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]
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Licensure of brokers, salespersons and nonresident licensees, amendments to chs 3 to 5
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REVENUE DEPARTMENT[701]

Calculation of alternative minimum tax credit, 42.10, 52.5(4), 58.5(4) Notice **ARC 2737C** 9/28/16

Solar energy system tax credit, 42.48, 52.44 Notice **ARC 2736C** 9/28/16

Withholding—verified summary of payments report, electronic filing of W-2 and 1099
forms, 46.3(3) Filed **ARC 2739C** 9/28/16

Property tax assessments and equalization—notice to taxpayers, updating of dates for filing a
protest, 71.20(3)“c,” 71.20(4)“a” Filed **ARC 2707C** 9/14/16

TREASURER OF STATE[781]

Unclaimed property, ch 9 Notice **ARC 2716C** 9/14/16

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Natural gas and electric safety standards—updates and corrections, amendments to chs 10,
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Tax reform revenue adjustment, rescind ch 30 Notice **ARC 2714C** 9/14/16

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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator Pam Jochum
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Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Colin Smith
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Emergency management employees—removal of prohibition from seeking elective office, 7.4(2) IAB 9/14/16 ARC 2713C	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	October 4, 2016 11 a.m.
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INSURANCE DIVISION[191]

Iowa retirement facilities, rescind ch 24; adopt ch 102 IAB 9/28/16 ARC 2724C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	October 18, 2016 10 a.m.
Burial sites and cemeteries, adopt ch 101; rescind ch 140 IAB 9/14/16 ARC 2718C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	October 4, 2016 10 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Marital and family therapists and mental health counselors—licensure, continuing education, amendments to chs 31, 32 IAB 9/28/16 ARC 2738C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	October 18, 2016 8 to 8:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Backflow prevention assembly tester registration, 26.2, 26.4 to 26.8 IAB 9/28/16 ARC 2734C	Rooms 517 and 518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa <i>To participate by conference call:</i> Dial 1-866-685-1580 Conference code: 0009991863	October 18, 2016 1 to 3 p.m.
Local boards of health—district board formation, city board dissolution, Iowa public health standards, 77.2, 77.3(2), 77.4 to 77.12 IAB 9/28/16 ARC 2725C	Room 415, Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	October 18, 2016 3 to 4 p.m.

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Organization and administration; definitions; supervision by superintendent of banking, amend chs 1, 2; adopt ch 17 IAB 9/14/16 ARC 2710C	Small Conference Room, Third Floor 200 E Grand Ave. Des Moines, Iowa	October 4, 2016 8:30 a.m.
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REAL ESTATE COMMISSION[193E]

Licensure of brokers, salespersons
and nonresident licensees,
amendments to chs 3 to 5
IAB 9/14/16 **ARC 2712C**

Commission Office, Suite 350
200 East Grand Ave.
Des Moines, Iowa

October 4, 2016
12 noon

TREASURER OF STATE[781]

Unclaimed property, ch 9
IAB 9/14/16 **ARC 2716C**

Room 116
State Capitol
Des Moines, Iowa

October 6, 2016
9 a.m.

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 2720C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 99D.22(5), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 62, “Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs,” Iowa Administrative Code.

The proposed amendment would simplify the process for registering a standardbred horse as an Iowa-foaled horse by eliminating the requirement that the U.S. Trotting Association Certificate be physically sent to the Department. The Department is able to verify standardbred registration on the U.S. Trotting Association Web site.

Any interested persons may make written suggestions or comments on the proposed amendment on or before October 18, 2016. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendment is subject to the Department’s general waiver provision.

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

This amendment is intended to implement Iowa Code section 99D.22(5).

The following amendment is proposed.

Amend subrule 62.26(4) as follows:

~~62.26(4) To complete the official registration of an Iowa-foaled horse, the owner(s) must forward the U.S. Trotting Association Certificate to the department. If, and if the horse has met all requirements for registration Iowa-foaled Registration, the department shall place the name and number of the horse on the official department list of Iowa-foaled standardbreds, which. Placement on the list shall constitute the official certification of the horse, and return the certificate within ten working days from the date of receipt. If the U.S. Trotting Association Certificate is lost or destroyed, a duplicate U.S. Trotting Association Certificate for that horse must be forwarded to the department and must be recertified by the department as Iowa-foaled.~~

CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of June 30, 2016, is approximately \$6,154.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 2724C

INSURANCE DIVISION[191]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 523D.10, the Insurance Division (the Division) hereby gives Notice of Intended Action to rescind Chapter 24, “Iowa Retirement Facilities,” and to adopt a new Chapter 102, “Iowa Retirement Facilities,” Iowa Administrative Code.

The proposed new chapter is intended to implement Iowa Code chapter 523D. The proposed new chapter updates existing Chapter 24 and provides new procedures to allow for more electronic administration of Iowa Code chapter 523D and the associated rules, in accordance with Iowa Code section 17A.2.

The Division intends that these amendments shall go into effect December 28, 2016.

Any interested person may make written suggestions or comments on the proposed new chapter on or before October 18, 2016. Such written materials should be directed to Rosanne Mead, Iowa Insurance Division, Securities and Regulated Industries Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

Also, there will be a public hearing on October 18, 2016, at 10 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The Insurance Division’s general waiver provisions in 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact on the State.

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

These amendments are intended to implement Iowa Code chapter 523D.

The following amendments are proposed.

ITEM 1. Rescind and reserve **191—Chapter 24**.

ITEM 2. Adopt the following **new** 191—Chapter 102:

CHAPTER 102
IOWA RETIREMENT FACILITIES

191—102.1(523D) Purpose and applicability. This chapter is promulgated to implement and administer Iowa Code chapter 523D, which regulates senior adult congregate living facilities and continuing care retirement communities. This chapter applies to entities of the same kind and in the same manner as set forth in Iowa Code section 523D.2.

191—102.2(523D) Definitions.

102.2(1) *Definitions of terms found in Iowa Code chapter 523D and this chapter.* The definitions in Iowa Code chapter 523D are incorporated by this reference. In addition, the following definition shall apply to this chapter and shall provide clarification and additional context to Iowa Code chapter 523D.

“*Certified financial statements,*” as used in this chapter and in Iowa Code section 523D.3(1)“i,” means financial statements audited and certified by a certified public accountant in accordance with generally accepted auditing standards.

INSURANCE DIVISION[191](cont'd)

102.2(2) Definitions of terms used in Iowa Code chapter 523D. The following terms, which are used in Iowa Code chapter 523D, are defined here to provide clarification and additional context.

“*Actuarial forecast*,” as used in Iowa Code section 523D.5(1) “f,” means an analysis which is performed by a qualified actuary or an individual who has demonstrated to the satisfaction of the commissioner the necessary experience and educational background. Such analysis shall be in accordance with generally accepted actuarial principles and practices and shall include a statement of actuarial opinion, an actuarial balance sheet, a cash flow projection, and a statement of applicable actuarial methodology, formulas, and assumptions. “Qualified actuary” means an individual who is a member of the American Academy of Actuaries.

“*Financial institution*,” as used in Iowa Code section 523D.5(4), means: a state or federally insured bank, savings bank, savings and loan association, or credit union; or a trust company authorized to do business in the state of Iowa.

“*Statement of financial feasibility*,” as used in Iowa Code section 523D.5(1) “d,” means a financial forecast, as defined by the American Institute of Certified Public Accountants (AICPA), of the revenues, expenses, working capital needs, and other financial requirements for the new or expanded facility or an alternative financial study in a form acceptable to the insurance division. The forecast period should include the development or expansion period and extend for five fiscal years from the date of initial occupancy. Unless waived by the commissioner, the statement of financial feasibility shall include a cash flow forecast with underlying assumptions and be presented in accordance with AICPA guidelines. The financial analysis shall be prepared by either a qualified actuary, a certified public accountant, or an individual who has demonstrated to the satisfaction of the commissioner the necessary experience and educational background. “Qualified actuary” means an individual who is a member of the American Academy of Actuaries. “Certified public accountant” means a person who is licensed as a certified public accountant under Iowa Code chapter 542 or under the laws of another state.

“*Statement of the market feasibility*” as used in Iowa Code section 523D.5(1) “e,” means an analysis of the market conditions which:

1. Identifies and evaluates the potential market, including a demographic and economic profile of the population in the facility’s market area;
2. Identifies the existing or proposed facilities or similar businesses offering similar services in the potential market area, including, if available, the occupancy rate for existing facilities for the last three years; and
3. Identifies the name and address of the person who prepared the feasibility study and the experience of the person in preparing similar studies or otherwise consulting in the field of continuing care or related health care fields.

191—102.3(523D) Forms and filings.

102.3(1) Copies of all required forms and instructions are available on the commissioner’s Web site, www.iid.iowa.gov.

102.3(2) All filings, fees and payments shall be made as directed by the commissioner. Instructions are available at the commissioner’s Web site, www.iid.iowa.gov.

191—102.4(523D) Standards for the disclosure statement.

102.4(1) Readability. Documents required by Iowa Code sections 523D.3, 523D.5 and 523D.6 to be given to residents, prospective residents, and personal representatives, including disclosure statements and residents’ contracts, shall be drafted in accordance with the following standards:

- a. The language used shall be readable by a person of average intelligence and education.
- b. All information presented should be conveyed in a logical sequence and in a clear and direct fashion.
- c. Complex and compound sentences should be avoided.
- d. Words should convey their commonly understood meanings.
- e. Definitions shall be included for words or terms which cannot properly be explained or qualified in the text.

INSURANCE DIVISION[191](cont'd)

f. Frequent section headings should be used to permit ease in locating provisions.

g. Documents shall be printed in a typeface and a point size easily legible to the audience to whom the literature is directed. An upright typeface with at least 10-point type should be used.

102.4(2) Form. Documents shall be typed or printed on paper measuring 8½ by 11 inches. The disclosure statement shall be bound or otherwise securely fastened.

102.4(3) Cover page. The cover page of the disclosure statement shall state, in a prominent location and in boldface type, “Disclosure Statement,” the date of the disclosure statement, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of supportive services or continuing care is required by Iowa Code chapter 523D, but that the disclosure statement has not been approved by any government agency or representative.

102.4(4) Table of contents. Multipaged documents shall contain a table of contents giving a comprehensive listing of all section headings used in the document. If the table of contents does not appear at the beginning of the document, the location of the table of contents shall be noted on the first page.

102.4(5) Acknowledgment. The last page of the disclosure statement shall consist of a detachable “acknowledgment of receipt” which shall be signed and dated by the resident. A copy of the acknowledgment shall be kept on file in the office of the provider for at least one year from the date of the acknowledgment.

102.4(6) Advertising. The disclosure statement shall contain no sales or advertising materials. Sales or advertising materials may be attached to the disclosure statement or packaged with the disclosure statement if the manner of attachment or packaging does not obfuscate the cover page of the disclosure statement.

191—102.5(523D) Certified financial statements, studies, and forecasts.

102.5(1) Certified financial statements, as required by Iowa Code section 523D.3(1) “i,” shall be prepared in accordance with generally accepted accounting principles and practices (GAAP).

102.5(2) Certified financial statements shall be presented in a format that allows financial analysis of the contracting party undertaking to provide the continuing care. The contracting party may consist of an individual facility or numerous operating units. In some cases, where the financial condition and financial obligations of affiliated legal entities are relevant to the financial condition of the contracting party, preparation on a consolidated basis may be necessary. Certified financial statements shall provide sufficient financial disclosure to the continuing care resident to enable the resident to make an informed decision.

102.5(3) Studies or forecasts must disclose the basic assumptions used.

102.5(4) The following certified financial statements must be filed with the annual disclosure statement:

- a.* An income statement or a statement of revenues and expenses;
- b.* A statement of changes in equity or changes in fund balances;
- c.* A balance sheet; and
- d.* A statement of cash flow.

191—102.6(523D) Amendments to the disclosure statement. Changes in the operations of a provider or licensed facility which shall require an amendment to a disclosure statement include, but are not limited to, the following:

102.6(1) New or additional mortgages, security interests, loan commitments, long-term financing arrangements, or leases that materially affect the real property of the licensed facility unless the material terms of such transactions were specifically described as proposed transactions in the disclosure statement.

102.6(2) The sale of the licensed facility to a new provider.

102.6(3) Changes in the provider’s tax status.

102.6(4) A material change in the form of the resident contract.

INSURANCE DIVISION[191](cont'd)

191—102.7(523D) Records.

102.7(1) A licensed facility or provider shall keep accurate accounts, books and records concerning transactions regulated under Iowa Code chapter 523D.

102.7(2) A licensed facility's or provider's accounts, books and records shall include:

- a. Copies of all contracts;
- b. The name and address of each resident, prospective resident, or current or past contract holder;
- c. Copies of disclosure statements, any amendments thereto, and any supporting documentation for the information included in the disclosure statements and annual disclosure statements pursuant to Iowa Code section 523D.3;
- d. Copies of documents related to new construction as required by Iowa Code section 523D.5; and
- e. The dates and amounts of all receipts and expenditures.

102.7(3) A licensed facility or provider shall retain all required accounts, books and records pertaining to each resident or prospective resident contract for at least two years after the expiration of the specified period of time in the contract or for five years if required by Iowa Code section 523D.3(3).

102.7(4) A licensed facility or provider shall make all accounts, books and records concerning transactions regulated under Iowa Code chapter 523D available to the commissioner for the purpose of examination.

102.7(5) A licensed facility or provider discontinuing business in this state shall maintain its records until it furnishes the commissioner with proof satisfactory to the commissioner that the licensed facility or provider has discharged all obligations to contract holders in this state.

191—102.8(523D) Misrepresentations. A licensed facility or provider shall not represent or imply in any manner that the licensed facility or provider has been sponsored, recommended, or approved or that the licensed facility's or provider's abilities or qualifications have in any respect been passed upon by the commissioner, the Iowa insurance division, or the state of Iowa. Nonetheless, if the statements are factually correct, a licensed facility or provider may state that the licensed facility or provider has filed with the Iowa insurance division an annual certification in accordance with Iowa Code section 523D.2A.

191—102.9(523D) Violations. Failure to comply with this chapter or with Iowa Code chapter 523D shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523D.

These rules are intended to implement Iowa Code chapter 523D.

ARC 2721C

PHARMACY BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The proposed amendments were approved at the August 31, 2016, regular meeting of the Board of Pharmacy.

The proposed amendments are intended to implement 2016 Iowa Acts, Senate File 2218, as amended by House File 2460, division XIV, which permits the possession and administration of opioid antagonist medications by certain eligible persons and allows the distribution of such medications by pharmacists pursuant to a standing order or collaborative agreement or pursuant to a prescription issued in the name

PHARMACY BOARD[657](cont'd)

of a law enforcement agency, fire department, or emergency medical service program. The amendments also remove the requirement for a pharmacy to include the address of a facility, school district, or accredited nonpublic school on the label of epinephrine dispensed to those entities.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 18, 2016. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement 2016 Iowa Acts, Senate File 2218, as amended by House File 2460, division XIV.

The following amendments are proposed.

ITEM 1. Amend subrule 8.19(1) as follows:

8.19(1) Requirements for a prescription. A valid prescription drug order shall be based on a valid patient-prescriber relationship except as provided in subrule 8.19(7) for epinephrine auto-injectors and in subrule 8.19(8) for opioid antagonists.

a. to d. No change.

ITEM 2. Amend subrule 8.19(7) as follows:

8.19(7) Epinephrine auto-injector prescription issued to school or facility. A physician, an advanced registered nurse practitioner, or a physician assistant may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in Iowa Code subsection 135.185(1), a school district, or an accredited nonpublic school. The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall be issued in the name and address of the facility, the school district, or the accredited nonpublic school in lieu of the name and address of a patient. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

a. The pharmacy's patient profile and record of dispensing of a prescription issued pursuant to this subrule shall be maintained in the name of the facility, school district, or accredited nonpublic school to which the prescription was issued and the drug was dispensed.

b. The label affixed to an epinephrine auto-injector dispensed pursuant to this subrule shall identify the name ~~and address~~ of the facility, school district, or accredited nonpublic school to which the prescription is dispensed.

ITEM 3. Adopt the following **new** subrule 8.19(8):

8.19(8) Opioid antagonist prescription issued to law enforcement, fire department, or service program. A physician, an advanced registered nurse practitioner, or a physician assistant may issue a prescription for one or more opioid antagonists in the name of a law enforcement agency, fire department, or service program pursuant to Iowa Code section 147A.18 and rule 657—8.31(135,147A). The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall be issued in the name and address of the law enforcement agency, fire department, or service program in lieu of the name and address of a patient. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

a. The pharmacy's patient profile and record of dispensing of an opioid antagonist pursuant to this subrule shall be maintained in the name of the law enforcement agency, fire department, or service program to which the prescription was issued and the drug was dispensed.

b. The label affixed to an opioid antagonist dispensed pursuant to this subrule shall identify the name of the law enforcement agency, fire department, or service program to which the prescription is dispensed and shall be affixed such that the expiration date of the drug is not rendered illegible.

PHARMACY BOARD[657](cont'd)

ITEM 4. Adopt the following new rule 657—8.31(135,147A):

657—8.31(135,147A) Opioid antagonist dispensing by pharmacists by standing order. An authorized pharmacist may dispense an opioid antagonist pursuant to a standing order established by the department, which standing order can be found via the board's Web site, or pursuant to a standing order authorized by an individual licensed health care professional in compliance with the requirements of this rule. An authorized pharmacist may only delegate the dispensing of an opioid antagonist to an authorized pharmacist-intern under the direct supervision of an authorized pharmacist. Nothing in this rule prohibits a prescriber or facility from establishing and implementing standing orders or protocols under the authority granted to the prescriber or facility.

8.31(1) Definitions. For the purposes of this rule, the following definitions shall apply:

"Authorized pharmacist" means an Iowa-licensed pharmacist who has completed the training requirements of this rule. "Authorized pharmacist" also includes an Iowa-registered pharmacist-intern who has completed the training requirements of this rule and is working under the direct supervision of an authorized Iowa-licensed pharmacist.

"Department" means the Iowa department of public health.

"First responder" means an emergency medical care provider, a registered nurse staffing an authorized service program under Iowa Code section 147A.12, a physician assistant staffing an authorized service program under Iowa Code section 147A.13, a fire fighter, or a peace officer as defined in Iowa Code section 801.4 who is trained and authorized to administer an opioid antagonist.

"Licensed health care professional" means a person licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery, an advanced registered nurse practitioner licensed under Iowa Code chapter 152 or 152E and registered with the board of nursing, or a physician assistant licensed to practice under the supervision of a physician as authorized in Iowa Code chapters 147 and 148C.

"Opioid antagonist" means the same as defined in Iowa Code section 147A.1 as amended by 2016 Iowa Acts, Senate File 2218.

"Opioid-related overdose" means the same as defined in Iowa Code section 147A.1 as amended by 2016 Iowa Acts, Senate File 2218.

"Person in a position to assist" means a family member, friend, caregiver, health care provider, employee of a substance abuse treatment facility, or other person who may be in a position to render aid to a person at risk of experiencing an opioid-related overdose.

"Standing order" means a preauthorized medication order with specific instructions from the licensed health care professional to dispense a medication under clearly defined circumstances.

8.31(2) Authorized pharmacist training and continuing education. An authorized pharmacist shall document successful completion of an ACPE-approved continuing education program of at least one-hour duration related to opioid antagonist utilization prior to dispensing opioid antagonists pursuant to a standing order. An authorized pharmacist shall maintain competency by completing and maintaining documentation of completion of at least one hour of continuing education in opioid antagonist utilization every pharmacist license renewal period to continue eligibility to dispense opioid antagonists pursuant to a standing order.

8.31(3) Additional supply. Notwithstanding a standing order to the contrary, an authorized pharmacist shall only dispense an opioid antagonist after completing an eligibility assessment and providing training and education to the person in a position to assist.

8.31(4) Assessment. An authorized pharmacist shall assess an individual for eligibility to receive an opioid antagonist pursuant to a standing order. In addition to the criteria identified in a standing order, an authorized pharmacist shall also take into consideration the following criteria to determine the eligibility of the person in a position to assist to receive and possess an opioid antagonist:

a. The person at risk of an opioid-related overdose for which the opioid antagonist is intended to be administered has no known sensitivity or allergy to naloxone, unless the person at risk is not known to the person in a position to assist, including but not limited to a first responder or member of law enforcement.

PHARMACY BOARD[657](cont'd)

b. The person in a position to assist is oriented to person, place, and time and able to understand and learn the essential components of opioid-related overdose, appropriate response, and opioid antagonist administration.

8.31(5) *Person in a position to assist training and education.* Upon assessment and determination that an individual is eligible to receive and possess an opioid antagonist pursuant to a standing order, an authorized pharmacist shall, prior to dispensing an opioid antagonist pursuant to a standing order, provide training and education to the person in a position to assist that includes, but is not limited to, the information identified in this subrule. An authorized pharmacist shall require the person in a position to assist to attest that, if the product will be accessible to any other individual for administration, the person in a position to assist will make available to such individual all received training and education materials. An authorized pharmacist may provide to the person in a position to assist written materials that include, but may not be limited to, the information identified in this subrule, but it shall not be in lieu of direct pharmacist consultation with the person in a position to assist.

- a.* The signs and symptoms of opioid-related overdose as described in the standing order.
- b.* The importance of calling 911 as soon as possible and the potential need for rescue breathing.
- c.* The appropriate use and directions for administration of the opioid antagonist to be dispensed pursuant to the standing order.
- d.* Adverse reactions of the opioid antagonist as well as reactions resulting from opioid withdrawal following administration.
- e.* The proper storage conditions, including temperature excursions, of the opioid antagonist being dispensed.
- f.* The expiration date of the opioid antagonist being dispensed and the appropriate disposal of the opioid antagonist upon expiration.
- g.* The prohibition of the person in a position to assist from further distributing the opioid antagonist to another individual, unless that individual has received appropriate training and education.
- h.* Information about substance abuse or behavioral health treatment programs.

8.31(6) *Labeling.* Upon the determination that a person in a position to assist is eligible to receive and possess an opioid antagonist, an authorized pharmacist shall label the product pursuant to rule 657—6.10(126,155A) and subrule 8.19(8). An authorized pharmacist shall ensure that the labeling does not render the expiration date of the product illegible. The medication shall be dispensed in the name of the eligible person in a position to assist.

8.31(7) *Reporting.* A copy of the assessment form shall be submitted to the department as provided on the assessment form within seven days of the dispensing of the opioid antagonist or within seven days of a denial of eligibility.

8.31(8) *Records.* An authorized pharmacist shall create and maintain an original record of each individual assessment, regardless of the eligibility determination following assessment, and dispensing of opioid antagonists pursuant to a standing order. These records shall be available for inspection and copying by the board or its authorized agent for at least two years.

ARC 2738C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby gives Notice of Intended Action to amend Chapter 31, “Licensure of Marital and Family Therapists and Mental

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Health Counselors,” and Chapter 32, “Continuing Education for Marital and Family Therapists and Mental Health Counselors,” Iowa Administrative Code.

These proposed amendments revise outdated language, revise the definitions, revise examination requirements, establish requirements for applicants taking the examination prior to graduation, revise the requirements for supervision electronically and by telephone, make the date for applicants who graduate from an accredited program and a nonaccredited program consistent, define requirements for a licensee who serves as a supervisor for temporary licensure, require that a licensee who serves as a supervisor to complete coursework in counseling supervision, and establish continuing education requirements for persons serving in a supervisory role.

Any interested person may make written comments on the proposed amendments no later than October 18, 2016, addressed to Judy Manning, Professional Licensure Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail judith.manning@idph.iowa.gov.

A public hearing will be held October 18, 2016, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

These amendments are intended to implement Iowa Code sections 147.3, 147.10, 147.55, 154D.2, and 154D.7

The following amendments are proposed.

ITEM 1. Amend rule **645—31.1(154D)**, definition of “Reciprocal license,” as follows:

“*Reciprocal license*” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is currently licensed in another state which has ~~a mutual agreement with the Iowa board of behavioral science to license persons who have the same or similar qualifications to those required in Iowa.~~

ITEM 2. Rescind the definition of “CRCC” in rule **645—31.1(154D)**.

ITEM 3. Amend subrule 31.2(1) as follows:

31.2(1) The applicant shall complete a board-approved application. Application forms may be obtained from the board’s Web site (~~<http://www.idph.state.ia.us/licensure>~~) (<https://www.idph.iowa.gov/licensure>) or directly from the board office, or the applicant may complete the application online at <https://ibplicense.iowa.gov>. All paper applications shall be sent to the Board of Behavioral Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 4. Amend subrule 31.2(7) as follows:

31.2(7) The candidate for temporary licensure for the purpose of fulfilling the postgraduate supervised clinical experience requirement must submit the Supervised Clinical Experience: Approval and Attestation form to the board and receive approval of the ~~candidate’s~~ candidate’s supervisor(s) prior to licensure. The temporary licensee must notify the board immediately in writing of any proposed change in supervisor(s) and obtain approval of any change in supervisor(s). Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office. The temporary licensee shall remain under supervision until a permanent license is issued.

ITEM 5. Amend paragraph **31.3(1)“b”** as follows:

b. For a mental health counselor license shall take and pass the National Counselor Examination of the NBCC, or the National Clinical Mental Health Counselor Examination of the NBCC, ~~or the Certified Rehabilitation Counselor Examination of the CRCC.~~

ITEM 6. Adopt the following **new** subrule 31.3(6):

31.3(6) An applicant who is requesting approval to take the licensure examination prior to graduation shall:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. Apply for licensure by creating an account and paying online at <https://ibplicense.iowa.gov> or by completing and returning a paper application with a check or money order payable to the Board of Behavioral Science.

b. Have a letter on official school letterhead sent directly from the program director to the board indicating that the applicant is in good academic standing; that the applicant will graduate from the program within three months of the date on the letter; and the applicant's anticipated date of graduation.

ITEM 7. Amend subrule 31.4(2) as follows:

31.4(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in a ~~mental health~~ marital and family therapy, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. ~~After March 31, 2009, graduates~~ Graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of ~~their~~ the graduates' educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. In order to qualify as a "content-equivalent" degree, a graduate transcript must document:

a. to c. No change.

ITEM 8. Amend paragraph **31.5(1)"d"** as follows:

d. Include a minimum of 25 percent of all clinical supervision in person. ~~Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:~~

(1) ~~The first two meetings are~~ shall be face-to-face and in person; ~~and~~

(2) Up to 50 percent of all supervision may be completed by telephone.

(3) Up to 75 percent of all supervision may be completed by electronic means.

~~(2) (4) The Supervision by electronic means is acceptable if the system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.~~

ITEM 9. Adopt the following **new** paragraphs **31.5(2)"c"** and **"d"**:

c. Effective October 1, 2020, the supervisor shall:

(1) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure or shall be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; or

(2) Be an Iowa-licensed mental health counselor in Iowa with at least three years of clinical experience following licensure or shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; and

(3) Have completed at least a six-hour continuing education course in counseling supervision or one master's level course in counseling supervision; and

(4) Meet a minimum of four hours per month with the supervisee; and

(5) Provide training that is appropriate to the functions to be performed; and

(6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and

(7) Not supervise any marital and family therapy or permit the supervisee to engage in any therapy that the supervisor cannot perform competently.

d. Exceptions to paragraph 31.5(2)"c" shall be made on an individual basis. Requests for alternative supervisors must be submitted in writing, and the board must approve the supervisor prior to commencement of the supervision.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 10. Amend subrule 31.6(1) as follows:

31.6(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, ~~2010~~ 2012, must present with the application an official transcript verifying completion of a ~~master's~~ master's degree of 45 semester hours or the equivalent; or

ITEM 11. Amend paragraph **31.7(1)“d”** as follows:

d. Include a minimum of 25 percent of all clinical supervision in person. ~~Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:~~

- (1) The first two meetings ~~are~~ shall be face-to-face and in person; ~~and.~~
- (2) Up to 50 percent of all supervision may be completed by telephone.
- (3) Up to 75 percent of all supervision may be completed by electronic means.
- ~~(2) (4)~~ The Supervision by electronic means is acceptable if the system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

ITEM 12. Adopt the following **new** paragraphs **31.7(2)“c”** and **“d”**:

c. Effective October 1, 2020, the supervisor shall:

- (1) Be an Iowa-licensed mental health counselor in Iowa with at least three years of clinical experience following licensure or shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; or
- (2) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure or shall be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; and
- (3) Have completed at least a six-hour continuing education course in counseling supervision or one master's level course in counseling supervision; and
- (4) Meet a minimum of four hours per month with the supervisee; and
- (5) Provide training that is appropriate to the functions to be performed; and
- (6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and
- (7) Not supervise any mental health counselor or permit the supervisee to engage in any therapy that the supervisor cannot perform competently.

d. Exceptions to paragraph 31.7(2)“c” shall be made on an individual basis. Requests for alternative supervisors must be submitted in writing, and the board must approve the supervisor prior to commencement of the supervision.

ITEM 13. Amend paragraph **31.8(1)“d”** as follows:

d. Provides official transcripts sent directly from the school to the board verifying completion of a master's degree of 45 hours or equivalent if the applicant entered a program of study prior to July 1, ~~2010~~ 2012, or verifying completion of a master's degree of 60 hours or equivalent if the applicant entered a program of study on or after July 1, ~~2010~~ 2012, or the appropriate doctoral degree. ~~After March 31, 2009, graduates~~ Graduates from a non-CACREP-accredited mental health counselor program or a non-COAMFTE-accredited marital and family therapy program shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 14. Amend paragraph **31.8(2)“c”** as follows:

c. The applicant possesses a master’s degree or higher in mental health counseling or marital and family therapy or an equivalent counseling-related field; and

ITEM 15. Amend subparagraph **32.3(2)“c”(4)** as follows:

(4) Distance learning conferences or courses will be allowed if the following criteria are met:

1. The program is offered through electronic transmission ~~such as the Iowa Communications Network (ICN).~~

2. and 3. No change.

ITEM 16. Amend subparagraph **32.3(2)“c”(5)** as follows:

(5) Home study courses will be allowed if the following criteria are met:

1. The program is recognized by the National Board for Certified Counselors (NBCC); ~~Commission on Rehabilitation Counselor Certification (CRCC);~~ or American Association of Marriage and Family Therapy (AAMFT) or meets all of the criteria in 645—32.3(272C).

2. No change.

ITEM 17. Amend subparagraph **32.3(2)“c”(7)** as follows:

(7) Computer-assisted instructional courses or programs pertaining to the practice of mental health counseling or marital and family therapy will be allowed if the following criteria are met:

1. The courses and programs are approved by the National Board for Certified Counselors (NBCC); ~~Commission on Rehabilitation Counselor Certification (CRCC);~~ or American Association of Marriage and Family Therapy (AAMFT) or their affiliates or meet all of the criteria in 645—32.3(272C).

2. An official transcript, certificate of completion, or verification that includes the following information is presented after successful completion of the course:

- Date course/program was completed.
- Title of the course/program.
- Number of course/program continuing education hours.
- Official signature or verification of the course/program sponsor.

ITEM 18. Amend subrule 32.3(3) as follows:

32.3(3) Required specific criteria:

a. Three hours of the 40 continuing education hours shall be in ethics.

b. Effective with the biennial continuing education compliance period that begins October 1, 2022, persons serving in a supervisory role must complete three hours of continuing education in supervision.

ARC 2732C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 139A.8 and 135.11(12), the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 7, “Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers or Institutions of Higher Education,” Iowa Administrative Code.

The current administrative rules in Chapter 7 provide for the immunization requirements of persons attending elementary or secondary school and licensed child care centers in Iowa. The proposed amendments implement changes made to Iowa Code section 139A.8 by 2016 Iowa Acts, House File 2460, section 92, which adds a requirement for meningococcal vaccine upon students’ entry into the

PUBLIC HEALTH DEPARTMENT[641](cont'd)

seventh and twelfth grades. Additional proposed amendments include the addition of a definition of a pharmacist, provisions to terminate an enrolled user's access to the Immunization Registry Information System (IRIS) for failure to comply with the release of information and confidentiality requirements, provisions to allow a pharmacist to release immunization and health screening information, and language changes to make the release of immunization and health screening sections consistent. The immunization requirements table is replaced with a new table that adds a vaccination requirement for meningococcal vaccine for students in the seventh and twelfth grades. Additional changes were made to the table to clarify immunization requirements of persons attending elementary or secondary schools and licensed child care centers based upon Advisory Committee on Immunization Practices (ACIP) recommendations and questions for health care providers and schools.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 18, 2016. Such written comments should be directed to Don Callaghan, Bureau Chief, Bureau of Immunization and TB, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to donald.callaghan@idph.iowa.gov.

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

These amendments are intended to implement Iowa Code chapter 139A and Iowa Code section 139A.8 as amended by 2016 Iowa Acts, House File 2460, section 92.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of "Pharmacist" in rule **641—7.1(139A)**:

"Pharmacist" means a person licensed to practice pharmacy pursuant to Iowa Code chapter 155A.

ITEM 2. Rescind subrule 7.4(1) and adopt the following **new** subrule in lieu thereof:

7.4(1) Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements below:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

IMMUNIZATION REQUIREMENTS

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.

Institution	Age	Vaccine	Total Doses Required
Licensed Child Care Center	Less than 4 months of age	This is not a recommended administration schedule, but contains the minimum requirements for participation in licensed child care. Routine vaccination begins at 2 months of age.	
	4 months through 5 months of age	Diphtheria/Tetanus/Pertussis	1 dose
		Polio	1 dose
		<i>haemophilus influenzae</i> type B	1 dose
		Pneumococcal	1 dose
	6 months through 11 months of age	Diphtheria/Tetanus/Pertussis	2 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses
		Pneumococcal	2 doses
	12 months through 18 months of age	Diphtheria/Tetanus/Pertussis	3 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses if the applicant received 1 dose before 15 months of age, or 1 dose if received when the applicant is 15 months of age or older.
		Pneumococcal	3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
	19 months through 23 months of age	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age; or 2 doses if only 1 dose received before 15 months of age, or 1 dose if received when the applicant is 15 months of age or older.
		Pneumococcal	4 doses if the applicant received 3 doses before 12 months of age; or 3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
		Measles/Rubella ¹	1 dose of measles/rubella-containing vaccine received on or after 12 months of age, or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Varicella	1 dose received on or after 12 months of age, unless the applicant has a reliable history of natural disease.
	24 months of age and older	Diphtheria/Tetanus/Pertussis	4 doses
Polio		3 doses	
<i>haemophilus influenzae</i> type B		3 doses, with the final dose in the series received on or after 12 months of age; or 2 doses if only 1 dose received before 15 months of age, or 1 dose if received when the applicant is 15 months of age or older. Hib vaccine is not required for persons 60 months of age or older.	
Pneumococcal		4 doses if the applicant received 3 doses before 12 months of age; or 3 doses if the applicant received 2 doses before 24 months of age; or 2 doses if the applicant received 1 dose before 24 months of age; or 1 dose if the applicant did not receive any doses before 24 months of age. Pneumococcal vaccine is not required for persons 60 months of age or older.	
Measles/Rubella ¹		1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.	
Varicella		1 dose received on or after 12 months of age, unless the applicant has had a reliable history of natural disease.	
Elementary or Secondary School (K-12)	4 years of age and older	Diphtheria/Tetanus/Pertussis ^{4, 5}	3 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or before September 15, 2000 ² ; or 4 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born after September 15, 2000, but on or before September 15, 2003 ² ; or 5 doses with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born after September 15, 2003 ^{2, 3} ; and 1 time dose of tetanus/diphtheria/acellular pertussis-containing vaccine (Tdap) for the applicant in grades 7 and above, if born after September 15, 2000; regardless of the interval since the last tetanus/diphtheria-containing vaccine.
		Polio	3 doses, with at least 1 dose received on or after 4 years of age if the applicant was born on or before September 15, 2003 ⁷ ; or 4 doses, with at least 1 dose received on or after 4 years of age if the applicant was born after September 15, 2003. ⁶ Polio vaccine is not required for persons 18 years of age or older.
		Measles/Rubella ¹	2 doses of measles/rubella-containing vaccine; the first dose shall have been received on or after 12 months of age; the second dose shall have been received no less than 28 days after the first dose; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Hepatitis B	3 doses
		Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, but born on or before September 15, 2003, unless the applicant has had a reliable history of natural disease; or 2 doses received on or after 12 months of age if the applicant was born after September 15, 2003, unless the applicant has a reliable history of natural disease. ⁸
		Meningococcal (A, C, W, Y)	1 dose of meningococcal vaccine received on or after 10 years of age for the applicant in grades 7 and above, if born after September 15, 2004; and 2 doses of meningococcal vaccine for the applicant in grade 12, if born after September 15, 1999; or 1 dose if received when the applicant is 16 years of age or older.

¹ Mumps vaccine may be included in measles/rubella-containing vaccine.
² DTaP is not indicated for persons 7 years of age or older, therefore, a tetanus and diphtheria-containing vaccine should be used.
³ The 5th dose of DTaP is not necessary if the 4th dose was administered on or after 4 years of age.
⁴ Applicants 7 through 18 years of age who received their 1st dose of diphtheria/tetanus/pertussis-containing vaccine before 12 months of age should receive a total of 4 doses, with one of those doses administered on or after 4 years of age.
⁵ Applicants 7 through 18 years of age who received their 1st dose of diphtheria/tetanus/pertussis-containing vaccine at 12 months of age or older should receive a total of 3 doses, with one of those doses administered on or after 4 years of age.
⁶ If an applicant received an all-inactivated poliovirus (IPV) or all-oral poliovirus (OPV) series, a 4th dose is not necessary if the 3rd dose was administered on or after 4 years of age.
⁷ If both OPV and IPV were administered as part of the series, a total of 4 doses are required.
⁸ Administer 2 doses of varicella vaccine, at least 3 months apart, to applicants less than 13 years of age. Do not repeat the 2nd dose if administered 28 days or greater from the 1st dose. Administer 2 doses of varicella vaccine to applicants 13 years of age or older at least 4 weeks apart. The minimum interval between the 1st and 2nd dose of varicella for an applicant 13 years of age or older is 28 days.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Adopt the following **new** subrule 7.11(5):

7.11(5) *Suspend or terminate access.* The department may suspend or terminate an enrolled user's access consistent with department policy if the user violates this chapter, the IRIS Authorized Site Agreement-Organization, the IRIS Authorized Individual User Agreement, or the IRIS Security and Confidentiality Policy. The department shall approve, suspend, terminate, and reinstate user access in accordance with this chapter and department policy.

ITEM 4. Amend subrules 7.12(1) to 7.12(5) as follows:

7.12(1) *Between a physician, physician assistant, nurse, certified medical assistant, pharmacist, or screening provider and the elementary, secondary, or postsecondary school or licensed child care center that the student attends.* A physician, a physician assistant, a nurse, a certified medical assistant, a pharmacist, or a screening provider shall disclose a student's or patient's immunization or health screening information, including the name, date of birth, and demographic information, ~~the month, day, year and vaccine(s) administered;~~ vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, to an elementary, secondary, or postsecondary school or a licensed child care center upon written or verbal request from the elementary, secondary, or postsecondary school or licensed child care center. Written or verbal permission from a student or parent is not required to release this information to an elementary, secondary, or postsecondary school or licensed child care center that the student attends.

7.12(2) *Among physicians, physician assistants, nurses, certified medical assistants, pharmacists or screening providers.* Immunization or health screening information, including the student's or patient's last name, first name, date of birth, and demographic information, ~~the month, day, year and vaccine(s) administered;~~ vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, shall be provided by a physician, physician assistant, nurse, certified medical assistant, pharmacist, or screening provider to another health care provider without written or verbal permission from the student, parent, guardian or patient.

7.12(3) *Among an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.* An elementary school, secondary school, postsecondary school, and licensed child care center shall disclose a student's immunization or health screening information, including the student's last name, first name, date of birth, and demographic information, ~~the month, day, and year of vaccine(s) administered;~~ vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, to another elementary school, secondary school, postsecondary school, and licensed child care center that the student attends. Written or verbal permission from a student, or if the student is a minor, the student's parent or guardian, is not required to release this information to an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.

7.12(4) *Among the department and a physician, physician assistant, nurse, certified medical assistant, pharmacist, screening provider, elementary school, secondary school, postsecondary school, and licensed child care center.* A student's or patient's immunization or health screening information, including name, date of birth, grade, and demographic information; vaccine(s) administered and the month, day and year of administration; and health screening results, clinic source, and location, all in a format specified by the department, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, pharmacists, screening providers, elementary schools, secondary schools, postsecondary schools, and licensed child care centers. Written or verbal permission from a student, patient, parent, or guardian is not required to release this information.

7.12(5) *Among the department and physicians, physician assistants, nurses, resettlement agencies, federal, state, and local government agencies, and certified medical assistants conducting refugee health screenings.* Refugee health screenings shall be disclosed only as indicated in this rule. Immunization or health screening information, including the patient's last name, first name, date of birth, and demographic information; the vaccine(s) administered and the month, day, and year of administration; health screening results; and clinic source and location, shall be disclosed upon written or verbal request among the

PUBLIC HEALTH DEPARTMENT[641](cont'd)

department, physicians, physician assistants, nurses, certified medical assistants, resettlement agencies, federal, state, and local government agencies, or screening providers to another health care provider or the department. Written or verbal permission from the parent, guardian or patient is not required to release this information.

ARC 2734C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 135K.4, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 26, “Backflow Prevention Assembly Tester Registration,” Iowa Administrative Code.

The proposed amendments update the current division name, update the definition of “third-party certification agency,” update the product standards referenced in the definition of “backflow prevention assembly” to reflect the current versions of the standards, remove references to past dates for submission of training courses and third-party certification, provide general language cleanup, add language to clarify the current registration fee structure, add language regarding a returned check fee to align the rules with the other rules of the Division of Acute Disease Prevention, Emergency Response and Environmental Health, and add requirements for test kit calibration and record keeping. These amendments resulted from discussions held with a backflow prevention assembly tester stakeholder group.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 18, 2016. Such written comments should be directed to Carmily Stone, Chief of the Bureau of Environmental Health Services, Iowa Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to carmily.stone@idph.iowa.gov.

A public hearing will be held on October 18, 2016, on the fifth floor of the Lucas State Office Building, Room 517/518, from 1 to 3 p.m., at which time persons may present their views either orally or in writing. The public hearing will also be accessible over the teleconference system. The toll-free call-in number is 1-866-685-1580, and the conference code number to enter when prompted is 0009991863. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons who require assistive services or devices to observe or participate should contact the Bureau of Environmental Health Services at (515)281-5894 in advance of the scheduled date to request that appropriate arrangements be made.

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

These amendments are intended to implement Iowa Code chapter 135K.

The following amendments are proposed.

ITEM 1. Amend rule **641—26.2(135K)**, definitions of “ABPA,” “ASSE,” “AWWA,” “Backflow prevention assembly” and “Third-party certification agency,” as follows:

“*ABPA*” means the American Backflow Prevention Association, ~~P.O. Box 3051, Bryan, Texas 77805-3051.~~

“*ASSE*” means the American Society of Sanitary Engineering, ~~901 Canterbury Road, Suite A, Westlake, Ohio 44145.~~

“*AWWA*” means the American Water Works Association, ~~6666 West Quincy Avenue, Denver, Colorado 80235.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Backflow prevention assembly*,” for the purposes of this chapter, means a device or means to prevent backflow into a potable water system for which a method of testing the device in-line has been published by the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern California.

NOTE: The following assemblies are included under this definition. This is not intended to be an exclusive list. If new devices and test methods are introduced that meet the definition, they are included under the rules.

Backflow Prevention Assembly	Product Standards
Double Check Valve Assembly	ASSE 4015-2009 <u>1015-2011</u> , AWWA C510-07
Double Check Detector Assembly	ASSE 4048-2009 <u>1048-2011</u>
Pressure Vacuum Breaker	ASSE 4020-2004 <u>1020-2011</u>
Reduced Pressure Principle Backflow Preventer	ASSE 4013-2009 <u>1013-2011</u> , AWWA 511-07
Reduced Pressure Detector Assembly	ASSE 4047-2009 <u>1047-2011</u>
Spill Resistant Pressure Vacuum Breaker	ASSE 4056-2004 <u>1056-2013</u>

“*Third-party certification agency*” means the ABPA, ASSE or another agency approved by the department to certify the knowledge and skills of backflow prevention assembly testers.

ITEM 2. Amend subrules 26.4(1) to 26.4(3) as follows:

26.4(1) Tester training.

a. A person or organization that plans to conduct or sponsor a backflow prevention assembly tester training course in Iowa shall apply to the department for approval of the course at least 15 days before the first time the course is held. ~~If a training course was approved before September 15, 2010, the person or organization responsible for the content of the course shall resubmit the information required by 26.4(1)“e.”~~ The application shall include:

(1) to (9) No change.

(10) A \$200 nonrefundable fee. A \$15 returned check fee will be charged for each check returned for insufficient funds.

b. No change.

c. ~~For a course approved after September 15, 2010, the~~ The person or organization responsible for the course content shall submit to the department the information required in paragraph 26.4(1)“a” within 30 calendar days of the fifth anniversary of the initial approval by the department and within 30 calendar days of the anniversary date of each fifth year thereafter. ~~For training courses approved prior to September 15, 2010, the person or organization responsible for the content of the course shall submit to the department the information required in paragraph 26.4(1)“a” within 30 calendar days of October 1, 2011, and within 30 calendar days of October 1 of each fifth year thereafter.~~

d. The course sponsor shall notify the department at least 15 days before an approved training course is started. The notification shall include:

(1) to (3) No change.

(4) A \$50 nonrefundable fee. A \$15 returned check fee will be charged for each check returned for insufficient funds.

e. A training course shall be at least 32 instructional hours, ~~and~~

(1) The training course shall cover at least the following subjects:

~~(1)~~ 1. Backflow definitions, causes and examples.

~~(2)~~ 2. Description of backflow prevention assemblies, their proper application and installation, and their operational characteristics.

~~(3)~~ 3. Description and operational characteristics of test equipment.

~~(4)~~ 4. Techniques for testing backflow prevention assemblies.

~~(5)~~ 5. Troubleshooting of backflow prevention assemblies.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~(6)~~ 6. Record keeping and the responsibilities of regulatory agencies and the registered tester.

(2) The course shall conclude with a written examination of at least 100 questions and a practical examination of testing techniques on all types of testable backflow prevention assemblies. The time for testing shall be in addition to the required instructional hours. To have successfully completed the course, the student must achieve a passing mark of at least 70 percent on the written examination and demonstrate proficiency in testing and troubleshooting procedures.

(3) ~~ABPA or other approved~~ Approved third-party certification agency testing may be substituted for the course test.

f. and *g.* No change.

26.4(2) *Continuing education training.*

a. A person or organization that plans to conduct or sponsor a continuing education course for registered testers in Iowa shall apply to the department for approval of the course at least 15 days before the course is scheduled to begin. The application shall include:

(1) to (7) No change.

(8) A \$50 nonrefundable fee. A \$15 returned check fee will be charged for each check returned for insufficient funds.

b. and *c.* No change.

26.4(3) *Third-party certification agencies.*

a. An agency that wishes to be a third-party certification agency in Iowa shall submit to the department a request for approval in writing on agency letterhead, signed by an authorized representative of the agency. The request shall include at least the following information:

(1) to (8) No change.

(9) A nonrefundable fee of \$200. A \$15 returned check fee will be charged for each check returned for insufficient funds.

b. No change.

c. A third-party certification agency ~~approved before September 15, 2010~~, shall submit to the department the information required in paragraph 26.4(3) "*a*" ~~on or within 30 calendar days before October 1, 2011, and on or within 30 calendar days before October 1 of each fifth year thereafter. A third-party certification agency approved after September 15, 2010, shall submit to the department the information in paragraph 26.4(3) "*a*" on or within 30 calendar days before the fifth anniversary of the initial approval by the department and on or within 30 calendar days before the anniversary date of every fifth year thereafter.~~

ITEM 3. Amend subrules 26.5(1) and 26.5(2) as follows:

26.5(1) *Initial registration.*

a. A person who has successfully completed an approved training course may register with the department within the 12 months after the date of course completion. A person who is certified may register with the department. The applicant must submit:

(1) and (2) No change.

(3) A nonrefundable fee in accordance with Table 1. A \$15 returned check fee will be charged for each check returned for insufficient funds.

The registration shall expire as shown in Table 1.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Table 1
Initial Registration Fees

Registration Month	Even Year		Odd Year	
	Fee	Registration Expiration	Fee	Registration Expiration
January - February	\$66	October 31 + one year	\$30	October 31
March - April	\$60	October 31 + one year	\$24	October 31
May - June	\$54	October 31 + one year	\$18	October 31
July - August	\$48	October 31 + one year	\$84	October 31 + two years
September - October	\$42	October 31 + one year	\$78	October 31 + two years
November - December	\$36	October 31	\$72	October 31 + one year

b. A person who has completed a course of training in another state may be registered in Iowa. The person shall submit:

(1) and (2) No change.

(3) A nonrefundable fee in accordance with Table 1. A \$15 returned check fee will be charged for each check returned for insufficient funds.

The registration shall expire as shown in Table 1.

26.5(2) Renewal registration.

a. Except as provided in subrule 26.5(1), each registered tester shall renew the registration between July 1 and October 1 of each odd-numbered year. The registered tester shall submit:

(1) No change.

(2) Documentation that the registered tester has completed at least five hours of ~~training in~~ approved continuing education courses after October 31 of the previous odd-numbered year or documentation that the registered tester is certified. Registered testers with an initial registration date of January 1 or later in an odd-numbered year are not required to obtain continuing education prior to renewal in that year.

(3) A nonrefundable fee of \$72. A \$15 returned check fee will be charged for each check returned for insufficient funds.

(4) No change.

b. No change.

ITEM 4. Amend rule 641—26.6(135K) as follows:

641—26.6(135K) Standards of conduct.

26.6(1) and **26.6(2)** No change.

26.6(3) A registered tester shall use a differential pressure gauge to field test a backflow prevention assembly. Methods of testing that use other types of equipment, such as but not limited to dual pressure gauges, water columns, or single pressure gauges, shall not be acceptable.

a. The accuracy of a differential pressure gauge used to test backflow prevention assemblies shall be verified no less frequently than every 13 months. The accuracy verification results shall be traceable to the National Institute of Standards and Technology (NIST). Any differential pressure gauge with an error of more than plus or minus 0.2 psi shall not be used to test a backflow prevention assembly.

b. For every test report record retained in accordance with the requirements of subrule 26.6(2), the most recent accuracy verification, for the differential pressure gauge used, performed prior to that test report date shall be retained.

c. The accuracy verification records shall be made available to an authorized representative of the department or by an authorized representative of the administrative authority of the jurisdiction in which the assembly is located.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 5. Amend rule 641—26.7(135K) as follows:

641—26.7(135K) Penalty. A In addition to other sanctions provided in this chapter, a person who violates a provision of this chapter shall be guilty of a simple misdemeanor pursuant to the authority of Iowa Code section 135K.5.

ITEM 6. Amend rule 641—26.8(135K) as follows:

641—26.8(135K) Denial, probation, suspension or revocation. This rule pertains to denial, probation, suspension or revocation of registration; denial or revocation of training course approval; and denial or revocation of approval as a third-party certification agency.

26.8(1) The department may deny an application for registration or renewal, may place a registration on probation, may suspend or revoke a registration, or may order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

a. to j. No change.

k. Engaging in any conduct that subverts or attempts to subvert a department investigation.

l. Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

m. Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

n. Knowingly aiding, assisting or advising a person to unlawfully practice as a backflow prevention assembly tester.

o. Representing oneself as a registered backflow prevention assembly tester when one's registration has been suspended or revoked or when one's registration is lapsed or has been placed on inactive status.

p. Permitting the use of a registration by a nonregistered person for any purpose.

q. Acceptance of any fee by fraud or misrepresentation.

r. Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

26.8(2) The department may deny or revoke the approval for a training course or a continuing education course when it finds:

a. to g. No change.

h. Failure to comply with these rules.

26.8(3) The department may deny or revoke the approval for a third-party certification agency when it finds:

a. to c. No change.

d. Failure to comply with these rules.

26.8(4) Complaints. Complaints regarding a registered tester, an approved training course or a third-party certification agency shall be made in writing and sent to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. to d. No change.

26.8(5) Appeals.

a. Notice of denial, probation, suspension or revocation of registration; denial or revocation of course approval; or denial or revocation of third-party certification agency approval shall be sent to the affected individual or organization by restricted certified mail, return receipt requested, or by personal service. The affected individual or organization shall have a right to appeal the denial, suspension or revocation.

b. An appeal of a denial, probation, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

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If such a request is made within the 30-day time period, the notice of denial, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, suspension or revocation. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

c. to i. No change.

j. 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 by certified mail, return receipt requested, or by personal service to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.

k. No change.

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PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 136B.4, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 43, “Minimum Requirements for Radon Testing and Analysis,” Iowa Administrative Code.

During the 2015 Legislative Session, Iowa Code section 136B.2(1)“b” was amended to allow certified radon measurement specialists to release radon measurement results to prospective home buyers who contracted to have the testing performed during the negotiation of a home sale. Prior to this change to Iowa Code section 136B.2(1)“b,” measurement specialists were prohibited from releasing test results to anyone except the building owner without a waiver from the owner. These proposed amendments will align Chapter 43 with the language found in Iowa Code chapter 136B. There are also several other areas within Chapter 43 that need clarification, and the proposed changes are outlined as follows:

- In subrule 43.3(1), language is added to cover possible additional means for offering radon testing kits other than by mail or directly.
- Subrules 43.3(3) and 43.3(4) are rescinded as they are duplicative statements, and the requirements for certification in those subrules are also included in the requirements for application in subrule 43.4(1).
- In subrule 43.4(1), language is added to more clearly allow for electronic submission of information.
- Subparagraph 43.4(1)“a”(7) is revised to remove specific references to outdated media.
- In paragraph 43.4(6)“e,” “revoked immediately” is stricken, and “shall become inactive” is added regarding certifications that are not renewed within 30 days of expiration, and reinstatement language has also been added.
- Subrule 43.5(1) is stricken to remove duplicative statements and the remaining items are moved to subrule 43.5(2), which allows for all types of enforcement, not limited to revocation and suspension.
- In subrule 43.5(2), language is added so that probation as an enforcement action is a possibility.
- In paragraph 43.5(2)“c,” the word “licensing” is stricken, and the word “certification” is added to be consistent with the rest of the chapter.
- Rule 641—43.8(136B) is amended to clarify exemptions and make them consistent with rule 641—43.1(136B) by adding a statement referencing persons performing testing for no compensation; is

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amended by striking the statement exempting persons performing scientific research; and is amended by adding a reference to local officials administering local programs.

- In rule 641—43.10(136B), language is added stating that penalties set forth in this rule are “in addition to other sanctions provided in this chapter.”

Any interested person may make written suggestions or comments on these proposed amendments on or before October 18, 2016. Such written comments should be directed to Angela Leek, Bureau Chief of Bureau of Radiological Health, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to angela.leek@idph.iowa.gov.

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

These amendments are intended to implement Iowa Code chapter 136B.

The following amendments are proposed.

ITEM 1. Amend subrule 43.3(1) as follows:

43.3(1) Except as provided in this chapter, no person may test for the presence of radon or radon progeny in the state of Iowa unless the person has been certified by the department of public health. This requirement also applies to persons whose place of business is located in Iowa, or in a state other than Iowa, and who offer radon testing to residents of Iowa either directly, ~~or~~ through the mail, or by other means.

ITEM 2. Rescind subrules **43.3(3)** and **43.3(4)**.

ITEM 3. Renumber subrule **43.3(5)** as **43.3(3)**.

ITEM 4. Amend subrule 43.4(1), introductory paragraph, as follows:

43.4(1) An application for certification or renewal of certification as a radon measurement specialist or a radon measurement laboratory shall be filed on a form or other electronic document as prescribed by the department and shall contain complete and accurate information.

ITEM 5. Amend subparagraph **43.4(1)“a”(7)** as follows:

(7) A signed statement that the individual will submit radon test results every 30 days to the Iowa radon program within the department. The radon test results may shall be submitted ~~on a form, a diskette, or through E-mail~~ in a manner that is approved by the department.

ITEM 6. Amend paragraph **43.4(6)“e”** as follows:

e. If payment is not received and the certification has been expired 30 days, certification ~~will be revoked immediately~~ shall become inactive. In order to ~~regain certification~~ reinstate certification after 30 days past the expiration date, the person must reapply and pay the appropriate fees as outlined in this subrule.

ITEM 7. Amend rule 641—43.5(136B) as follows:

641—43.5(136B) ~~Revocation of certification~~ Enforcement actions.

43.5(1) The department will consider ~~revoking or suspending any certification, in whole or in part, for:~~

- ~~*a.* Any misstatement in the application or in any supplementary statement;~~
- ~~*b.* Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department’s refusal to grant a certification on an original application;~~
- ~~*c.* Any violation or failure to observe any of the applicable terms or provisions of certification, the public health law, or any other applicable rule, regulation, code or order;~~
- ~~*d.* Being discontinued or removed from the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program;~~
- ~~*e.* Not fully cooperating with the department or its agents when field evaluations are being conducted;~~
- ~~*f.* Not attending a scheduled meeting or inspection set up by the department or its agents, when the certified person was previously notified and agreed to the time and location of the inspection;~~
- ~~*g.* Not submitting radon test data as required in 641—43.6(136B).~~

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43.5(2) The department may deny, suspend, revoke, modify the certification of a person, place on probation, impose a civil penalty, or refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code chapter 136B, or any combination thereof, when it finds that a certified person or a person who is not certified has committed any of the following acts:

- a.* and *b.* No change.
- c.* Falsifying approval records, qualifications, or other information or documentation related to ~~licensing~~ certification approval;
- d.* to *o.* No change.
- p.* Failing to comply with a subpoena issued by the department or failing to cooperate with a department investigation; ~~or~~
- q.* Failing to pay costs assessed in any disciplinary action;
- r.* Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department's refusal to grant a certification on an original application;
- s.* Being discontinued or removed from the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program; or
- t.* Failing to submit radon test data as required in 641—43.6(136B).

ITEM 8. Amend paragraph **43.6(4)“c”** as follows:

c. ~~Not disclose to any other person, except to the department, the address or owner of a nonpublic building that was tested for radon gas or radon progeny, unless the owner of the building waives this right of confidentiality in writing the results of a test or the address or the name of the owner of a nonpublic building that the person tested for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. However, a person certified or credentialed pursuant to Iowa Code section 136B.1 may disclose the results of a test performed by the person for the presence of radon and radon progeny to a potential buyer of a nonpublic building when an offer to purchase has been presented by the buyer and if the potential buyer paid for the testing. Any test results disclosed shall be results of a test performed within the five years prior to the date of the disclosure.~~

ITEM 9. Amend rule **641—43.8(136B)** as follows:

641—43.8(136B) Exemptions. Certification requirements shall not apply to:

1. Those persons who test for radon/radon decay products in buildings that they own or who perform radon tests for no compensation.
2. ~~Those persons testing for radon/radon decay products as part of scientific research approved by the department.~~
3. ~~2.~~ State officials who are conducting radon testing as part of the state's radon testing program or local officials who are acting on behalf of the state or administering a local program, and approved by the department.
4. ~~3.~~ Officials who are conducting radon testing as part of government programs in the United States or contractors working for the United States government.

ITEM 10. Amend rule 641—43.10(136B) as follows:

641—43.10(136B) Penalties. It is unlawful for an individual to function as a radon measurement specialist or radon measurement laboratory in violation of the provisions of the Iowa radon testing Act or of any rule adopted pursuant to the Act. ~~Persons~~ In addition to other sanctions provided in this chapter, persons convicted of violating the provisions of the Act or the rules adopted pursuant to the Act shall be guilty of a serious misdemeanor (Iowa Code section 136B.5).

ARC 2735C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 135.11(12), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 73, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC),” Iowa Administrative Code.

These proposed amendments to the rules in Chapter 73 make the chapter consistent with the Iowa WIC Policy and Procedure Manual and WIC USDA federal regulations. WIC participants now receive food benefits via an EBT (electronic benefits transfer) eWIC card instead of paper checks. Updates are made throughout Chapter 73 to reflect this change. Several undefined terms used throughout Chapter 73 are defined herein. Updates are made to the rule pertaining to food packages to ensure that the rule is consistent with how WIC foods are approved and which foods are approved. The rules pertaining to appeals and fair hearings are revised so that provisions for local agencies, participants, and vendors are organized into three separate rules instead of being grouped into one rule for local agencies and vendors and one rule for participants. A rule about confidentiality is added. These proposed amendments help to ensure that WIC rules and regulations are followed, thereby improving the success of the program.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 18, 2016. Such written comments should be directed to Kimberly Stanek, Bureau of Nutrition and Health Promotion, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kimberly.stanek@idph.iowa.gov.

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

These rules are intended to implement Iowa Code section 135.11(12).

The following amendment is proposed.

Amend **641—Chapter 73** as follows:

CHAPTER 73
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS, AND CHILDREN (WIC)

641—73.1(135) Program explanation. The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federal program operated pursuant to agreement with the states. The purpose of the program is to provide supplemental foods and nutrition education to eligible pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate incomes. The WIC program is administered on the federal level by the U.S. Department of Agriculture, Food and Nutrition Service (FNS). The Iowa department of public health serves as the administering agency for the state of Iowa. The Iowa department of public health enters into contracts with selected local agencies on an annual basis for the provision of WIC services to eligible participants.

641—73.2(135) Adoption by reference. Federal regulations ~~found at~~ in 7 CFR Part 246 found at <http://www.fns.usda.gov/sites/default/files/wic/WICRegulations-7CFR246.pdf> (effective as of February 13, 1985, as amended through September 27, 2006 January 1, 2016, 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

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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 found at http://www.fns.usda.gov/sites/default/files/2015-08-26-FNS_Handbook%20901-v1-8-1.pdf (as amended through May 28, 2015, 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 WIC state plan provides policy and procedural guidance in the implementation of these regulations to contract agencies administering WIC programs. The WIC state plan as approved by the United States Department of Agriculture is incorporated herein by reference.~~ 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.

641—73.3(135) Availability of rules and policy and procedure manual. Copies of the federal rules and the Iowa WIC state plan Policy and Procedure Manual adopted by reference in 641—73.2(135) are available from: Chief, Bureau of Nutrition and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075, ~~(515)281-4919;~~ (515) 281-7095 or 1-800-532-1579.

~~**641—73.4(135) Certain rules exempted from public participation.** The Iowa department of public health finds that certain rules should be exempted from notice and public participation as being in a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law and regulation governing the Iowa WIC program where the department has no option but to adopt such rules as specified and where federal funding for the WIC program is contingent upon the adoption of the rules.~~

641—73.5 641—73.4(135) Definitions.

“Above-50-percent vendor” means a vendor that derives more than 50 percent of the vendor’s annual food sales revenue from WIC food instruments, and a new vendor applicant expected to meet this criterion under guidelines approved by FNS.

“Applicant” means a person applying for the WIC program, but not yet a participant of the WIC program pregnant woman, breastfeeding woman, postpartum woman, an infant or a child who is applying to receive WIC benefits and the breastfed infant(s) of an applicant breastfeeding woman. “Applicant” includes an individual who is currently participating in the program and who is reapplying because the individual’s certification period is about to expire.

“Authorized supplemental food” means supplemental food authorized by the state or local agency for issuance to a participant.

“Breastfeeding” means the practice of feeding a mother’s breast milk to her infant(s) on the average of at least once a day.

“Breastfeeding women woman” means ~~women~~ a woman up to one year postpartum who are ~~is~~ breastfeeding ~~their infants~~ her infant(s).

“Cash-value benefit” means a fixed-dollar amount food instrument which is used by a participant to obtain authorized fruits and vegetables.

“Categorical eligibility” means a person who meets the definition of a pregnant woman, breastfeeding woman, postpartum woman, or infant or child.

“Certification” means the implementation of criteria and procedures to assess and document each applicant’s eligibility for the program.

“Chief state health officer” or “director” means the director of the Iowa department of public health.

“Children Child” means ~~persons~~ a person who ~~have~~ has had ~~their~~ his or her first birthday but ~~have~~ has not yet attained ~~their~~ his or her fifth birthday.

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“Clinic” means a facility where applicants are certified.

“Competent professional authority” or “CPA” means an individual on the staff of the contract agency who, using standardized WIC screening tools and eligibility criteria provided by the department, determines whether an applicant for WIC services is eligible to receive those services. A CPA shall be a member of one of the following categories:

1. A dietitian licensed by the Iowa board of ~~dietetic examiners~~ dietetics;
2. A nutrition educator as defined in the Iowa WIC Policy and Procedure Manual;
3. A physician, registered nurse or licensed physician assistant.

“Compliance buy” means a covert, on-site investigation in which a representative of the WIC program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts one or more food instruments or cash-value benefits, and does not reveal during the visit that he or she is a program representative.

“Contract agency” means a private, nonprofit or public agency that has a contract with the department to provide WIC services and receives funds from the department for that purpose.

“Department” means the Iowa department of public health.

~~“Director” means the director of the Iowa department of public health.~~

“Disqualification” means the act of ending the WIC program participation of a participant, authorized food vendor, or authorized state or local agency, whether as a punitive sanction or for administrative reasons.

“Division director” means the director of the division of health promotion and chronic disease prevention, Iowa department of public health.

“ECR” means electronic cash register.

“eWIC” means functions related to the electronic benefits transfer (EBT) card.

“Family” means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.

“Fiscal year” means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

“FNS” means the Food and Nutrition Service of the U.S. Department of Agriculture.

“Food instrument” means a voucher, check, coupon, electronic benefits transfer (~~EBT~~ EBT-eWIC) card or any other document used to obtain supplemental foods.

~~“HAWK-I” means healthy and well kids in Iowa and is the health insurance program in Iowa, as authorized in Title XXI of the Social Security Act.~~

“Health professional” means an individual who is licensed to provide health care or social services within the individual’s scope of practice.

“Health services” means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

“Hearing officer” means the contract agency director, health professional, community leader or impartial citizen who is designated to hear the appeal of a participant, and is not to be confused with the statutory definition of a hearing officer, which is an administrative law judge.

“Homeless facility” means the following types of facilities which provide meal service: a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or normally used as, a regular sleeping accommodation for human beings.

“Homeless participant” means a woman, infant or child:

1. Who lacks a fixed and regular nighttime residence; or
2. Whose primary nighttime residence is:
 - A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodations;

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- An institution that provides a temporary residence for individuals intended to be institutionalized;
 - A temporary accommodation of not more than 365 days in the residence of another individual;
- or
- A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

“Infant formula” means a food that meets the definition of an infant formula in Section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under Section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR Parts 106 and 107.

“Infants Infant” means persons a person under one year of age.

“Iowa WIC Policy and Procedure Manual” means all of the state WIC policies and procedures that describe the manner in which the department implements and operates all aspects of program administration within its jurisdiction in accordance with 7 CFR Part 246.

“Nutritional risk” means: (a) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; (b) other documented nutritionally related medical conditions; (c) dietary deficiencies that impair or endanger health; or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

“Nutritional risk” means:

1. Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements;
2. Other documented nutritionally related medical conditions;
3. Dietary deficiencies that impair or endanger health;
4. Conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or
5. Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

“Nutrition education” means an individual or group education sessions 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 and health, all in keeping with the individual’s personal, cultural, and socioeconomic preferences.

“Participants Participant” means a pregnant women woman, breastfeeding women woman, postpartum women woman, infants and children infant or child who are is receiving supplemental foods under the program, and the breastfed infants infant(s) of a participant breastfeeding women woman.

“Peer group” means a system of grouping WIC vendors according to structure; type; number of cash registers; square footage; and sales. Peer groups are used to establish statistical norms that an individual store vendor may be compared against and provide the numeric baselines for the process of determining what may be fraudulent behavior.

“PIN” means personal identification number.

“Postpartum women woman” means women a woman up to six months postpregnancy who are is not breastfeeding.

“Pregnant women woman” means women a woman determined to have one or more embryos or fetuses in utero.

“Program” means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966.

“Rebate” means the amount of money refunded under cost containment procedures to the department from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in the department’s WIC program. Such rebates shall be payments made subsequent to the exchange of a food instrument for food.

“Routine monitoring” means overt, on-site monitoring during which WIC program representatives identify themselves to vendor personnel.

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“SNAP” or “Supplemental Nutrition Assistance Program,” formerly known as the Food Stamp Program, means the program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011, et seq.), in which eligible households receive benefits that can be used to purchase food items from authorized retail vendors and farmers’ markets.

“USDA” means the United States Department of Agriculture.

“Vendor” means a retail outlet that provides supplemental food to WIC program participants.

“Vendor authorization” means the process by which the department assesses, selects, and enters into agreements with vendors that apply or subsequently reapply to be authorized as vendors.

“Vendor overcharge” means intentionally charging the department more for authorized supplemental foods than is permitted under the 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 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.

“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.

641—73.6 641—73.5(135) Staffing of contract agencies.

~~73.6(1)~~ Rescinded IAB 10/9/96, effective 11/13/96.

~~73.6(2)~~ **73.5(1)** The competent professional authority (CPA) shall conduct either the diet history or the health history part of the certification process ~~and shall sign the certification form attesting or both histories and shall attest~~ to the applicant’s eligibility for services after the certification process is completed.

~~73.6(3)~~ **73.5(2)** Contract agencies shall maintain on file documentation of qualifications for any individual employed or under contract as a CPA.

~~73.6(4)~~ **73.5(3)** All contract agencies shall employ at least one licensed dietitian to provide services for participants determined to be at high risk. Nutrition educators employed by a contract agency shall be supervised by a licensed dietitian.

~~73.6(5)~~ Rescinded IAB 10/9/96, effective 11/13/96.

~~73.6(6)~~ Contract agencies shall submit the license number of each dietitian hired within 30 days of employment.

~~73.6(7)~~ **73.5(4)** Proposed staffing patterns within contract agencies shall be subject to approval from the department following review in accord with established statewide WIC staff patterns.

641—73.7 641—73.6(135) Certification of participants. The certification process to determine eligibility for WIC services, as defined in 7 CFR 246.7, shall include the following procedures and definitions:

~~73.7(1)~~ **73.6(1) Application.** Information on identity, address, family incomes, and ~~nutrition~~ nutritional risk must be collected in accordance with the Iowa WIC Policy and Procedure Manual.

~~73.7(2)~~ **73.6(2) Income.**

a. The income guidelines used shall be the same as the National School Lunch Program guidelines for reduced price school lunches, which are equal to 185 percent of the current federal poverty guidelines. Definitions of income are mandated by federal regulation and are described in the Iowa WIC ~~state plan~~ Policy and Procedure Manual. Revised dollar figures for the 185 percent poverty level are published annually in the Federal Register and become effective for WIC no later than July 1 following their publication. Copies of the income definitions and monetary guidelines are available from the department.

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b. Applicants must provide the contract agency written proof of their income as part of each certification process, pursuant to the Iowa WIC Policy and Procedure Manual.

~~73.7(3)~~ **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 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.

~~e.~~ ~~Rescinded IAB 5/30/01, effective 7/4/01.~~

~~d. c.~~ Priority II infants ~~pre-certified~~ precertified with referral data require a full certification within ~~six weeks~~ 30 days of the infant's birth.

~~73.7(4)~~ **73.6(4)** *Medical equipment.*

a. Medical equipment used in conducting WIC clinics shall be subject to approval by the department.

b. Standards for conducting the medical and nutritional assessments on WIC program applicants shall be as described in the Iowa WIC Policy and Procedure Manual.

c. Medical equipment shall be recalibrated in accord with procedures outlined in the Iowa WIC Policy and Procedure Manual.

~~73.7(5)~~ **73.6(5)** *Documentation of health and nutrition information.* Documentation of health and nutrition information in individual participant records shall be as described in the Iowa WIC Policy and Procedure Manual.

~~73.7(6)~~ **73.6(6)** *Documentation of nonmedical information.* Documentation of nonmedical information in individual participant and collective program records shall be as described in the Iowa WIC Policy and Procedure Manual.

~~73.7(7)~~ **73.6(7)** *Transfer of participant information.* Requirements for use and disclosure of confidential applicant and participant information for non-WIC purposes were revised in the Federal Register September 27, 2006, Department of Agriculture, Food and Nutrition Service, 7 CFR Part 246, Miscellaneous Provisions; Final Rule 246.25(a)(4).

a. *Designation by chief state health officer.* The chief state health officer must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

b. *Notice to applicants and participants.* The applicant or participant will be notified at the time of application (in accordance with 7 CFR 246.7(i)(11)) or through a subsequent notice that the chief state health officer may authorize the use and disclosure of information about an applicant's or participant's participation in the WIC program for non-WIC purposes. This statement will also indicate that such information will be used by state and local WIC agencies and public organizations only in the administration of programs that serve persons eligible for the WIC program.

c. *Written agreement and ~~WIC state plan~~ policy and procedure manual.* The state or local agency disclosing the information will enter into a written agreement with the other public organization or, in the case of a non-WIC use by a state or local WIC agency, the unit of the state or local agency that will be using the information. The ~~state agency~~ department will also include in its ~~state plan~~ the Iowa WIC Policy and Procedure Manual, as specified in 7 CFR 246.4(a)(24), a list of all organizations (including units of the ~~state agency~~ department or local agencies) with which the ~~state agency~~ department or its local agencies have executed or intend to execute a written agreement. The written agreement must:

(1) Specify that the receiving organization may use the confidential applicant and participant information only for:

1. Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;
2. Conducting outreach to WIC applicants and participants for such programs;
3. Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by state law;

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4. Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC program; or

5. Assessing and evaluating the responsiveness of a state's health system to participants' health care needs and health care outcomes; and

(2) Contain the receiving organization's assurance that ~~it~~ the organization will not use the information for any other purpose or disclose the information to a third party.

~~641—73.8~~ ~~641—73.7(135)~~ **Food delivery.** Food delivery refers to all aspects of the method by which WIC participants receive food benefits, ~~i.e., printing,~~ including but not limited to the issuing, distribution, and processing of ~~computerized~~ personal food instruments redeemable through retail food markets and the statewide banking system. Food delivery shall be uniform throughout the state as provided for by these rules.

~~73.8(1)~~ **73.7(1)** *Responsibilities of WIC participants.*

a. *Prompt redemption of food instruments.* A WIC participant must redeem WIC benefits within the validated date of use.

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 nutrition education contacts. Missed attendance may entitle contract agencies to deny that month's benefit. ~~If a written statement is provided to the contract agency, a proxy may pick up food instruments. A proxy may pick up food instruments as described in the Iowa WIC Policy and Procedure Manual.~~

c. *Adherence to standards for use of the food instrument.* The WIC participant in using the WIC food instrument to obtain the specified foods shall:

(1) ~~Sign the WIC identification card at~~ At the time of receipt of food benefits in the clinic, electronically sign that food benefits were received.

(2) ~~Present the WIC identification card to the vendor~~ Swipe the eWIC card at the vendor's ECR and enter the participant's PIN at point of purchase.

~~(3) Sign each food instrument in the appropriate box in the presence of the vendor.~~

~~(4) Write in the total amount of the purchase in the designated space.~~

~~(5)~~ (3) Not accept money in exchange for unused food ~~instruments~~ benefits or portions of the food allotment.

~~(6)~~ (4) Attempt to redeem food ~~instruments~~ benefits only with a WIC-contracted vendor.

~~73.8(2)~~ **73.7(2)** *Responsibilities of contract agencies.*

a. *Loss or theft of food instruments.* The contract agency is responsible for any financial loss due to theft or other loss of food instruments from clinics. Steps for minimizing the chances of theft or loss are followed in accord with the Iowa WIC Policy and Procedure Manual.

b. *Mailing of WIC food instruments.* Mailing of food instruments to participants is allowed ~~when inclement weather prevents participants from coming to a distribution site~~ 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.

~~c. Use of manual food instruments. Rescinded IAB 1/30/08, effective 3/5/08.~~

~~d. c.~~ *Training/monitoring of WIC vendors.* The contract agency shall communicate information regarding the Iowa WIC program to vendors, as instructed by the department. Monitoring and training of vendors and securement of contracts shall be carried out in accordance with department directives outlined in the Iowa WIC Policy and Procedure Manual.

~~e. d.~~ *Food ~~instrument~~ instrument/benefits distribution on ~~nonclinic~~ non-clinic days.* It is the policy of the Iowa WIC program to ensure maximum accessibility to program benefits by establishing alternate procedures for distributing WIC food instruments to participants on days other than regularly scheduled clinic days when the participant notified the contract agency on or before the clinic day of the participant's inability to appear at the clinic. Each contract agency shall establish written guidelines for assessing the adequacy of reasons presented for inability to appear and shall establish written procedures for alternative means of food ~~instrument~~ instrument/benefits distribution when a participant timely presents

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adequate reasons for inability to appear on a regularly scheduled clinic day. These written guidelines and procedures shall be subject to review and approval by the department.

~~73.8(3)~~ 73.7(3) *Responsibilities of department.* Provision of foods through retail grocers and special purpose vendors is an integral part of the WIC program's function. It is the responsibility of the department to ensure that there are a sufficient number of ~~stores~~ vendors authorized to provide reasonable access for ~~program~~ WIC participants. The department also has an obligation to ensure that both food and administrative funds are expended in the most efficient manner possible. As with all other purchases made by state government, this means that ~~the number of vendors (retail grocers and special purpose vendors) may be limited and that~~ all vendors must meet minimum criteria for approval. The Iowa WIC program does not limit the number of vendors that may participate in the agency service area. A retailer that intends to derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments will not be allowed. The department shall be responsible for the following:

a. Approving or denying vendor applications. The department shall determine if applications meet the mandatory specifications in ~~73.8(4)~~ 73.7(4) and meet the minimum review points in ~~73.8(4)~~ 73.7(4) for a subsequent agreement.

b. Compiling the statewide or local area composite data against which vendor applications are reviewed, determining if applications meet the selection criteria which require use of that data, providing training, and signing the initial authorization agreement if a vendor is determined ~~to be~~ eligible.

c. Developing procedures, forms, and standards for agencies to use in conducting on-site review of vendor applications, monitoring, compliance buys, educational buy monitoring, or compliance investigations as defined in ~~73.8(5)~~ 73.7(5).

d. Determining when compliance investigation activities are necessary to verify WIC program violations, developing or approving standards and procedures to be used in conducting the activities, and arranging for an appropriate state or private agency to conduct the compliance buying investigation as required.

e. Providing to vendors written notice ~~to vendors~~ of WIC program violations and sanctions.

f. Ensuring that activities related to eWIC follow information provided by FNS's WIC EBT operating rules, WIC EBT Technical Implementation Guide and FNS Handbook 901.

~~73.8(4)~~ 73.7(4) *Responsibilities of WIC vendors.* A potential vendor shall make application to the Iowa department of public health WIC program and shall accept the obligations imposed by the signing of a WIC vendor agreement prior to acceptance of any WIC food instrument. The two categories for which any potential vendor may apply are grocery vendors and special purpose vendors. A retailer that intends to derive more than 50 percent of annual revenue of the sale of food items, for grocery vendors, or of infant and special medical formula, for special purpose vendors, from the redemption of WIC food instruments will not be approved.

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

(1) The vendor must stock all of the following categories of items to be defined as a grocery vendor: a minimum of 5 linear feet of raw fruits and vegetables; a minimum of 12 linear feet of unbreaded fresh or frozen meats and poultry (prepackaged luncheon meats do not qualify); canned and frozen vegetables; dairy products; ~~and~~ cereals; and breads.

(2) No more than 20 percent of the vendor's gross retail sales may be from the sale of gasoline or other automotive supplies.

(3) No more than 20 percent of the vendor's gross retail sales may be from the sale of alcoholic beverages and tobacco products.

(4) The vendor must maintain regular business hours. This shall include a minimum of two 4-hour blocks of time on each of five days per week. Daily operating hours shall be consistent from week to week, and shall be posted.

(5) The vendor must stock the minimum variety and quantity of WIC-approved foods as defined in the latest revised version of the Iowa WIC vendor application.

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1. The specific brands of products that are included on the WIC-approved food list shall be made available to the vendor at the time of application and prior to renewal of each agreement.

2. The variety and quantity in stock are defined as including both inventory on display and in on-premises storage, but not inventory on order from suppliers.

(6) The vendor must purchase formula only from state-licensed wholesalers, distributors, retailers, and infant formula manufacturers registered with the Food and Drug Administration (FDA) through a list maintained by the WIC program.

~~(6)~~ (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.

~~(7)~~ There must be a minimum of five current WIC participants residing in the same ZIP code area as the vendor.

(8) Vendors will also be selected based on access to WIC participants. If at all possible, at least one vendor contract will be maintained in rural counties where a WIC clinic is located. The Iowa WIC program does not limit the number of vendors that may participate in the agency service area.

(9) The vendor must have a current state of Iowa food establishment license.

(10) The vendor must consistently identify WIC products by using shelf labels that meet specific criteria and price points as described in the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

~~(8)~~ (11) The vendor must not have had a ~~food stamp program~~ Supplemental Nutrition Assistance Program (SNAP) disqualification or civil monetary penalty imposed within the 12 months preceding the date of the application or reauthorization.

~~(9)~~ (12) The vendor must not have had a WIC program suspension imposed or a WIC application denied within the six-month period preceding the date of the application.

~~(10)~~ (13) The vendor must not have had a conviction or civil judgment for any activity that indicates a lack of business integrity against any of the officers or owners during the previous six years.

~~(11)~~ (14) The vendor must accept training on WIC program regulations prior to signing an agreement and must agree to provide training to all employees who will handle WIC food instruments prior to accepting any food instruments.

~~(12)~~ (15) The vendor must agree to adhere to all provisions of the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

b. Special purpose vendor. To qualify as a special purpose vendor, a retail outlet shall meet all of the following criteria:

(1) The vendor may be primarily a retailer of any type of merchandise but shall be authorized to provide only specified infant formula in exchange for WIC food instruments.

(2) The vendor must be able to provide the specified formula within 48 hours; 72 hours if a weekend or holiday is involved.

(3) The prices charged to WIC participants must be equal to or less than the prices charged to all other customers. The average price of each brand of infant formula sold to WIC participants as reported must not exceed the average price of the same brands of infant formula charged by all authorized WIC grocery vendors in the same peer group.

(4) The vendor shall meet the criteria in paragraph "~~a,~~" 73.7(4) "a," subparagraphs (2) ~~to~~ through (4), ~~and (6) to (12)~~ through (8), and (10) through (15), for grocery vendors.

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(5) The vendor must agree to adhere to applicable provisions of the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

~~(6) Vendors that derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments are not allowed.~~

c. Application review. The department shall review each vendor application within five working days of receipt and determine if the information provided indicates that the retail outlet meets the selection criteria. If the application shows that the vendor does not meet one or more of the criteria, the department shall deny the application. If the vendor's application indicates that the vendor would qualify, the department or contract agency shall make an on-site visit to verify that the information provided in the application is correct, to provide training, and sign the agreement. If the department or contract agency finds that the vendor has two or more types of out-of-date, stale, or moldy WIC foods in stock during the on-site visit, the vendor's application may be denied. If the contract agency or department determines during the on-site visit that the vendor does not qualify, the contract agency or department shall not sign the agreement. Within five working days of disapproving an application or agreement, the department will advise the vendor in writing of the reasons for denial of the application and the procedure for appeal. During the on-site visit, the contract agency representative is acting as an agent of the department and has the authority to approve or deny an application.

A vendor that is denied an agreement, either at the application review level or at the on-site review, is required to wait six months prior to submitting a new application. ~~The~~ Prior to completing its review, the department may, at its discretion, request a vendor to resubmit an application ~~prior to completing its review~~ if the application has not been completed to the extent that a determination of eligibility can be made.

e. 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 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" ~~within the previous 24 months~~ 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" ~~within the last 24 months,~~ during a contract period or if any of the following conditions are in effect:

(1) The vendor has failed to submit any of the preceding year's Price Assessment Reports by the specified dates.

~~(2) The vendor has not cashed any WIC food instruments for at least two consecutive months at any time during the contract period, or has not cashed five or more WIC food instruments for any 120-day period during the contract period. A vendor will not be excluded under this provision if it is the only grocery or special purpose vendor in that ZIP code area.~~

~~(3) (2)~~ Any of the selection criteria listed in ~~73.8(4) "a"~~ 73.7(4) "a" and "b" above are no longer met.

Expiration of a WIC 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.

d. e. Training. Vendors shall accept training in WIC program policies and procedures at the on-site review prior to becoming an authorized vendor and shall be responsible for training all employees who will be handling WIC food instruments. The manager and person responsible for staff training must allow time at this visit for training; the agreement will not be signed until training is completed. Vendors shall be responsible for all actions of their employees in conducting WIC transactions.

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If violations of WIC program policies and procedures are documented, either through on-site monitoring or other indirect means, the vendor shall implement a corrective action training plan developed jointly by the vendor and the department or contract agency.

e. Validity of food instruments. The WIC vendor shall be responsible for ensuring that:

- (1) The participant signature required on the food instrument is completed in the vendor's presence;
- (2) The participant presents a WIC identification card prior to redeeming food instruments. A signature on the WIC identification card must match the food instrument signature;
- (3) The type and quantity of food to be purchased is as indicated on the food instrument;
- (4) The amount of money written onto the food instrument for repayment does not exceed the maximum amount as designated by the department and printed on the food instrument;
- (5) The expiration date is present on the food instrument and is equal to or no later than the date of usage;
- (6) WIC food instruments are never exchanged for cash or credit;
- (7) Substitutions of foods different from those listed on the food instrument in type or amount are not made;
- (8) Food instruments are presented to the state's agent (bank) for payment within 15 days of the date of receipt;
- (9) The costs of foods purchased by WIC participants do not exceed charges to other customers for the same foods;
- (10) The vendor's authorizing number is stamped with the state-issued vendor stamp on the face of the food instrument prior to its being presented for payment.

f. Cooperation during monitorings. Contracted WIC vendors shall cooperate with department and contract agency staff who are present on site to monitor the store's vendor's WIC activities.

g. Reimbursement to the WIC program. Vendors determined by the department to have collected more moneys than the true value of food items received shall make reimbursement to the department.

73.8(5) 73.7(5) Vendor monitoring. To maintain WIC program integrity and accountability for federal or state program funds, the department and contract agencies shall conduct ongoing monitoring of authorized vendors, both through on-site visits and through indirect means. A sample of 10 percent of currently authorized vendors receives on-site monitoring every year. Vendors that change ownership during the year, or that apply during the contract period, receive an on-site visit prior to signing an agreement. The types of on-site monitoring are defined 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, ~~examination of redeemed WIC food instruments on hand~~, review of ~~store~~ 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 ~~store~~ vendor employees. At the conclusion of the transaction, the results of the buy are discussed with the ~~store~~ vendor owner or manager on duty. The transaction is then voided, and the merchandise returned to the shelves. 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 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.

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b. Electronic monitoring is examination of indicators tracked in the vendor computer database. It allows the analysis of data collected via computer from the contract agencies and the state's bank, from which patterns indicating compliance with or deviation from established patterns for Iowa WIC vendors emerge. Data is collected daily and reviewed on an ongoing basis. Trends identified can necessitate another type of monitoring, depending on the nature of each exception.

c. Compliance investigations may be used for any vendors. Compliance investigations will be conducted annually in a minimum percentage of vendors as mandated in federal regulations. A compliance investigation includes a sufficient number of compliance buys to provide evidence of WIC program noncompliance, two compliance buys in which no WIC program violations are found, or when an inventory audit has been completed. A compliance buy means a covert, on-site investigation in which a representative of the WIC program poses as a participant, parent or caretaker, or proxy, transacts one or more food instruments and does not reveal during the visit that he or she is a WIC representative. Compliance buys may be performed by the department or another state agency or private company under contract with the department. The department is responsible for identifying the vendors to be investigated and for approving the protocol to be used during the investigation. Upon completion of a compliance buy documenting WIC program violations, the department shall issue the vendor a notice of violation points assessed unless such notification would hinder an investigation.

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, is confidential as provided for in Iowa Code section 22.7(6). This business information could provide an advantage to competitors and would serve no public purpose if made available.

641—73.9 641—73.8(135) Food package. The authorized supplemental foods shall be prescribed for participants by a CPA in the contract agency from food packages outlined in 7 CFR 246.10 and in accordance with the following:

73.9(1) 73.8(1) Prescription of foods. Food packages shall maintain a balance between cost and nutrition integrity. There are two components to this balance: (1) administrative adjustments by the department; and (2) nutrition tailoring by both the department and the CPA in the contract agencies.

a. Administrative adjustments include restrictions in the packaging methods, brands, sizes, types, and forms (but not quantities) of the federally allowable foods in order to establish the approved food list for the state. Administrative adjustments include decisions to eliminate more expensive brands or prohibit more costly food items allowed by regulations. Criteria for considering foods for inclusion in the approved food list are found in ~~73.9(3)~~ **73.8(3)**.

b. Nutrition tailoring includes changes or substitutions to food types, forms, and quantities in order to prescribe food packages that better meet the nutritional needs of participants. Tailoring is done to reduce quantities of foods based on nutritional needs, to accommodate participant preferences, to accommodate household conditions, such as lack of refrigeration or other special needs and problems of homeless or transient participants, and to recommend or prescribe specific forms of the allowable WIC foods based upon a participant's nutritional needs or goals.

e. ~~Rescinded IAB 8/4/04, effective 9/8/04.~~

73.9(2) 73.8(2) Tailoring to meet individual ~~nutrition~~ nutritional needs. Food packages are individually tailored to meet the needs of specific participants according to USDA regulations and the Iowa WIC Policy and Procedure Manual.

73.9(3) 73.8(3) Criteria for approving products for inclusion in the WIC food package.

a. A product shall meet the federal regulations governing the WIC food package.

b. Variety in the food package is encouraged to increase the likelihood of products being used and to allow participants to exercise responsibility in shopping.

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. 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:

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- ~~(1) They are carried by current Iowa WIC-approved vendors.~~
- ~~(2) The product form and marketing approach are consistent with the promotion of good nutrition and education.~~
- ~~(3) (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) The brand is carried by current Iowa WIC-approved vendors. Any private-label (store) brands that meet the selection criteria will also be considered.~~
- ~~(4) Ready-to-eat cold cereals are ranked by the six major distributors to Iowa grocery retailers based on volume of total sales. Hot cereals are ranked in the same way. Multiple container sizes of a single cereal variety shall be considered as one variety for the purposes of constructing this ranking. The department compiles data from all distributors to develop an overall ranking or ranked list. At least half of the cereals authorized on the WIC-approved food list must have whole grain as the primary ingredient by weight and must meet labeling requirements for making a health claim as a whole grain food with moderate fat content.~~
- ~~(3) The department reserves the right to limit the number of approved cereals for administrative efficiency.~~
- ~~(5) Product has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.~~
- 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. Juices are ranked by the six major distributors to Iowa grocery retailers based on volume of total sales. 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) Product has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.~~
- ~~(6) (5) Frozen fruit juices must be single flavors.~~
- f.* The following conditions apply to dairy products:
- ~~(1) To qualify, brands of whole, 1%, or fat-free skim milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands which have a retail value of 115 percent or higher than the state average for this product.~~
- ~~(2) Fluid milk with added bacterial cultures or enzymes, including but not limited to sweet acidophilus or lactose-reduced milk, may qualify. Brands are approved by the department on a case-by-case basis.~~
- ~~(3) All brands of natural cheese designated in the USDA WIC regulations qualify. The cheese shall have no added flavors (e.g., smoke flavoring, peppers, wine).~~
- ~~(4) Yogurt shall meet federal guidelines for content and shall also meet the following conditions:~~
- ~~1. The 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.* All brands of packaged dried beans or peas are approved ~~whether packaged or purchased in bulk~~; however, no soup mixes and no dried beans or peas with added vegetables, fruits, meat, sugars, fats, or oils are allowed.
- h.* Any brand of peanut Peanut butter qualifies as long as it does not contain other ingredients such as jelly must meet federal guidelines. Brands may be either refrigerated or nonrefrigerated.

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

j. 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.

k. Commercial infant formula shall meet the following conditions:

(1) It is registered with the Food and Drug Administration as complying with the legal definition of infant formula.

(2) It complies with the calorie and iron content prescribed by the ~~federal WIC regulations~~ USDA.

(3) It is approved by the USDA for use in the WIC program.

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

~~(5) All of the formula marketed under one label shall meet all standards. If a similar, nonqualifying formula is marketed along with a qualifying formula, participants may be easily confused. Therefore, the qualifying formula shall not be approved.~~

l. At least two whole grain options that meet federal guidelines will be provided.

m. Infant food fruits, vegetables and meats must meet the federal guidelines.

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

o. Soy beverages shall meet federal guidelines.

p. Tofu shall meet federal guidelines.

~~*q.*~~ *q.* 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 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.

~~*r.*~~ *r.* 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.

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

~~641—73.10~~ 641—73.9(135) Education.

~~73.10(1)~~ 73.9(1) Nutrition education for WIC participants.

a. Nutrition education is provided as a benefit to all women and to parents of all children enrolled in the WIC program.

b. A minimum of two nutrition education contacts shall be offered to each woman participant or the parent/guardian of ~~children~~ children/infants participating in WIC during each certification period.

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

d. All pregnant women enrolled in WIC shall ~~receive~~ be offered education on the benefits of breastfeeding.

e. Education in normal nutrition, i.e., education in nutrition for life-cycle stages, shall be provided in accordance with the Iowa WIC Policy and Procedure Manual.

f. Participants who are at high risk, as defined in the Iowa WIC Policy and Procedure Manual, shall receive counseling and a nutrition plan of care developed by a licensed dietitian. The plan of care shall be documented in the participant record and shall include scheduling a minimum of one individual education contact by a licensed dietitian.

g. The department shall make nutrition education materials and resources available at no cost to contract agencies. The department reserves the right to review and approve or disapprove any printed materials or lesson plans developed by contract agencies.

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h. To the extent that time and resources are available, nutrition education may be provided to applicants who are not eligible to receive other WIC services.

~~73.10(2)~~ **73.9(2)** *Education of contract agency personnel.* Agencies accepting WIC funds shall be responsible for ensuring that all agency staff or contractors are adequately trained for their responsibilities. At a minimum, training shall include the components described in the Iowa WIC Policy and Procedure Manual.

Continuing education is an allowable WIC administrative expense for contract agency staff and contractors who provide nutrition education.

~~641—73.11~~ **641—73.10(135)** **Health services.** The WIC program shall serve in the arrangement of ongoing health services for its participants. ~~Health services are defined to include ongoing, routine pediatric and obstetrical care, and referral for diagnosis and treatment of any other condition.~~ Contract agencies not able to provide such health services directly shall enter into written agreements with other public health agency(ies) or private physician to ensure availability of health services.

~~73.11(1)~~ **73.10(1)** *Written agreements.*

a. Contract for services. Contract agencies shall maintain an annual written, contractual agreement with any health agency performing WIC health assessments, whether for fee or exchange of service.

b. Memorandum of understanding. Contract agencies shall maintain a current memorandum of understanding with any health agency designated to provide ongoing health services to WIC participants and with any agency providing referral data ~~for precertification of infants and pregnant women.~~

~~73.11(2)~~ **73.10(2)** *Referral procedures.* The contract agency shall be responsible for referral of WIC participants to appropriate health care providers, as determined by the WIC health professional's assessment of their condition.

a. Authorization for release of information. Except as indicated below, before releasing medical or other personal information, including name, to an outside agency, the contract agency shall secure the participant's or parent/legal guardian's written authorization to release such information. A statement shall be signed for each specific provider to which information is being sent. The information contained in individual participant records shall be confidential pursuant to 7 CFR 246.26.

Referrals to the department of human services' child protective services for investigation of potential child abuse ~~or to a law enforcement agency conducting an active criminal investigation~~ may be made without obtaining a written release of information. Procedures for responding to a subpoena are made in accordance with the Iowa WIC Policy and Procedure Manual.

b. The referral form. A standard referral form, as provided by the department, shall be completed and sent to the referral agency. Documentation and follow-up are made in accord with the Iowa WIC Policy and Procedure Manual.

~~641—73.12~~ **641—73.11(135)** **Appeals and fair hearings—local agencies and vendors.**

~~73.12(1)~~ **73.11(1)** *Right of appeal.* The right to appeal shall be granted when a local agency's or 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 local agency or vendor is disqualified or any other action which affects participation is taken. For participating vendors, a minimum of 30 days' advance notice will be given before the effective date of the action. For participating contract agencies, a minimum of 60 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:

~~a. When a vendor's contract expires.~~

~~b. When the department makes a determination regarding participant access.~~

~~c. When a vendor is disqualified from the WIC program as a result of a food stamp program disqualification.~~

~~d. When a vendor does not agree with the validity or appropriateness of selection criteria defined in 73.8(4).~~

a. Applicant. An applicant may appeal the denial or rejection of a timely submitted application.

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b. Contract agencies. The right to appeal shall be granted when, during the course of the contract or agreement period, a local agency is disqualified or any other action which affects participation is taken.

~~73.12(2) 73.11(2)~~ *Request for hearing.* An appeal is brought by filing a written request for a hearing with 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, within ten days of receipt of notification of the adverse action. The written request for hearing shall state the adverse action being appealed. The appeal shall be submitted in writing within ten business days of receipt of notification of the adverse decision. The appeal shall be addressed to the contract administrator cited in the competitive selection application guidance, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

a. Applicant. In the event of an appeal, the department will continue working with the applicant awarded funding pending the outcome of the appeal.

b. Contract agencies. For participating contract agencies, a minimum of 60 days' advance notice will be given before the effective date of the action.

~~73.12(3) 73.11(3)~~ *Contested cases.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals (DIA) pursuant to the administrative rules adopted by that agency DIA 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 department of inspections and appeals DIA.

~~73.12(4) 73.11(4)~~ *Notice of hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge (ALJ) shall schedule the time, place, and date of the hearing so that the hearing is held as expeditiously as possible. Hearings shall be conducted by telephone or in person in Des Moines at the Lucas State Office Building or other suitable location. If necessary, parties will be provided at least two opportunities to have the hearing rescheduled.

~~73.12(5) 73.11(5)~~ *Conduct of hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246.24. Copies of these regulations are available from the department of inspections and appeals upon request.

~~73.12(6) 73.11(6)~~ *Decision.* A written decision of the ALJ shall be issued, where possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time.

~~73.12(7) 73.11(7)~~ *Decision of ALJ.* When the ALJ 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 agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken filed by either of the parties as provided in 641—subrule 73.12(8) 176.8(5) or the director serves notice on the parties of the director's intent to review the decision.

~~73.12(8) 73.11(8)~~ *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the ALJ 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 ALJ's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

~~73.12(9) 73.11(9)~~ *Record of hearing.* Upon receipt of an appeal request, the ALJ shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the hearing officer ALJ.

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~~73.12(10) 73.11(10)~~ *Decision of director.* ~~The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service. Upon receipt of a properly filed appeal, the director shall establish a briefing schedule and, at the discretion of the director, an opportunity for oral argument. An appeal to the director shall be based on the record made at the hearing. The director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law the director finds to be in error. The decision and order of the director shall be delivered by certified mail, return receipt requested, or by personal service, and becomes the department's final decision upon receipt by the aggrieved party.~~

~~73.12(11) 73.11(11)~~ *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 pursuant to Iowa Code chapter 17A.

~~73.12(12) 73.11(12)~~ *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. The party who appeals a final agency action to district court shall pay the costs of the preparation of a transcript of the contested case hearing for the district court.

~~641—73.13 641—73.12(135)~~ **Right to appeal—participant.**

~~73.13(1) 73.12(1)~~ *Right of appeal.* A WIC participant shall have the right to appeal whenever a decision or action of the department or contract agency results in the individual's denial of participation, disqualification, or termination from the WIC program. All hearings shall be conducted in accordance with these rules.

~~73.13(2) 73.12(2)~~ *Notification of appeal rights and right to hearing.* Each WIC program participant shall be notified in writing of the participant's right to appeal at the time of application and at the time of denial of eligibility or termination from the WIC program ~~(on Denial or Termination of Eligibility Form)~~ and at the time a participant receives a notice of a claim being established for repayment of improperly issued benefits. Appeal and hearing notices shall also be written, posted, and immediately available at contract agencies to explain the method by which a hearing is requested, and that the participant may present arguments at the hearing either personally or through a representative such as a relative, friend, legal counsel, or other spokesperson.

~~73.13(3) 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 days from the date the individual receives notice of the decision or action that is the subject of appeal.

~~73.13(4) 73.12(4)~~ *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 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.

~~73.13(5) 73.12(5)~~ *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

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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.

~~73.13(6)~~ **73.12(6)** *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.

~~73.13(7)~~ **73.12(7)** *Conduct of hearing.* The hearing shall be conducted in accordance with federal regulations found at 7 CFR Section 246.23. Copies of these regulations are available from the contract agency and the department.

a. At a minimum, the party requesting the hearing or the party's representative shall have the opportunity to:

~~a-~~ *(1)* Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

~~b-~~ *(2)* Be assisted or represented by an attorney or other person at the party's own expense;

~~c-~~ *(3)* Bring witnesses;

~~d-~~ *(4)* Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;

~~e-~~ *(5)* Submit evidence to establish all pertinent facts and circumstances in the case;

~~f-~~ *(6)* Advance arguments without undue interference.

~~g-~~ *b.* If a participant fails to attend the hearing, the agency will reschedule the hearing and give the participant 20 days' notice. The participant may have another person as the participant's designee. If neither the participant nor the designee attends the second hearing, the appeal will be closed.

~~73.13(8)~~ **73.12(8)** *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.

~~73.13(9)~~ **73.12(9)** *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.

~~73.13(10)~~ **73.12(10)** *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.

~~73.13(11)~~ **73.12(11)** *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.

~~73.13(12)~~ **73.12(12)** *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 ~~73.13(13)~~ **73.12(13)**.

~~73.13(13)~~ **73.12(13)** *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,

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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.

~~73.13(14)~~ **73.12(14)** *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. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

~~73.13(15)~~ **73.12(15)** *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.

~~73.13(16)~~ **73.12(16)** *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.

~~73.13(17)~~ **73.12(17)** *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.

~~73.13(18)~~ **73.12(18)** *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.

641—73.13(135) Right to appeal—vendor.

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 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:

- a. When a vendor's contract expires.
- b. When the department makes a determination regarding participant access.
- c. When a vendor is disqualified from the WIC program as a result of a Supplemental Nutrition Assistance Program (SNAP) disqualification.
- d. When there are disputes regarding food instrument or cash-value benefit payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR 246.12(k)(3)).
- e. The denial of authorization, if the department vendor authorization is subject to the procurement procedures applicable to the department.

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f. When a vendor does not agree with the validity or appropriateness of the department's vendor selection and limiting criteria, the department's peer group criteria, the department's above-50-percent vendor criteria, and the department's prohibition of incentive items and the department's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to 7 CFR 246.12(h)(8).

g. Determination of the following by the department:

(1) Whether or not a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(2) To include or exclude an infant formula, manufacturer, wholesaler, distributor, or retailer from the approved-formula list required pursuant to 7 CFR 246.12(g)(11).

(3) Whether to notify a vendor in writing when an investigation reveals an initial violation to impose a sanction, pursuant to 7 CFR 246.12(l)(3).

73.13(2) Request for hearing. An appeal is brought by filing a written request for a hearing with 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, within ten days of receipt of notification of the adverse action. The written request for hearing shall state the adverse action being appealed.

73.13(3) Contested cases. Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the 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 department of inspections and appeals.

73.13(4) Notice of hearing. The administrative law judge (ALJ) shall schedule the time, place and date of the hearing as expeditiously as possible. Hearings shall be conducted by telephone or in person in Des Moines, Iowa, at the Lucas State Office Building or other suitable location.

73.13(5) Conduct of hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246.18. Copies of these regulations are available from the department of inspections and appeals upon request.

73.13(6) Decision. A written decision of the ALJ shall be issued, where possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time.

73.13(7) Decision of ALJ. When the ALJ 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 agency action 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 73.13(8).

73.13(8) Appeal to director. Any appeal to the director for review of the proposed decision and order of the ALJ 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 ALJ's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

73.13(9) Record of hearing. Upon receipt of an appeal request, the ALJ shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the hearing officer.

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73.13(10) Decision of director. The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

73.13(11) 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 pursuant to Iowa Code chapter 17A.

73.13(12) 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 petition for judicial review 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.

641—73.14(135) State monitoring of contract agencies. The department shall review contract agency operations through use of reports and documents submitted, state-generated data processing reports, and on-site visits for evaluation and technical assistance.

73.14(1) On-site visits. Department staff shall visit contract agencies whenever necessary, to review operations and ensure compliance with state and federal regulations.

73.14(2) Request for written reports. The department may request written progress reports from contract agencies within specified times.

73.14(3) Qualifications of department reviewers. At minimum, one of the persons from the department responsible for reviewing a contract agency shall be a licensed dietitian.

641—73.15(135) Migrant services. To meet the WIC needs of migrant workers within the state, a contract or work agreement shall be maintained with at least one contract migrant service agency within the state to provide or assist in the provision of service to this population.

641—73.16(135) Civil rights. The Iowa WIC program shall operate in compliance with ~~the Equal Employment Opportunity Act of 1973, the Civil Rights Act of 1964, amended 1972, the State of Iowa Civil Rights Act of 1965, the Age Discrimination Act of 1967, Section 504 of Rehabilitation Act of 1973, Iowa Executive Order #15 of 1973, Executive Order #11246 of 1965 as amended by Executive Order #11375 of 1967, and the Americans With Disabilities Act of 1991~~ state and federal regulations to ensure the rights of all individuals under this the WIC program.

641—73.17(135) Audits. Each contract agency shall ensure an audit of the WIC program within the agency at least every two years, to be conducted by a private certified public accountant or in accord with applicable Office of Management and Budget Circulars: A-128, Audits of State and Local Governments, and A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions. Each audit shall cover all unaudited periods through the end of the previous grant year. The department's audit guide shall be followed to ensure an audit that meets federal and state requirements.

641—73.18(135) Reporting. Completion of grant applications, budgets, expenditure reports and written responses to the department's monitoring for the WIC program shall be conducted by contract agencies in compliance with the formats and procedures outlined by the department in the Iowa WIC Policy and Procedure Manual, as specified in the contract entered into by the department and the contract agency.

641—73.19(135) Program WIC program violation. Participants or vendors are subject to the sanctions outlined below if determined by contract agency or department staff to be guilty of abusing the WIC program or its regulations.

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73.19(1) Participant violation. Violations may be detected by contract agency staff, by vendors, or by department staff. Information obtained by the department is forwarded to the contract agency for appropriate action.

a. Whenever possible, the participant is counseled in person 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 instrument for more than the possible value of the foods listed instruments outside of valid dates.	3 4
3. Not signing the food instrument at the time of purchase. Attempting to redeem WIC food instruments at an unauthorized vendor.	3 4
4. Attempting to cash food instruments after the last valid date.	4
5. Redeeming WIC food instruments at an unauthorized vendor.	4
6. Redeeming food instruments before the allowable date.	4
7. Attempting to cash food instruments that were signed prior to redemption at the vendor.	5
8. 4. Redeeming WIC food instruments that were reported as lost or stolen.	5
9. 5. Attempting to purchase more than the quantity of foods specified on the food instrument in the food benefits.	5
10. 6. Verbal abuse or harassment of WIC or vendor employees.	5
7. Verbal abuse or harassment on social media.	5
11. 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
12. 10. Attempting to sell, return, or exchange foods for cash or credit.	10
13. 11. Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc.	10
14. 12. Attempting to purchase items that are not food.	10
15. 13. Sale or exchange of WIC food instruments for cash or credit or giving away WIC foods.	10
16. Altering a food instrument (e.g., changing last valid date, food item or quantity).	10
17. 14. Attempting to redeem food instrument issued to another participant.	10
18. 15. Receiving more than one set of benefits for the same time period.	10
19. 16. Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility).	10
20. 17. Attempting to steal WIC food instruments from a contract agency or participant.	10
21. 18. Physical abuse of WIC contract agency or vendor employees.	10
22. 19. Attempting to pick up food instruments for a child that is not currently in their care.	10
20. <u>Other violations of this chapter or the Iowa WIC Policy and Procedure Manual.</u>	

c. 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.

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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, ~~and of the right to appeal the decision through the fair hearing process,~~ and of eligibility to reapply for the WIC program at the end of the disqualification period.

e. A disqualification generally applies 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. ~~The cashing of one or more food instruments at the same time constitutes a single violation. Participants will not be charged with a second violation for minor violations worth 5 or fewer points for subsequent food instruments cashed between the first instance and the receipt of the violation notice if the violation is the same. If a major violation greater than 5 points occurs during this period, the participant will be disqualified.~~ Violations are cumulative.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement, or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food instruments. Collection of overpayment is not required when the department determines it is not cost-effective to do so.

The contract agency shall issue a ~~Statement of Restitution along with the disqualification notice~~ written notice of restitution and disqualification. The statement 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.

h. Each contract agency 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.

73.19(2) Vendor violations. There are five types of sanctions that are applied to vendors for violations of WIC program regulations: nonpayment of food instruments, issuance of violation points, temporary disqualification, permanent disqualification, and civil money penalties.

a. Nonpayment of food instruments. If the vendor has been terminated from the WIC program and submits a claim, it will be fully denied.

~~(1) As a result of prepayment reviews conducted by the state's bank, improperly completed food items are refused payment and returned to the vendor. Items screened during prepayment are authorized vendor stamp not present or legible in the "Pay to the Order of:" box on face of food instrument, missing signature, price exceeds maximum printed on face of food instrument.~~

~~(2) If the violation can be corrected by applying the authorized stamp, obtaining the proper signature, or reducing the price, the item may be resubmitted for payment. Federal banking regulations prohibit a financial instrument from being sent through the federal reserve system more than twice. If an improperly completed WIC food instrument is received by the state's bank a second time, it is voided and may not be redeposited.~~

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 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.

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Violation	Points Per Event
1. <u>Accepting food instrument(s) outside the valid dates of use.</u>	<u>5</u>
2. <u>Depositing food instrument(s) more than 15 days after purchase date.</u>	<u>5</u>
3. <u>Accepting food instrument(s) with no date stamp.</u>	<u>5</u>
1. <u>Developing and using promotional materials including stickers, tags, labels, or channel strips with the WIC service mark to identify WIC-approved foods.</u>	<u>5</u>
2. <u>Developing and using vendor-created WIC vendor identification decals to indicate vendor is an authorized vendor.</u>	<u>5</u>
3. <u>Failure to allow WIC participants to leave the vendor with WIC foods that were debited/removed from their eWIC account during a WIC transaction.</u>	<u>5</u>
4. <u>Failure to post eWIC signs in the cash register lane that has a working WIC terminal if the vendor is not integrated.</u>	<u>5</u>
5. <u>Failure to provide vendor ECR system participant receipts to WIC participants during each WIC transaction.</u>	<u>5</u>
6. <u>Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.</u>	<u>10</u>
4. <u>7.</u> Refusal to accept valid WIC food instruments from participants.	10
5. <u>8.</u> 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. <u>9.</u> Treating WIC customers differently by offering them incentive items, vendor discounts, coupons, or other promotions that are not offered to non-WIC customers.	<u>10</u>
6. <u>10.</u> Providing to WIC participants incentive items not prior authorized by the department.	10
7. <u>11.</u> Failure to carry out corrective action plan developed as a result of monitoring visit.	10
8. <u>Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.</u>	<u>5</u>
9. <u>12.</u> Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
10. <u>Failure to use the WIC vendor stamp issued by the Iowa WIC program.</u>	<u>5</u>
11. <u>13.</u> Issuing "rain checks" or credit in exchange for WIC food instruments.	10
12. <u>14.</u> Stocking out-of-date, stale, or moldy WIC foods.	10
13. <u>15.</u> Failure to submit vendor price assessment reports as requested.	10
16. <u>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.</u>	<u>10</u>
17. <u>Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.</u>	<u>10</u>
18. <u>Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.</u>	<u>10</u>
19. <u>Requiring to enter the PIN for the participant and/or asking for the participant's PIN.</u>	<u>10</u>
14. <u>20.</u> For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
15. <u>Cashing food instrument(s) without amount, date of purchase, or participant signature.</u>	<u>45</u>
16. <u>21.</u> Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
17. <u>22.</u> Providing false information on the price assessment report.	15

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Violation	Points Per Event
18. 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.	40
19. Requiring WIC participants to purchase a particular brand when other WIC approved brands are available.	40
20. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	40
23. <u>Knowingly entering false information or altering information on the eWIC receipt/benefits.</u>	<u>10</u>
24. 24. Requiring other cash purchases to redeem WIC food instruments.	15
22. 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
25. <u>Failure to obtain infant and/or special needs formula from an approved source listed by the state WIC program.</u>	<u>15</u>
26. <u>Offering incentive items with a value of more than \$1.99.</u>	<u>15</u>
27. <u>Scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant.</u>	<u>20</u>
28. <u>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.</u>	<u>20</u>
29. <u>Other violations of this chapter or the vendor agreement or the Iowa WIC Policy and Procedure Manual.</u>	

c. One-year disqualification. With an administrative finding of the following ~~violations~~ patterns of sanctions, the vendor will be disqualified for one year.

(1) ~~Accumulation of 45 or more violation points within a single federal fiscal year of the agreement period. A pattern of allowing purchase of nonapproved food items in exchange for WIC food instruments or for foods provided in excess of those listed on the WIC food instrument. (federally mandated sanction)~~

(2) ~~Allowing purchase of nonapproved and nonsimilar food items in exchange for WIC food instruments. Accumulation of 45 or more violations points within a single federal fiscal year of the agreement period. (department sanction)~~

(3) ~~Failure to provide access to ~~store~~ vendor premises or in any manner to hinder, impede or misinform authorized WIC personnel in the act of conducting an on-site education, monitoring or investigation visit. (department sanction)~~

(4) ~~Loss of Iowa department of inspections and appeals license. (department sanction)~~

(5) ~~Submitting for payment a WIC food instrument redeemed by another authorized vendor. (department sanction)~~

(6) ~~Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions. (department sanction)~~

(7) ~~Submitting for payment WIC food instruments known by the vendor to have been lost or stolen. (department sanction)~~

(8) ~~Participating with other individuals, including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instrument. (department sanction)~~

d. With an administrative finding of the following ~~violations~~ federally mandated sanctions, the vendor will be disqualified from being a WIC vendor for three years.

(1) A pattern of charging WIC participants more than non-WIC customers or charging WIC participants more than the current shelf price.

(2) A pattern of charging for items not received by the WIC participant or for foods provided in excess of those listed on the WIC food instrument.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(3) A pattern of providing credit or nonfood items, except for alcohol, alcoholic beverages, or tobacco products, in exchange for WIC food instruments.

(4) One incidence of allowing the purchase of alcohol, alcoholic beverages, or tobacco products with a WIC food instrument.

(5) A pattern of receiving, transacting, or redeeming WIC food instruments outside authorized channels, including through unauthorized vendors or persons.

(6) A pattern of claiming reimbursement for the sale of a quantity of a specific food item which exceeds the ~~store's~~ vendor's documented inventory of that food item for a specified period of time.

~~(7) Submission for payment of WIC food instruments known by the vendor to have been lost or stolen.~~

e. With an administrative finding of the following ~~violations~~ federally mandated sanctions, the vendor will be disqualified for six years.

(1) One incidence of buying or selling food instruments for cash (trafficking).

~~(2) Participating with other individuals including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instruments.~~

~~(3) (2)~~ (2) One incidence of 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 food instruments.

f. With a conviction in a criminal court of law for trafficking in WIC food instruments 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 food instruments, the vendor will be permanently disqualified from the Iowa WIC program. The department may impose a civil money penalty (CMP) in lieu of a disqualification when it determines, in its sole discretion, that:

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

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

g. The following items do 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 ~~10~~ 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.

h. The above sanctions notwithstanding, the state of Iowa reserves the right to seek civil and criminal prosecution of WIC vendors for any and all instances of dealing in stolen or lost food instruments, trading cash and other inappropriate commodities for food instruments, or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, or other practices meeting the definition of fraud as defined in 7 CFR Part 246 or the Iowa Code.

i. A vendor shall not be entitled to receive any compensation for revenues lost as a result of any temporary or permanent disqualification.

j. A minimum of 15 days' notice is provided prior to all disqualifications, except for permanent disqualifications assessed under paragraph 73.19(2) "*f*," which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a disqualification letter with supporting documentation is prepared for the WIC director's signature. The disqualification letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal. Voluntary withdrawal from the WIC vendor agreement to avoid a sanction is not allowed.

k. The department is responsible for issuing all warning and disqualification letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant

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violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

l. Federal ~~food stamp~~ Supplemental Nutrition Assistance Program (SNAP) regulations require automatic disqualification from ~~the food stamp program~~ SNAP for vendors disqualified by the WIC program for certain types of violations. When a vendor is disqualified from the WIC program, the disqualification letter to the vendor will include the following statement: “This disqualification from WIC may result in disqualification as a retailer in the ~~food stamp program~~ Supplemental Nutrition Assistance Program (SNAP). Such disqualification may not be subject to administrative or judicial review under ~~the food stamp program~~ SNAP.” For all vendor disqualifications from the WIC program, notice will be sent to the United States Department of Agriculture for appropriate action.

m. The department shall disqualify a vendor who has been disqualified from ~~the food stamp program~~ SNAP. The disqualification shall be for the same length of time as the ~~food stamp program~~ SNAP disqualification, may begin at a later date than the ~~food stamp program~~ SNAP disqualification, and shall not be subject to administrative or judicial review under the WIC program. If the department determines that disqualification of a vendor would result in inadequate participant access, it will impose a civil money penalty (CMP) in lieu of disqualification.

n. Civil money penalties.

(1) When the department determines that a civil money penalty (CMP) shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2) “*j*” or 73.19(2) “*m*,” it shall use the civil money penalty formula in accordance with Title 7 CFR ~~Subpart~~ 246.12(k)(1)(x) to determine the CMP.

(2) If a vendor does not pay, only partially pays, or fails to timely pay a CMP, the department will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. “Failure to timely pay a CMP” includes the failure to pay a CMP in accordance with an installment plan approved by the department.

(3) Money received by the state WIC agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as WIC program income.

641—73.20(135) Data processing. All contract agencies shall comply with the instructions outlined in the Iowa WIC Policy and Procedure Manual for use of the automated data processing system in provision of WIC food instruments and monitoring of WIC services. No contract agency is exempted from adherence to any portion of these instructions.

641—73.21(135) Outreach. Outreach efforts within the Iowa WIC program shall be directed toward extension of services to the neediest Iowans of high priority by reason of their WIC status (see 7 CFR ~~246.1(d)3~~ 246.1(d)(3)). The department and contract agencies shall share responsibility for the conduct of outreach efforts.

73.21(1) Contract agency responsibilities. Contract agencies shall conduct any or all of the following outreach activities annually:

a. ~~Employ outreach worker(s).~~

b. ~~Submit for publication a minimum of two newspaper articles on WIC in the local community.~~

e. a. Distribute WIC brochures to numerous community organizations and offices.

b. Complete outreach activities as specified in the local agency contract.

d. ~~Hold informational meetings for county social service departments, including food stamp program staff, drug/alcohol abuse counseling services, family investment program staff, and child abuse staff, and for public health nurse offices, physician offices, maternal and child health programs, Head Start programs, dental programs, family planning programs, nutrition professional groups, nursing professional groups, extension services, parent teacher and other community organizations.~~

73.21(2) Reserved.

641—73.22(135) Caseload management. The statewide caseload (number of participants) shall be managed by the department in accord with funding limitations and federal regulations or directives.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The federally established priority categories of participant shall be followed when limitation of services is necessary in accord with 7 CFR ~~246.7(d)~~ 246.7(d)(3). In addition the following rules shall apply:

73.22(1) A contract agency shall maintain a waiting list only when the department determines that sufficient funds are not available to meet demand.

73.22(2) When a waiting list has been authorized, contract agencies shall certify applicants of potential highest priority first (e.g., women and infants) and potential lower priority second (children). Within these priority groups, applicants shall be offered certification appointments in the order of placement on the list.

73.22(3) When insufficient funds are available to serve all priority categories, the department shall provide instructions to contract agencies regarding which priority categories may continue to be certified.

73.22(4) When necessitated by federal funding restrictions, the department reserves the right to terminate or temporarily suspend benefits for categories of participants prior to the end of their certification period. Each participant shall be advised in writing 15 days before the effective date of the reasons for the action and of the right to a fair hearing.

641—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services shall 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, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; ~~(515)281-4913~~; (515)281-7095 or 1-800-532-1579.

641—73.24(135) Participant rights. The special supplemental nutrition 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. ~~An applicant or participant may appeal any decision made by the contract agency or department regarding the applicant's or participant's eligibility for the program.~~ The USDA Nondiscrimination Statement can be found on the following USDA Web site: <http://www.fns.usda.gov/sites/default/files/cr/Nondiscrimination-Statement.pdf>.

641—73.25(135) Confidentiality. The department and local agencies shall protect the confidentiality of participant, applicant, and vendor information in accordance with 7 CFR Part 246.

These rules are intended to implement federal law 42 U.S.C. Section 1786, and Iowa Code sections ~~10A.202(1) "h" and 135.11(1)~~ section 135.11(12).

ARC 2725C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 137.119, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 77, “Local Boards of Health,” Iowa Administrative Code.

The purpose of Chapter 77 is to define the structure, powers, and duties of local boards of health. The chapter also describes a process for voluntarily merging local boards of health into a district board of health. To date, this process has not been utilized to completion. Counties that have attempted to form a district board of health have reached points of impasse, some of which were related to Iowa Code requirements that were too inflexible. When 2016 Iowa Acts, Senate File 2159, was passed, it removed unnecessary barriers to district formation and cumbersome requirements that were part of the application process. It also removed references to the Iowa public health standards since local boards of health are pursuing national accreditation instead.

The proposed amendments reflect the changes that 2016 Iowa Acts, Senate File 2159, made to Iowa Code chapter 137 and allow more flexibility for determining the district board’s membership and makeup, modify documentation required to be submitted to the Department, limit the Department’s role in assessing the application for completeness, and permit the newly merged entity to subcontract for a treasurer or auditor if necessary. A new rule is proposed to allow city boards of health to voluntarily dissolve by submitting notice to the Department.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 18, 2016. Such written comments should be directed to Lindsay Schmauss, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to lindsay.schmauss@idph.iowa.gov.

A public hearing is scheduled for October 18, 2016, from 3 to 4 p.m. in Room 415 on the fourth floor of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

These amendments are intended to implement Iowa Code chapter 137 and 2016 Iowa Acts, Senate File 2159.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Iowa public health standards” in rule **641—77.2(137)**.

ITEM 2. Amend subrule 77.3(2) as follows:

77.3(2) Policy development: Exercise responsibility to serve the public interest in the development of comprehensive public health policies. This core function can be accomplished by promoting use of a scientific knowledge base in decision making about public health and by taking the lead in public health policy development.

a. A local board of health may perform the following essential public health services:

- (1) Develop policies and plans that support individual and community health efforts; and
- (2) Research new insights and innovative solutions to health problems and health threats.

b. A local board of health shall perform the following essential public health services:

- (1) Enforce laws and regulations that protect public health and enforce lawful orders of the department;

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(2) Make and enforce reasonable rules and regulations not inconsistent with the law, or the rules of the state board, ~~or the Iowa public health standards~~ as may be necessary for the protection and improvement of the public health; and

(3) Employ persons as necessary for the efficient discharge of ~~its~~ the board's duties. Employment practices shall meet the requirements of Iowa Code chapter 8A, subchapter IV, or any civil service provision adopted under Iowa Code chapter 400.

ITEM 3. Rescind rule 641—77.4(137) as follows:

~~**641—77.4(137) Local boards of health—Iowa public health standards.** Local boards of health may:~~

~~1. Designate an agency to assure compliance with the Iowa public health standards in the jurisdiction.~~

~~2. Demonstrate a commitment to comply with the Iowa public health standards.~~

~~3. Request at least annually reports from organizations that provide public health services within the jurisdiction.~~

ITEM 4. Renumber rules ~~641—77.5(137)~~ to ~~641—77.7(137)~~ as ~~641—77.4(137)~~ to ~~641—77.6(137)~~.

ITEM 5. Adopt the following new rule 641—77.7(137):

641—77.7(137) Dissolution of city boards. A city board of health may voluntarily dissolve by submitting notice to the department. The notice shall set an effective date for the action.

ITEM 6. Amend rule 641—77.8(137) as follows:

641—77.8(137) District boards Request to form district board of health. The county boards of health of any two or more geographically contiguous counties may at any time submit to the department a written request to form a district board of health.

77.8(1) A request to form a district board of health shall be executed by the county ~~boards~~ board of supervisors and the county ~~boards~~ board of health for each county comprising the proposed district.

77.8(2) A request to form a district board of health shall be submitted to the department and shall be completed on the department's application form. The application form shall include:

a. A written narrative that explains how the formation of a district board of health will ~~increase organizational capacity and attain the capability~~ to provide population-based and personal health services compared with operating as local boards of health.

~~*b.* A written narrative that details the infrastructure capability of the proposed district board of health to deliver core public health functions, provide essential public health services, and comply with Iowa public health standards.~~

~~*e. b.*~~ *b.* The composition of the district board of health, including the number of members each county shall appoint pursuant to Iowa Code section ~~435.105~~ 137.105 and the total number of members on the district board of health.

~~*d. c.*~~ *c.* Proof of approval by all county boards of supervisors and county boards of health involved in the request to form a district and of the elements included in the formation plan.

~~*e. d.*~~ *d.* A service delivery plan ~~to include each component of the public health standards~~. The service delivery plan shall detail how population-based and environmental health services will be delivered throughout the district.

~~*f. e.*~~ *e.* The budget and fiscal plan for the proposed district health department. The budget plan shall include an estimate of the proposed expenditures and revenues and an allocation of the revenue responsibilities of each of the counties participating in the proposed district.

~~*g. f.*~~ *f.* A table of organization.

~~*h. g.*~~ *g.* A personnel system description, including identification of the district health department treasurer and district health department auditor and a section which addresses the employment issues contained in Iowa Code section 137.110.

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~~i. h.~~ The location of the district health department offices and workforce throughout the jurisdiction. The request shall include a map showing district boundaries.

~~j. i.~~ An inventory of the property and equipment in the custody of each county health department and a description as to whether such property and equipment shall remain in the custody of the county health department or shall be transferred to the district health department to become property of the district health department. Property and equipment include any item which costs more than \$5,000.

~~k. j.~~ An information technology (IT) plan ~~that details the formation of a centralized IT department able to serve the needs of the proposed district health department.~~

~~l. k.~~ A proposed date upon which the district board of health shall be formed and established and a timeline for the adoption of district board of health rules and regulations.

ITEM 7. Amend rule 641—77.9(137) as follows:

641—77.9(137) Approval Review, approval or denial of district board of health formation.

77.9(1) to 77.9(4) No change.

77.9(5) The state board of health has the authority to deny formation of a district board of health if the application fails to conform with Iowa Code chapter 137 as amended by 2016 Iowa Acts, Senate File 2159, or this chapter.

77.9(6) The department will notify, in writing, all local boards of health in the proposed district of the reason and rationale for the denial of the district board of health formation within 30 days of the decision.

77.9(7) The local boards of health in the proposed district shall have the right to request reconsideration of the decision by submitting the request to the department within 30 days of receiving notice of the decision.

77.9(8) The state board of health shall reconsider the request by the local boards of health at its next regularly scheduled meeting. The reconsideration shall not constitute a contested case hearing. The state board of health's final decision following reconsideration shall constitute final agency action pursuant to Iowa Code section 17A.19, and judicial review of any such decision shall be treated as other agency action.

ITEM 8. Rescind rule 641—77.10(137) as follows:

~~**641—77.10(137) Denial of district board of health formation.** The department and the state board of health have the authority to deny formation of a district board of health. The department is responsible for assessing the application form for completeness and accuracy. The state board of health has the authority to deny formation of a district board of health if the application does not show sufficient organizational capacity to deliver core public health functions and essential public health services, does not ensure compliance with the Iowa public health standards, or otherwise fails to conform with Iowa Code chapter 137 or this chapter.~~

~~**77.10(1)** The department will notify, in writing, all local boards of health in the proposed district of the reason and rationale for the denial of the district board of health formation within 30 days of the decision.~~

~~**77.10(2)** The local boards of health in the proposed district shall have the right to request reconsideration of the decision by submitting the request to the department within 30 days of receiving notice of the decision.~~

~~**77.10(3)** The state board of health shall reconsider the request by the local boards of health at its next regularly scheduled meeting. The reconsideration shall not constitute a contested case hearing. The state board of health's final decision following reconsideration shall constitute final agency action pursuant to Iowa Code section 17A.19, and judicial review of any such decision shall be treated as other agency action.~~

ITEM 9. Renumber rules **641—77.11(137)** and **641—77.12(137)** as **641—77.10(137)** and **641—77.11(137)**.

ARC 2733C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 691.6, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 127, “County Medical Examiners,” Iowa Administrative Code.

The proposed amendments implement changes made to Iowa Code section 331.802(2)“b” in 2016 Iowa Acts, House File 2446, in regards to reimbursing county medical examiner staff for services performed. In accordance with Iowa Code section 331.802(2), if a person’s death affects the public interest, the county medical examiner is required to conduct a preliminary investigation of the cause and manner of death, prepare a written report of the findings, and submit the full report to the state medical examiner and a copy of the report to the county attorney. In accordance with Iowa Code section 331.802(2)“b,” the county medical examiner is authorized to submit an invoice to the county of appointment for the actual costs incurred. The county where the death occurred is the county of appointment. The county of appointment is permitted to seek reimbursement from the county of the decedent’s residence for costs incurred, but seeking reimbursement typically occurs after the county of appointment has paid the invoiced amount to the county medical examiner staff. The county of the decedent’s residence is required to reimburse the county of appointment.

The proposed amendments state that the county medical examiner, deputy medical examiner and medical examiner investigators shall submit a joint invoice to the county of appointment for services performed. The county of appointment can choose to pay the invoice immediately or forward the invoice to the county of the decedent’s residence for payment to the county medical examiner staff. If payment is not received by the county medical examiner staff from the county of the decedent’s residence within 60 days, the county of appointment shall pay the invoice to the county medical examiner staff.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 18, 2016. Such written comments should be directed to John Kraemer, Director of Forensic Operations, Iowa Office of the State Medical Examiner, Department of Public Health, 2250 S. Ankeny Blvd., Ankeny, Iowa 50023-9093. E-mail may be sent to john.kraemer@idph.iowa.gov.

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

These amendments are intended to implement Iowa Code section 331.802(2) as amended by 2016 Iowa Acts, House File 2446.

The following amendments are proposed.

ITEM 1. Amend subrule 127.4(1) as follows:

127.4(1) *Payment of fee and expenses.*

a. A medical examiner shall receive from the county of appointment or the county of the decedent’s residence a fee for each preliminary investigation and report submitted in a case in which a death affects the public interest. A county medical examiner shall also receive from the county of appointment or the county of the decedent’s residence the examiner’s actual expenses. The fee and expenses shall be submitted by the county medical examiner to the county of appointment, which may immediately pay the invoice or forward the invoice to the county of the decedent’s residence for payment to the county medical examiner. If the county medical examiner does not receive payment from the county of the decedent’s residence within 60 days of receiving the invoice, the county of appointment shall pay the invoice.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. A pathologist or other physician who performs an autopsy under medical examiner authorization shall be paid for the services by the county of appointment.

c. Invoices produced for services performed by a county medical examiner, deputy county medical examiner or county medical examiner investigator shall be submitted as a joint invoice to the county of appointment when services were rendered in a case by multiple county medical examiner staff.

ITEM 2. Amend subrule 127.7(5) as follows:

127.7(5) Fees. Fees for the services provided by a CME-I shall be paid by the county of appointment or by the county of the decedent's residence. A CME-I shall also receive from the county of appointment or the county of the decedent's residence reimbursement for actual expenses. The fee and expenses shall be submitted by the CME-I to the county of appointment, which may immediately pay the invoice or forward the invoice to the county of the decedent's residence for payment to the CME-I. If the CME-I does not receive payment from the county of the decedent's residence within 60 days of receiving the invoice, the county of appointment shall pay the invoice.

ITEM 3. Amend subrule 127.8(4) as follows:

127.8(4) Fees. Fees for the services provided by a DCME shall be paid by the county of appointment or by the county of the decedent's residence. A DCME shall also receive from the county of appointment or the county of the decedent's residence reimbursement for actual expenses. The fee and expenses shall be submitted by the DCME to the county of appointment, which may immediately pay the invoice or forward the invoice to the county of the decedent's residence for payment to the DCME. If the DCME does not receive payment from the county of the decedent's residence within 60 days of receiving the invoice, the county of appointment shall pay the invoice.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

As part of the Department's review of its treatment of income taxes in light of the United States Supreme Court's decision in *Comptroller of Treasury of Maryland v. Wynne*, 135 S. Ct. 1787 (2015), the Department discovered an inconsistency in the administrative rules regarding the calculation of the alternative minimum tax (AMT) credit. The maximum Iowa AMT credit that can be claimed each year is the difference between the regular tax liability and the tentative AMT for the current tax year. However, due to a holdover from past practices, the example for the calculation of the AMT credit suggests that regular tax liability less credits must be used in determining the maximum AMT credit that can be claimed. The forms used for individual income, corporate income, fiduciary income, and franchise taxes all rely on the language in the example. As a result, taxpayers with other nonrefundable tax credits may have been directed to reduce their AMT credit lower than necessary. The proposed amendments correct these examples by removing references to using the regular tax “less credits” to calculate the allowable alternative minimum tax credit for a year, bringing the rules up to date with the current law.

Interested persons may make written comments on the proposed amendments on or before October 18, 2016. Written comments on the proposed amendments should be directed by mail to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building,

REVENUE DEPARTMENT[701](cont'd)

P.O. Box 10457, Des Moines, Iowa 50306-0457; or by e-mail to ben.clough@iowa.gov. Persons who wish to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, by telephone at (515)725-2176 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 18, 2016.

The Department estimates that this change will reduce revenue to the general fund over the next several years by allowing certain taxpayers to reduce their liability by claiming a greater amount of alternative minimum tax credit.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

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

These amendments are intended to implement Iowa Code sections 422.11B, 422.33, and 422.60.

The following amendments are proposed.

ITEM 1. Amend rule 701—42.10(422) as follows:

701—42.10(422) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used against the regular tax for a tax year, the remaining credit is carried over to the following tax year to be applied against the regular income tax liability for that period. The minimum tax credit is computed on Form IA 8801.

42.10(1) Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. The taxpayers reported \$5,000 of minimum tax for 2007. For 2008, the taxpayers reported regular tax ~~less credits~~ of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayers had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. The taxpayers reported \$2,500 of minimum tax for 2007. For 2008, the taxpayers reported regular tax ~~less credits~~ of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax ~~less credits~~ exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

42.10(2) Minimum tax credit for nonresidents and part-year residents. Nonresident and part-year resident taxpayers who paid Iowa minimum tax in tax years beginning on or after January 1, 1987, are eligible for the minimum tax credit to the extent that the minimum tax they paid was attributable to tax preferences and adjustments. Therefore, if a nonresident or part-year resident taxpayer had Iowa source tax preferences or adjustments, then all the minimum tax that was paid would qualify for the minimum tax credit.

The minimum tax credit for a tax year as computed above applies to the regular income tax liability ~~less credits including~~ the nonresident part-year credit to the extent this regular tax amount exceeds the minimum tax for the tax year. To the extent the credit is not used, the credit can be carried over to the next tax year.

This rule is intended to implement Iowa Code section 422.11B.

ITEM 2. Amend subrule 52.5(4) as follows:

52.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid by a taxpayer in prior tax years commencing with tax years beginning on or after January 1, 1987, can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year.

REVENUE DEPARTMENT[701](cont'd)

Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. Computation of minimum tax credit on Schedule IA 8827. The minimum tax credit is computed on Schedule IA 8827 from information on Schedule IA 4626 for prior tax years, from Form IA 1120 and Schedule IA 4626 for the current year and from Schedule IA 8827 for prior tax years.

b. Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2007. For 2008, taxpayer reported regular tax ~~less credits~~ of \$8,000 and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a ~~\$2,000~~ \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax ~~less credits~~ of \$8,000 and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax ~~less credits~~ exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

c. Computation of the minimum tax credit attributable to a member leaving an affiliated group filing a consolidated Iowa corporation income tax return. The amount of minimum tax credit available for carryforward attributable to a member of a consolidated Iowa income tax return shall be computed as follows: The consolidated minimum tax credit available for carryforward from each tax year is multiplied by a fraction, the numerator of which is the separate member's tax preferences and adjustments for the tax year and the denominator of which is the total tax preferences and adjustments of all members of the consolidated Iowa income tax return for the tax year.

d. Computation of the amount of minimum tax credit which may be used by a new member of a consolidated Iowa corporation income tax return. The amount of minimum tax credit carryforward which may be used by a new member of a consolidated Iowa income tax return is limited to the separate member's contribution to the amount by which the regular income tax ~~less credits~~ set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

The separate member's contribution to the amount by which the regular income tax ~~less nonrefundable credits~~ exceeds the tentative minimum tax shall be computed as follows:

$$\frac{[\frac{A}{B} \times C + D]}{E} \times F = \text{Separate member's contribution to the amount by which regular income tax less credits set forth in section 422.33 exceeds the tentative minimum tax.}$$

A = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated income subject to apportionment.

D = Separate corporation income allocable to Iowa.

E = Iowa consolidated income subject to tax.

F = The amount by which the regular income tax ~~less credits~~ set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

e. Minimum tax credit after merger. When two or more corporations merge or consolidate into one corporation, the minimum tax credit of the merged or consolidated corporations is available for use by the survivor of the merger or consolidation.

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ITEM 3. Amend subrule 58.5(4) as follows:

58.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. Computation of minimum tax credit on Schedule IA 8827F. The minimum tax credit is computed on Schedule IA 8827F from information on Schedule IA 4626F for prior tax years, Form IA 1120F and Schedule IA 4626F for the current year and from Schedule IA 8827F for prior tax years.

b. Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2011. For 2012, taxpayer reported regular tax less credits of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2012 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2011 was used, there is a ~~\$2,000~~ \$3,000 minimum tax carryover credit to 2013.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2011. For 2012, taxpayer reported regular tax less credits of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2012 because, although the regular tax less credits exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2013.

c. Minimum tax credit after merger. When two or more financial institutions merge or consolidate into one financial organization, the minimum tax credit of the merged or consolidated operation is available for use by the survivor of the merger or consolidation.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” and Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

These proposed amendments update the Department's rules regarding the application of the solar energy system tax credit to both individual and corporation income taxes in order to comply with 2015 Iowa Acts, chapter 124; 2016 Iowa Acts, House File 2459; and 2016 Iowa Acts, House File 2468. These amendments also include nonsubstantive changes to clarify the rules.

Interested persons may make written comments on the proposed amendments on or before October 18, 2016. Written comments on the proposed amendments should be directed by mail to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; or by e-mail to ben.clough@iowa.gov. Persons who wish to convey their views orally should contact the Policy Section, Policy and Communications

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Division, Department of Revenue, by telephone at (515)725-2176 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 18, 2016.

The Department finds that coupling with the federal statute through at least 2021 and other changes to the solar energy system tax credit will reduce projected general fund revenue each year through fiscal year 2032.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

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

These amendments are intended to implement Iowa Code section 422.11L as amended by 2015 Iowa Acts, chapter 124; 2016 Iowa Acts, House File 2459; and 2016 Iowa Acts, House File 2468; and Iowa Code section 422.33 as amended by 2015 Iowa Acts, chapter 124.

The following amendments are proposed.

ITEM 1. Amend rule 701—42.48(422) as follows:

701—42.48(422) Solar energy system tax credit. For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for both residential property and business property located in Iowa. The solar energy system must be installed on or after January 1, 2012, to be eligible for the credit.

42.48(1) Property eligible for the tax credit. The following property located in Iowa is eligible for the tax credit:

a. to d. No change.

42.48(2) Relationship between the Iowa and federal credits. As stated in subrules 42.48(3) to 42.48(5) below, the Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also claim the corresponding federal credit. Availability of the Iowa credit for installations in a given year is dependent upon availability of the federal credit. If the federal credits referenced in this subrule are extended, the Iowa tax credit will also be extended, unless the Iowa tax credit is otherwise rescinded by the Iowa legislature.

42.48(2) 42.48(3) Calculation of credit for systems installed during tax years beginning on or after January 1, 2012, but before January 1, 2014. The credit is equal to the sum of the following federal tax credits:

a. to c. No change.

d. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(2)“a” 42.48(3)“a” and “b” cannot exceed \$3,000 for a tax year. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(2)“e” 42.48(3)“c” and “d” cannot exceed \$15,000 for a tax year.

~~The federal residential energy efficient tax credits are allowed for installations that are completed and the federal energy tax credits for solar energy systems are allowed for installations that are placed in service before January 1, 2014. The solar energy system must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.~~

~~EXAMPLE: A taxpayer reported a \$9,000 residential energy efficient tax credit on the 2011 federal return due to an installation of a solar energy system that was placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer’s 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was placed in service before January 1, 2012.~~

42.48(3) 42.48(4) Calculation of credit for systems installed during tax years beginning on or after January 1, 2014, ~~but~~ and installed before January 1, 2017 2016. The credit is equal to the sum of the following federal tax credits:

a. to c. No change.

REVENUE DEPARTMENT[701](cont'd)

d. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3)“*a*” 42.48(4)“*a*” and “*b*” cannot exceed \$5,000 for a tax year per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3)“*e*” 42.48(4)“*c*” and “*d*” cannot exceed \$20,000 for a tax year per separate and distinct installation. “Separate and distinct installation” is described in subrule 42.48(7).

The federal residential energy efficient tax credits are allowed for installations that are completed on or before December 31, 2016, and the federal energy tax credits for solar energy systems are allowed for installations that are placed in service on or before December 31, 2016. Therefore, the Iowa tax credit is available for installations that are either completed or placed in service before January 1, 2017. If the federal residential energy property tax credits or the federal energy credits are extended to installations completed or placed in service on or after January 1, 2017, the Iowa tax credit will also be extended.

42.48(5) *Calculation of credit for systems installed on or after January 1, 2016.* The credit is equal to the sum of the following federal tax credits:

a. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code.

b. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code.

c. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

d. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(5)“*a*” and “*b*” cannot exceed \$5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(5)“*c*” and “*d*” cannot exceed \$20,000 per separate and distinct installation. The term “separate and distinct installation” is described in subrule 42.48(7).

42.48(4) 42.48(6) *Application for the tax credit. Tax credit award limitations.* No more than \$1.5 million of tax credits for solar energy systems are allowed for tax years 2012 and 2013. The \$1.5 million cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax. No more than \$4.5 million of tax credits for solar energy systems is allowed for each of the tax years 2014 to 2016. The \$4.5 million cap does not include any dollars allocated to a previous tax year that roll over to the 2015 and 2016 tax years. The following limitations apply:

a. *Aggregate tax credit award limit.* No more than \$5 million of tax credits will be issued for calendar years beginning on or after January 1, 2015. The \$4.5 million annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax and in rule 701—58.22(422) for franchise tax. Awards of tax credits are made on a first-come, first-served basis.

b. *Allocation for residential installations.* At Beginning with tax year 2014, at least \$1 million of the \$4.5 million annual tax credit allocation cap for the 2014 to 2016 each tax years year is reserved for residential installations. If the total amount of credits for residential installations for a tax year is less than \$1 million, the remaining amount below \$1 million will be allowed for nonresidential installations.

c. *Rollover of unallocated credits.* If Beginning with calendar year 2014, if the \$4.5 million annual tax credit allocation cap for the 2014 and 2015 tax years is not reached, the remaining amount below \$4.5 million the cap will be allowed to be carried forward to the following tax year and shall not count toward the cap for that year.

42.48(7) *How to apply for the credit.* Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit may be submitted through the Tax Credit Award, Claim, and Transfer Administration System (CACTAS), which applicants may access through the department’s Web site.

a. *Separate and distinct installation requirement.* A taxpayer may claim apply for one tax credit for each separate and distinct solar installation. Each separate and distinct installation requires a separate

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application. In order for an installation to be considered a separate and distinct solar installation, both of the following factors must be met:

(1) Each installation must be eligible for the federal residential energy property credit or the federal energy credit as provided in subrule ~~42.48(3)~~ 42.48(1).

(2) Each installation must have separate metering.

b. Application deadline. ~~In order to request the tax credit, a taxpayer must complete an application for the solar energy tax credit for each separate and distinct installation.~~ For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:

(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.

(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.

c. Contents of the application. The application must contain the following information:

(1) Name, address and federal identification number of the taxpayer.

(2) Date of installation of the solar energy system.

(3) The kilowatt capacity of the solar energy system.

(4) Copies of invoices or other documents showing the cost of the solar energy system.

(5) Amount of federal income tax credit for the solar energy system.

(6) Amount of Iowa tax credit requested.

(7) ~~For nonresidential installations,~~ All applicants must provide a completion sheet from a local utility company or similar documentation verifying that installation of the system has been placed in service completed. For nonresidential installations, the completion sheet must indicate the date the installation was placed in service. If a completion sheet is ~~not available~~ from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) For leased solar energy systems where the lessor is the applicant, the lessor should also provide a copy of the solar energy system lease that indicates the property that is the subject of the lease and the parties to the lease agreement. If the lessor is entitled to the Iowa solar energy system tax credit, the lessee will not be entitled to such a credit.

d. Waitlist. If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. The applications will be prioritized based on the date the department received the applications and shall first be funded in the order listed on the waitlist. With the exception of the extension described in subparagraphs 42.48(7) "b"(1) and (2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year, unless the corresponding federal credit is extended.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to subrule 42.48(7) in a future year is contingent upon the availability of tax credits in that particular year.

e. Certificate issuance. If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate ~~number~~.

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f. Claiming the tax credit. The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The taxpayer must include with any Iowa tax return claiming the solar energy system tax credit federal Form 5695, Residential Energy Credits, if claiming the residential energy credit or federal Form 3468, Investment Credit, if claiming the business energy credit.

If the department receives applications for tax credits in excess of the \$1.5 million available for 2012 and 2013 and the \$4.5 million available for 2014 to 2016, the applications will be prioritized by the date the department received the applications. If the number of applications exceeds the \$1.5 or \$4.5 million of tax credits available, the department shall establish a wait list for the next year's allocation of tax credits and the applications shall first be funded in the order listed on the wait list. However, if the \$4.5 million cap of tax credit is reached for 2016, no applications in excess of the \$4.5 million cap will be carried over to the next year, assuming there is no extension of the federal credit.

EXAMPLE: A taxpayer submitted an application for a \$2,500 tax credit on December 1, 2012, for an installation that occurred in 2012. The application was denied on December 15, 2012, because the \$1.5 million cap had already been reached for 2012. The taxpayer will be placed on a wait list and will receive priority for receiving the tax credit for the 2013 tax year. However, if the application was submitted on December 1, 2016, for an installation that occurred in 2016 and the \$4.5 million cap had already been reached for 2016, no tax credit will be allowed for the 2017 tax year, assuming there is no extension of the federal credit.

g. Refundability. Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. Transferability. The credit may not be transferred to any other person.

~~d. 42.48(8)~~ *Unavailable to those eligible for renewable energy tax credit.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—42.28(422,476C) is not eligible for the solar energy system tax credit.

~~42.48(5)~~ **42.48(9)** *Allocation of tax credit to owners of a business entity.* If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate or trust shall be limited to \$15,000 for installations placed in service in tax years 2012 and 2013 and \$20,000 for installations placed in service in tax years beginning on or after January 1, 2014 to 2016.

This rule is intended to implement Iowa Code section 422.11L as amended by 2014 Iowa Acts, Senate File 2340, and 2014 Iowa Acts, House File 2473, section 77 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

ITEM 2. Amend rule 701—52.44(422) as follows:

701—52.44(422) Solar energy system tax credit. For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for business property located in Iowa. The solar energy system must be installed on or after January 1, 2012, to be eligible for the credit.

52.44(1) No change.

52.44(2) *Relationship between the Iowa and federal credits.* As stated in subrules 52.44(3) to 52.44(5) below, the Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also claim the corresponding federal credit. Availability of the Iowa credit for installations in a given year is dependent upon availability of the federal credit. If the federal credits described in this subrule are extended, the Iowa tax credit will also be extended, unless the Iowa tax credit is otherwise rescinded by the Iowa legislature.

REVENUE DEPARTMENT[701](cont'd)

~~52.44(2)~~ **52.44(3)** *Calculation of credit for systems installed during tax years beginning on or after January 1, 2012, but before January 1, 2014.* The credit is equal to the sum of the following federal tax credits:

a. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

b. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs ~~52.44(2)~~ “*a*” 52.44(3) “*a*” and “*b*” cannot exceed \$15,000 for a tax year.

The federal energy tax credits for solar energy systems are allowed for installations that are placed in service before January 1, 2014. The solar energy system must be placed in service on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 energy credit on the 2011 federal return due to an installation of a solar energy system that was placed in service in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer’s 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was placed in service before January 1, 2012.

~~52.44(3)~~ **52.44(4)** *Calculation of credit for systems installed during tax years beginning on or after January 1, 2014, but and installed before January 1, 2017 2016.* The credit is equal to the sum of the following federal tax credits:

a. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

b. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs ~~52.44(3)~~ “*a*” 52.44(4) “*a*” and “*b*” cannot exceed \$20,000 for a tax year per separate and distinct installation. The term “separate and distinct installation” is described in subrule 52.44(7).

The federal energy tax credit for solar energy systems is allowed for installations that are placed in service on or before December 31, 2016. Therefore, the Iowa tax credit is available for installations placed in service before January 1, 2017. If the federal energy tax credit is extended to installations placed in service on or after January 1, 2017, the Iowa credit will also be extended.

52.44(5) *Calculation of credit for systems installed on or after January 1, 2016.* The credit is equal to the sum of the following federal tax credits:

a. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

b. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 52.44(5) “*a*” and “*b*” cannot exceed \$20,000 per separate and distinct installation. “Separate and distinct installation” is described in subrule 52.44(7).

~~52.44(4)~~ **52.44(6)** *Application for the tax credit. Tax credit award limitations.* No more than \$1.5 million of tax credits for solar energy systems are allowed for tax years 2012 and 2013. The \$1.5 million cap also includes the solar energy system tax credits provided in rule 701—42.48(422) for individual income tax. No more than \$4.5 million of tax credits for solar energy systems is allowed for each of the tax years 2014 to 2016. The \$4.5 million cap does not include any dollars allocated to a previous tax year that roll over to the 2015 and 2016 tax years. The following limitations apply:

a. Aggregate tax credit award limit. No more than \$5 million of tax credits will be issued for calendar years beginning on or after January 1, 2015. The ~~\$4.5 million~~ annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—42.48(422) for individual income tax and in rule 701—58.22(422) for franchise tax. ~~Awards are made on a first-come, first-served basis.~~

REVENUE DEPARTMENT[701](cont'd)

b. Allocation for residential installations. At Beginning with tax year 2014, at least \$1 million of the ~~\$4.5 million~~ annual tax credit allocation cap for the 2014 to 2016 each tax years year is reserved for residential installations. If the total amount of credits for residential installations for a tax year is less than \$1 million, the remaining amount below \$1 million will be allowed for nonresidential installations.

c. Rollover of unallocated credits. If Beginning with calendar year 2014, if the ~~\$4.5 million~~ annual tax credit allocation cap for the 2014 and 2015 tax years is not reached, the remaining amount below ~~\$4.5 million~~ the cap will be allowed to be carried forward to the following tax year and shall not count toward the cap for that tax year.

52.44(7) How to apply for the credit. Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit may be submitted through the Tax Credit Award, Claim, and Transfer Administration System (CACTAS), which applicants may access through the department's Web site.

a. Separate and distinct installation requirement. A taxpayer may ~~claim~~ apply for one tax credit for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. In order for an installation to be considered a separate and distinct solar installation, both of the following factors must be met:

(1) Each installation must be eligible for the federal energy credit as provided in subrule 52.44(3) 52.44(1).

(2) Each installation must have separate metering.

b. Application deadline. ~~In order to request the tax credit, a taxpayer must complete an application for the solar energy tax credit for each separate and distinct installation.~~ For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:

(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.

(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.

c. Contents of the application. The application must contain the following information:

(1) Name, address and federal identification number of the taxpayer.

(2) Date of installation of the solar energy system.

(3) The kilowatt capacity of the solar energy system.

(4) Copies of invoices or other documents showing the cost of the solar energy system.

(5) Amount of federal income tax credit for the solar energy system.

(6) Amount of Iowa tax credit requested.

(7) A completion sheet from a local utility company or similar documentation verifying that installation of the system has been placed in service completed. The completion sheet must indicate the date the system was placed in service. If a completion sheet is not available from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) For leased solar energy systems where the lessor is the applicant, the lessor should also provide a copy of the solar energy system lease that indicates the property that is the subject of the lease and the parties to the lease agreement. If the lessor is entitled to the Iowa solar energy system tax credit, the lessee will not be entitled to such a credit.

REVENUE DEPARTMENT[701](cont'd)

d. Waitlist. If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. The applications will be prioritized based on the date the department received the applications and shall first be funded in the order listed on the waitlist. With the exception of the extension described in subparagraphs 52.44(7) "b" (1) and (2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year, unless the corresponding federal credit is extended.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to subrule 52.44(7) in a future year is contingent upon the availability of tax credits in that particular year.

e. Certificate issuance. If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate number.

f. Claiming the tax credit. The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The taxpayer must include federal Form 3468, Investment Credit, with any Iowa tax return claiming the solar energy system tax credit.

If the department receives applications for tax credits in excess of the \$1.5 million available for 2012 and 2013 and the \$4.5 million available for 2014 to 2016, the applications will be prioritized by the date the department received the applications. If the number of applications exceeds the \$1.5 or \$4.5 million of tax credits available, the department shall establish a wait list for the next year's allocation of tax credits and the applications shall first be funded in the order listed on the wait list. However, if the \$4.5 million cap of tax credit is reached for 2016, no applications in excess of the \$4.5 million cap will be carried over to the next year, assuming there is no extension of the federal credit.

EXAMPLE: A taxpayer submitted an application for a \$2,500 tax credit on December 1, 2012, for an installation that occurred in 2012. The application was denied on December 15, 2012, because the \$1.5 million cap had already been reached for 2012. The taxpayer will be placed on a wait list and will receive priority for receiving the tax credit for the 2013 tax year. However, if the application was submitted on December 1, 2016, for an installation that occurred in 2016 and the \$4.5 million cap had already been reached for 2016, no tax credit will be allowed for the 2017 tax year, assuming there is no extension of the federal credit.

g. Refundability. Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. Transferability. The credit may not be transferred to any other person.

~~d. 52.44(8)~~ 52.44(9) Unavailable to those eligible for renewable energy credit. A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—52.27(422,476C) is not eligible for the solar energy system tax credit.

~~52.44(5)~~ 52.44(9) Allocation of tax credit to owners of a business entity. If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate or trust shall be limited to \$15,000 for installations placed in service in tax years 2012 and 2013 and \$20,000 for installations placed in service in tax years beginning on or after January 1, 2014 ~~to 2016~~.

This rule is intended to implement Iowa Code section 422.33 as amended by 2014 Iowa Acts, House File 2473, section 76 ~~2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.~~

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for September is 3.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 9, 2016, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .05%
More than 397 days	Minimum .35%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 2719C

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 2, "Organization and Administration," and Chapter 9, "Reciprocity and Substantial Equivalency," Iowa Administrative Code.

These amendments reflect partial compliance with Iowa Code section 17A.7(2), which states that beginning July 1, 2012, over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules. The goal of the review is the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies. The amendment to Chapter 2 updates outdated address information. The amendment to Chapter 9 provides for recognition of a broader scope of accountant designations outside of the United States.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 22, 2016, as **ARC 2598C**. A public hearing was held on July 14, 2016, at 9 a.m. in the Board office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa. No comments were received. These amendments are identical to those published under Notice.

There is no fiscal impact. No current fees are being changed, and no new fees are being imposed.

These amendments are subject to waiver or variance pursuant to 193A—Chapter 5.

These amendments were adopted by the Board on August 31, 2016.

After analysis and review of this rule making, a positive impact on jobs is found as a result of the amendment to subrule 9.5(2). By recognizing a broader scope of acceptable accountancy designations outside of the United States, Iowa demonstrates a welcoming perspective to individuals from other countries who seek licensure in Iowa.

These amendments are intended to implement Iowa Code chapter 542.

These amendments will become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 2.1(3) as follows:

2.1(3) All official communications, including submissions and requests, should be addressed to the board at ~~1920 S.E. Hulsizer, Ankeny, Iowa 52001~~ 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309.

ITEM 2. Amend subrule 9.5(2) as follows:

9.5(2) A person who holds in good standing a certificate, license or designation from a foreign authority that is substantially equivalent to an Iowa CPA certificate shall be deemed qualified for an Iowa CPA certificate if the person satisfies all of the provisions of Iowa Code section 542.19(3). The burden is on the applicant to demonstrate that such certificate, license or foreign designation is in full force and effect and that the requirements for that certificate, license or foreign designation are comparable or superior to those required for a CPA certificate in this state. Original verification from the foreign authority which issued the certificate, license or designation shall be required to demonstrate that such certificate, license or designation is valid and in good standing. If the applicant cannot establish comparable or superior qualifications, the board shall require that the applicant pass the uniform certified public accountant examination designed to test the applicant's knowledge of practice in this state and country. If the applicant is a Canadian Chartered Accountant, Australian Chartered Accountant ~~or Australian Certified Practising Accountant~~, Hong Kong CPA, Ireland Chartered Accountant, Mexico Contador Público Certificado (CPC), or New Zealand Chartered Accountant, the

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

applicant may be required to take the International Uniform CPA Qualification Examination (IQEX) in lieu of the uniform certified public accountant examination.

[Filed 9/1/16, effective 11/2/16]

[Published 9/28/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.

ARC 2727C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 515E.14 and 515I.15, the Insurance Division (the Division) hereby amends Chapter 21, "Requirements for Excess and Surplus Lines, Risk Retention Groups and Purchasing Groups," Iowa Administrative Code.

Iowa Code chapter 515E regulates risk retention groups and purchasing groups, and Iowa Code chapter 515I regulates surplus lines insurance. The adopted amendments allow surplus lines insurance producers to electronically deliver to insureds, under a defined method, notices required by rule 191—21.4(515) stating that nonadmitted companies are not covered by the Iowa Insurance Guaranty Association. The amendments also update many citations and make general updates to the chapter. One of those updates includes rule 191—21.6(515E), risk retention groups, and rule 191—21.7(515E), procedures for qualification as a risk retention group, which are rescinded and replaced to amend the rules' language and to reverse their order to provide more logical progression in the chapter. The Division's review and changes are also in accordance with Iowa Code section 17A.2.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2664C**. A public hearing was held on August 23, 2016, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, and written comments were accepted through August 23, 2016. Comments were received. The following list summarizes the changes made to the amendments in response to public comment and Division review:

1. The Division received two comments requesting the striking of revised subrule 21.2(1) because, the comments suggested, Iowa Code section 515I.3 could be interpreted to hold both surplus lines producers and insurers liable for collecting and paying premium tax for surplus lines insurance. Instead, the Division has clarified that the premium tax amount is due from insurers only if a surplus lines insurance producer fails to collect and pay the tax as required under Iowa Code section 515I.3.

2. The Division received two comments objecting to requiring an insurer to designate an Iowa resident surplus lines insurance producer to act as the person upon whom service of process can be made on behalf of the nonadmitted insurer under subparagraph 21.5(1)"b"(2). The Division modified the subparagraph to require the designation of a producer to accept inquiries and notices on behalf of the nonadmitted insurer.

The Insurance Division's waiver provisions in 191—Chapter 4 apply to this rule making.

These amendments will impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapters 515E and 515I.

These amendments shall become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend **191—Chapter 21**, title, as follows::

REQUIREMENTS FOR ~~EXCESS AND~~ SURPLUS LINES,
RISK RETENTION GROUPS AND PURCHASING GROUPS

INSURANCE DIVISION[191](cont'd)

ITEM 2. Amend rule 191—21.1(515) as follows:

191—21.1(~~515~~ **515E,515I) Definitions.** In addition to the definitions provided in Iowa Code chapters ~~515 and 515E and 515I~~, the following definitions shall apply to this chapter, unless the context clearly requires otherwise:

“Division” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapters 515E and 515I.

“Division’s Web site” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“Excess and surplus lines insurance” means surplus lines insurance.

“NAIC UCAA” means a National Association of Insurance Commissioners Uniform Certificate of Authority Application form.

“Nonadmitted insurer” means an insurer that is not licensed by or admitted to do business in this state.

“Place” or “places” means obtaining insurance for an insured with a specific insurer.

“Producer” means the person who places the policy with the insurance company. The producer may be either a resident or nonresident of this state and must be licensed in Iowa to sell insurance classified as excess and surplus lines.

“Qualified surplus lines carrier” means a nonadmitted insurer that the division has determined is qualified to provide surplus lines coverage as set forth in Iowa Code section 515.120, but in no event shall “qualified surplus lines carrier” include an insurer described in Iowa Code section 515.122.

“Surplus lines insurance” means insurance on a risk or a part of a risk for which there is no market available through the original insurance producer in Iowa; therefore, the risk needs to be placed with a qualified surplus lines carrier, in accordance with the provisions of Iowa Code chapter 515 and this chapter.

ITEM 3. Amend rule 191—21.2(515) as follows:

191—21.2(~~515~~ **515I) Qualified Eligible surplus lines carriers’ insurer’s duties.**

21.2(1) *Insurer liable.* Where, pursuant to Iowa Code section ~~515.120~~ chapter 515I, coverage is placed with a ~~qualified~~ an eligible surplus lines carrier insurer, but the surplus lines insurance producer fails to pay to the state of Iowa the premium tax required by Iowa Code section 515I.3(2) and rule 191—21.3(515), the ~~qualified eligible surplus lines carrier insurer~~ shall be liable for the premium tax required by Iowa Code section ~~515.120~~ chapter 515I and this chapter.

21.2(2) *How premium tax quoted.* ~~A qualified~~ An eligible surplus lines carrier insurer or a broker for ~~a qualified an eligible surplus lines carrier insurer~~ is authorized to quote a premium which includes tax as is required by Iowa Code section ~~515.120~~ chapter 515I, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

ITEM 4. Amend rule 191—21.3(515) as follows:

191—21.3(~~515~~ **515I) Producers’ Surplus lines insurance producer’s duties.**

21.3(1) *Producer Surplus lines insurance producer’s collection of tax.* A surplus lines insurance producer who places insurance ~~in qualified with an eligible surplus lines carriers insurer~~ shall collect premium tax from the qualified eligible surplus lines carriers insurer by withholding 1 percent of the premiums for such tax.

21.3(2) *Electronic reporting of premium tax.* A surplus lines insurance producer who places insurance with a ~~qualified an eligible surplus lines carrier insurer~~ shall file electronically the premium tax information with the division on or before March 1 for policies issued during the preceding calendar year.

INSURANCE DIVISION[191](cont'd)

21.3(3) Annual report. On or before March 1 of each year, every surplus lines insurance producer who has placed insurance with ~~qualified~~ an eligible surplus lines carrier insurer when the policies have been issued during the preceding calendar year shall file electronically with the division or as otherwise directed by the division a sworn report of all such business written during the preceding calendar year and shall submit the amount to cover the taxes due on ~~said~~ all such business. If no business was written during the preceding calendar year, no report is required. Failure to file an annual ~~return~~ report or pay the taxes imposed by Iowa Code ~~section 515.120 et seq.,~~ chapter 515I will be deemed grounds for the revocation of a surplus lines insurance producer's license by the ~~insurance~~ division, and failure to file an annual ~~return~~ report or pay taxes within the time requirements of this rule will subject the surplus lines insurance producer to the penalties of Iowa Code ~~section 515.121~~ 515I.12.

ITEM 5. Amend rule 191—21.4(515) as follows:

191—21.4(515 515I) Producers' Surplus lines insurance producer's duty to insured; evidence of coverage. A surplus lines insurance producer who places coverage with a ~~qualified~~ an eligible surplus lines carrier insurer as defined ~~herein~~ in Iowa Code section 515I.2 shall deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code ~~section 515.120~~ chapter 515I, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A surplus lines insurance producer may comply with this rule by ~~typing or stamping a verbatim copy~~ verifying disclosure of this language in a clear and conspicuous ~~place~~ position on the policy or by electronic delivery authorized by Iowa Code chapter 505B, if the method of delivery of the notice allows the division, the surplus lines insurance producer and the intended recipient to verify receipt of the specific notice.

ITEM 6. Amend rule 191—21.5(515) as follows:

191—21.5(515 515I) Procedures for qualification and renewal of a nonadmitted insurer as a qualified an eligible surplus lines carrier insurer.

21.5(1) Application and procedures for initial qualification of a nonadmitted insurer as a qualified an eligible surplus lines carrier insurer.

a. Any nonadmitted insurer who wishes to qualify under Iowa Code ~~section 515.120~~ chapter 515I as a ~~nonadmitted~~ an eligible surplus lines insurer shall make an application.

b. The nonadmitted insurer's application shall contain the following information, which also is listed on the division's Web site, ~~www.iid.state.ia.us~~:

(1) A completed NAIC UCAA National Association of Insurance Commissioners Uniform Certificate of Authority Application (NAIC UCAA) Expansion Application, available through the division's Web site, ~~www.iid.state.ia.us~~, or through the NAIC Web site, www.naic.org/industry.

(2) ~~A designation~~ The name of a licensed Iowa an Iowa-licensed resident insurance producer qualified to write excess and surplus lines insurance qualified in Iowa to write surplus lines insurance, whom the nonadmitted insurer is designating as the person to accept inquiries and notices on behalf of the nonadmitted insurer.

(3) Remittance of the greater of a \$100 filing fee or a retaliatory fee, and a \$500 examination fee for all new applicants.

c. In addition to the above requirements, the insurer shall:

(1) Maintain the greater of either minimum capital and surplus of \$5 million or risk-based capital pursuant to Iowa Code chapter 521E, and

(2) Have been actively in operation for at least three years without significant changes in ownership or management during the three-year period.

These financial and management requirements may be waived by the division upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The division may require other information as deemed necessary.

INSURANCE DIVISION[191](cont'd)

21.5(2) *Procedures for renewal of a nonadmitted insurer as ~~a qualified~~ an eligible surplus lines carrier insurer.* A nonadmitted insurer that is not an alien insurer as defined in Iowa Code section 515.70 and that ~~met the division's requirements for becoming a qualified surplus lines carrier~~ was approved by the division as an eligible surplus lines insurer shall, by March 1 of each year following the year of qualification approval:

- a. Continue to comply with paragraph 21.5(1) "c";
- b. Pay a \$100 renewal fee; and
- c. Submit to the division the documents and materials listed on the division's Web site, www.iid.state.ia.us.

21.5(3) *Failure to comply.* Failure of a nonadmitted insurer to timely submit the materials required in this rule or to otherwise fail to comply with this rule shall result in the termination of the nonadmitted insurer's status as a ~~qualified~~ an eligible surplus lines carrier insurer.

ITEM 7. Rescind rules 191—21.6(515E) and 191—21.7(515E) and adopt the following new rules in lieu thereof:

191—21.6(515E) Procedures for qualification as a risk retention group.

21.6(1) Any insurer who wishes to register under Iowa Code chapter 515E as a risk retention group shall file with the division an application that contains:

- a. The information required by Iowa Code section 515E.4, which also is listed on the division's Web site; and
- b. Remittance of a \$100 filing fee plus any additional retaliatory fees.

21.6(2) A risk retention group shall pay a \$100 renewal fee by March 1 of each year following the year of registration. The risk retention group shall annually provide information requested by the division for determination of continued registration.

191—21.7(515E) Risk retention groups. A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, the producers shall file the premium tax information electronically with the division through the division's Web site on or before March 1 for policies issued during the preceding calendar year.

ITEM 8. Amend paragraph **21.8(1)"a"** as follows:

- a. The information set forth in Iowa Code section 515E.8, which also is listed on the division's Web site, www.iid.state.ia.us; and

ITEM 9. Amend rule 191—21.9(515,515E) as follows:

191—21.9(~~515,515E,515I~~) Failure to comply; penalties. Failure of a producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code section ~~515.120, 515.121, or 515.122, or chapter chapters 515E and 515I~~ may subject the producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapter 507B or Iowa Code section 515.121, 515E or 515I.

[Filed 9/8/16, effective 11/2/16]

[Published 9/28/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.

ARC 2728C**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 516E.7, the Insurance Division (the Division) hereby rescinds Chapter 23, “Motor Vehicle Service Contracts,” and adopts new Chapter 104, “Motor Vehicle Service Contracts,” Iowa Administrative Code.

The adopted Chapter 104 implements Iowa Code chapter 516E. The rescinded Chapter 23 was reviewed according to Iowa Code section 17A.7(2), and new Chapter 104 updates provisions from rescinded Chapter 23, including, among other things, procedures allowing more electronic administration of Iowa Code chapter 516E and the associated rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2665C**. A public hearing was held on August 23, 2016, and written comments were accepted through that date. No comments were received. Since publication of the Notice, one nonsubstantive, technical change has been made. For consistency, the words “in the instructions” were added to paragraph 104.3(2)“d.”

These amendments are subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

These amendments impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 516E.

These amendments shall become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Rescind and reserve **191—Chapter 23**.

ITEM 2. Adopt the following new 191—Chapter 104:

CHAPTER 104

MOTOR VEHICLE SERVICE CONTRACTS

191—104.1(516E) Purpose. This chapter is promulgated to implement and administer the provisions of Iowa Code chapter 516E, which regulates the sale of motor vehicle service contracts.

191—104.2(516E) Applicability and definitions.

104.2(1) Applicability. This chapter shall apply to the following:

a. Any person who issues motor vehicle service contracts in this state, i.e., the obligor under the motor vehicle service contract.

b. Any person who offers or sells a motor vehicle service contract in this state, such as automobile dealers and financial institutions.

c. Third-party administrators, as defined in Iowa Code section 516E.1(15), administering motor vehicle service contracts or claims.

d. Motor vehicle service contract reimbursement insurance policies and surety policies issued in this state by an insurer.

104.2(2) Definitions. The definitions in Iowa Code section 516E.1 are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“*Division*” shall mean the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapter 516E.

“*Division’s Web site*” shall mean the Web site of the Iowa insurance division, www.iid.iowa.gov.

INSURANCE DIVISION[191](cont'd)

191—104.3(516E) Annual registration of service companies and providers.

104.3(1) *Registration of a service company.* In order for a service company to be permitted to issue a service contract or arrange to perform services pursuant to a service contract each year, no later than August 1, the service company shall do all of the following using forms and instructions available on the division's Web site:

- a. File an application for registration with the division, pursuant to Iowa Code section 516E.2(2).
- b. Provide documentation demonstrating that the service company has financially secured its service contracts in compliance with Iowa Code section 516E.3(1) "a," 516E.4 or 516E.21.
- c. File a consent to service of process on the commissioner, pursuant to Iowa Code section 516E.3(1) "b."
- d. Provide to the division other information the division requires, pursuant to Iowa Code section 516E.3(1) "b."
- e. Pay a registration fee of \$500 to the division, as required by Iowa Code section 516E.2, and other fees or payments as required by the division in the instructions.

104.3(2) *Registration of a provider.* Each year, no later than August 1, a provider shall do all of the following using forms and instructions available on the division's Web site:

- a. File a notice with the division, as required by Iowa Code section 516E.3(2) "a."
- b. File a consent to service of process on the commissioner, pursuant to Iowa Code section 516E.3(2) "a."
- c. Provide to the division other information the division requires, pursuant to Iowa Code section 516E.3(2) "a."
- d. Pay a notice filing fee of \$100 to the division, as required by Iowa Code section 516E.3(2) "a," and other fees or payments as required by the division in the instructions.

104.3(3) *Prompt filing of changes in information.*

a. Pursuant to Iowa Code section 516E.3(1) "c" or 516E.3(2) "b," a service company or a provider shall promptly file the following information with the division:

- (1) Any change in the name or ownership of the service company or provider.
- (2) Notice of the termination of the service company's or provider's business.
- (3) If material amendments have been made to any of the documents filed with the division pursuant to Iowa Code section 516E.3(1) "b" or 516E.3(2) "a," copies of those amended documents.

b. The division shall not charge a filing fee for interim filings made pursuant to this subrule to keep the materials previously filed with the division current and accurate.

191—104.4(516E) A service company's filing of service contracts.

104.4(1) Pursuant to Iowa Code section 516E.3(1) "a," a service company shall file with the division a true and correct copy of each service contract prior to issuing, selling or offering the service contract for sale in Iowa. The service company shall submit to the division \$10 for each service contract filed.

104.4(2) If material amendments, including any new riders, attachments, addenda or the like, have been made to any of the documents filed with the division pursuant to Iowa Code section 516E.3(1) "b," a service company shall promptly file copies of those amended documents. The division shall not charge a filing fee for interim filings made to keep the materials previously filed with the division current and accurate.

104.4(3) Copies of all required forms, procedures and instructions can be found on the division's Web site. Required fees and other payments are described in the instructions.

104.4(4) A motor vehicle service contract form filed pursuant to Iowa Code section 516E.3 may be used in this state immediately after the contract form has been filed with the division.

191—104.5(516E) A service company's use of surety bond in lieu of reimbursement insurance policy.

104.5(1) In lieu of obtaining a reimbursement insurance policy as required by Iowa Code section 516E.2, a service company may file with the division a surety bond. The surety bond shall be in the form as directed by the division and as available on the division's Web site.

INSURANCE DIVISION[191](cont'd)

104.5(2) A surety bond claimant, for purposes of this rule, includes any service contract holder whose service contract predates the effective date of the surety bond or was executed during the surety bond's period of coverage and whose service contract has not been rescinded, fulfilled, or secured by another bond or by other insurance.

104.5(3) Except as provided in Iowa Code section 516E.4 and subrule 104.5(6), no suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

104.5(4) Any surety bond claimant as set forth in subrule 104.5(2) may maintain an action on the surety bond. A surety's aggregate liability shall not exceed the penal sum of the bond.

104.5(5) A surety shall not cancel a surety bond except upon written notice of cancellation given by the surety to the division by certified mail. The effective date of the cancellation shall not be less than 60 days after the division receives the surety's notice. The surety shall specify the reason for the cancellation.

104.5(6) The surety shall not be liable for any surety bond claim related to the service company's insolvency or cessation of business unless the surety claim is made within five years of the date of insolvency or business cessation.

104.5(7) If the surety notifies the service company that the surety intends to cancel a surety bond, the service company, within 30 days, shall submit to the division a substitute surety bond or reimbursement insurance policy.

104.5(8) A service company seller shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy. The surety bond amount shall be calculated based on the value of the service contracts sold and not performed or canceled and for which no trust fund or insurance is in place.

191—104.6(516E) Costs of audits and examinations. When the commissioner chooses to conduct an audit or examination pursuant to Iowa Code section 516E.14, 516E.21(1)“d,” or 516E.11(1)“c,” the actual costs of the audit or examination shall be borne by the provider, service company, or third-party administrator being audited or examined. The provider, service company, or third-party administrator may request that the division waive all or part of the costs.

191—104.7(516E) Prohibited acts.

104.7(1) *Unfair or deceptive trade practices involving used or rebuilt parts.*

a. Used parts. A motor vehicle service contract provider shall not use used parts to repair a motor vehicle covered by a motor vehicle service contract without prior written authorization by the vehicle owner, except as provided in paragraph 104.7(1)“b.”

b. Rebuilt parts. A motor vehicle service contract provider shall not use rebuilt parts to repair a motor vehicle covered by a motor vehicle service contract unless all of the following are true:

- (1) The parts have been dismantled and reconstructed as necessary.
- (2) All of the internal and external parts have been cleaned and made free from rust and corrosion.
- (3) All impaired, defective, or substantially worn parts have been restored to a sound condition or replaced with new, rebuilt, or unimpaired used parts.
- (4) All missing parts have been replaced with new, rebuilt, or unimpaired used parts.
- (5) All rewinding or machining or other necessary operations have been performed.
- (6) The rebuilt parts have been put in working condition, using, as minimum standards, the manufacturer's performance specifications in existence when the parts were originally manufactured if those specifications are publicly available.

104.7(2) *Unfair discrimination or trade practices.* A motor vehicle service contract or provider shall not make or permit any unfair discrimination between individuals of the same class in the rates charged for any contract, or in any other manner.

INSURANCE DIVISION[191](cont'd)

191—104.8(516E) Violations. Failure to comply with this chapter or with Iowa Code chapter 516E shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 516E.

These rules are intended to implement Iowa Code chapter 516E.

[Filed 9/8/16, effective 11/2/16]

[Published 9/28/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.

ARC 2731C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.202(24)“g” and section 502.305(2) as amended by 2016 Iowa Acts, House File 2394, section 2, the Insurance Division (the Division) hereby amends Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Iowa Code chapter 502 is the Iowa Uniform Securities Act, which regulates the sale of securities in Iowa. The amendments bring the rules into accordance with Iowa Code section 502.305 as amended by 2016 Iowa Acts, House File 2394, related to the fee charged for filing a registration statement or a notice filing under Iowa Code section 502.305. The amendments also update many citations and provide other general updates to Chapter 50.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2668C**. A public hearing was held on August 23, 2016, and written comments were accepted through that date. No comments were received. These amendments are identical to those published under Notice except that an implementation sentence has been added at the end of new rule 191—50.70(502) in Item 4.

These amendments are subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

These amendments impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 502 as amended by 2016 Iowa Acts, House File 2394, section 2.

These amendments shall become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **50.60(3)“b”** as follows:

b. Payment of the applicable fee under Iowa Code section ~~502.302(1)“a” as amended by 2015 Iowa Acts, House File 632.~~ 502.302(1)“a.”

ITEM 2. Amend subrule 50.60(4) as follows:

50.60(4) Amendments to notice filings are made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing is made by filing Form NF or providing the administrator with notice of the withdrawal or termination in a similar format. An amendment, withdrawal, or termination is effective upon receipt by the administrator of the required notice and all fees required by Iowa Code section ~~502.302(1)“a” as amended by 2015 Iowa Acts, House File 632.~~ 502.302(1)“a.”

This subrule is intended to implement Iowa Code section 502.302 ~~and 2015 Iowa Acts, House File 632.~~

ITEM 3. Amend subrule 50.60(6) as follows:

50.60(6) An investment company that makes a notice filing under subrule 50.60(2) and that pays an initial \$400 filing fee under Iowa Code section 502.302(1)“a” ~~as amended by 2015 Iowa Acts, House~~

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~~File 632~~, shall pay a \$400 renewal fee prior to the notice filing's annual renewal date. Notice filings that are not renewed by the annual renewal date shall expire.

This subrule is intended to implement Iowa Code section 502.302 ~~and 2015 Iowa Acts, House File 632~~.

ITEM 4. Adopt the following new rule 191—50.70(502):

191—50.70(502) Fee for securities registration filings under Iowa Code section 502.305. Except as provided in Iowa Code sections 502.302(3) and 502.304A(3) "g," a person who files a registration statement or a notice filing pursuant to Iowa Code section 502.305 as amended by 2016 Iowa Acts, House File 2394, section 2, shall pay the following fees:

50.70(1) For the initial filing, \$400 for one year; and

50.70(2) On each anniversary date of the initial filing, an annual renewal fee of \$400.

This rule is intended to implement Iowa Code section 502.305.

ITEM 5. Amend rule 191—50.90(502) as follows:

191—50.90(502) Intrastate crowdfunding exemption.

50.90(1) Purpose and authority.

a. The purpose of this rule is to set out the requirements, procedures and fees relating to the registration and conduct of intrastate crowdfunding, as established by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3.

b. This rule is authorized by Iowa Code ~~section sections 502.202 and 502.605 and Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, and is intended to implement 2015 Iowa Acts, House File 632.~~

50.90(2) Definitions. For purposes of this rule, the definitions in Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632, and the following definitions shall apply unless the context requires otherwise:

"*Administrator's Web site*" means the Web site of the Iowa insurance division, www.iid.iowa.gov.

"*Issuer*" means a person that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa and has been approved by the administrator as a crowdfunding issuer pursuant to paragraph 50.90(8) "a."

"*Management*" means an issuer's directors or executive officers or the individuals who perform such functions for the issuer.

"*Portal Web site*" means the Internet Web site through which a registered Iowa crowdfunding portal provides intrastate crowdfunding offers and sales of exempt securities in Iowa.

"*Purchaser*" means an investor or person that purchases crowdfunding securities through an Iowa crowdfunding intermediary.

50.90(3) Intermediary registration. To act as a registered intermediary as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3:

a. and *b.* No change.

50.90(4) Iowa crowdfunding portal registration. To request administrator approval of a registration as an Iowa crowdfunding portal as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, a person shall submit all of the following to the administrator:

a. to *d.* No change.

50.90(5) No change.

50.90(6) Duties of an Iowa crowdfunding portal.

a. No change.

b. Background and regulatory checks. Prior to offering securities to residents of Iowa, the Iowa crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal Web site and of each of the issuer's control persons. "Control persons" for purposes of this subrule means the issuer's officers or directors; other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by

INSURANCE DIVISION[191](cont'd)

contract or otherwise; and persons holding more than 20 percent of the outstanding equity of the issuer. The Iowa crowdfunding portal shall deny an issuer access to the portal Web site if:

(1) The issuer or any of its control persons are subject to a disqualification under Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, ~~section 502.202(24)“b”(5)~~ section 502.202(24)“b”(5) or this rule;

(2) and (3) No change.

c. to e. No change.

f. *Enforcement of investment limits.* The Iowa crowdfunding portal shall take reasonable measures to ensure that no purchaser exceeds the sales limits set forth in Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 ~~section 502.202(24)“e” and “d”~~. section 502.202(24)“c.”

g. *Administrator access.* The Iowa crowdfunding portal shall provide the administrator purchaser-level access at all times to the portal Web site, pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 ~~section 502.202(24)“g”(8)~~. section 502.202(24)“g”(8).

50.90(7) No change.

50.90(8) *Duties of a crowdfunding issuer.*

a. *Notice to administrator.* Pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, at least 30 days prior to the offer of any security in this state in reliance upon the exemption provided by this rule, the crowdfunding issuer shall file with the administrator for approval a crowdfunding exemption notice application form, available on the administrator’s Web site.

(1) and (2) No change.

b. and c. No change.

50.90(9) to **50.90(13)** No change.

This rule is intended to implement Iowa Code section ~~502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632.~~

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[Published 9/28/16]

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ARC 2729C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 523C.10, the Insurance Division (the Division) hereby rescinds Chapter 54, “Residential Service Contracts,” and adopts new Chapter 103, “Residential Service Contracts,” Iowa Administrative Code.

The adopted Chapter 103 implements Iowa Code chapter 523C. The rescinded Chapter 54 was reviewed according to Iowa Code section 17A.7(2), and new Chapter 103 updates provisions in rescinded Chapter 23, including, among other things, procedures allowing more electronic administration of Iowa Code chapter 523C and the associated rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2666C**. A public hearing was held on August 23, 2016, and written comments were accepted through that date. No comments were received. These amendments are identical to those published under Notice.

These amendments are subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

These amendments impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 523C.

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These amendments shall become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Rescind and reserve **191—Chapter 54**.

ITEM 2. Adopt the following **new** 191—Chapter 103:

CHAPTER 103
RESIDENTIAL SERVICE CONTRACTS

191—103.1(523C) Purpose. The purpose of this chapter is to administer Iowa Code chapter 523C, relating to residential service contracts as defined in Iowa Code section 523C.1(9).

191—103.2(523C) Applicability, scope, and definitions.

103.2(1) This chapter shall apply to any person who issues or offers to issue a residential service contract as defined in Iowa Code section 523C.1(9).

103.2(2) This chapter shall apply when an offer to sell a residential service contract is made or accepted in this state. An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to a person in this state.

103.2(3) The definitions in Iowa Code sections 523C.1 and 523C.8A(3) are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“Division” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapter 523C.

“Division’s Web site” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“Guarantee or warranty” means:

1. Any written affirmation or written promise made by a manufacturer or seller in connection with the sale of structural components or any tangible personal property which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance over a specified period of time; or

2. Any written affirmation, promise or undertaking by a manufacturer or seller in connection with the sale of structural components or any tangible personal property to refund, repair, replace or take other remedial action with respect to a product if the product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain for purposes other than resale.

“Residential customer” means any person (whether or not the person is the owner of the residential property) who purchases a service contract relating to a residential property.

“Residential property” means any single- or multiple-unit structure, including a house, townhouse, condominium, mobile home, or other habitable structure which is used primarily for residential purposes.

“Structural components” means the roof, foundation, basement, walls, ceiling or floors of a residential property.

191—103.3(523C) Application of insurance laws. The sale of a residential service contract by a licensed service company shall not be deemed to include the sale of insurance. Thus, unless the service company is otherwise engaged in the sale of insurance, the provisions of the insurance laws of this state shall not be applicable to any service company granted a license by the division. However, this provision may not be construed to exempt any other warranties or service contracts from the provisions of the insurance laws of this state.

191—103.4(523C) Forms and instructions. Instructions for fees, forms and other filings, and copies of all required forms are available on the division’s Web site.

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191—103.5(523C) Fees and costs.

103.5(1) When a service company files a residential service contract form with the division for approval pursuant to Iowa Code section 523C.7, the service company shall also submit a residential service contract form approval fee of \$100 for each form of residential service contract filed; except that, if the residential service contract form is filed as part of the service company's annual report required by Iowa Code section 523C.15, the fee shall be the amount described in rule 191—103.8(523C).

103.5(2) When the commissioner chooses to conduct an audit or examination pursuant to Iowa Code section 523C.12, the actual costs of the audit or examination shall be borne by the service company being audited or examined. The service company may request that the division waive all or part of the costs.

191—103.6(523C) Prohibited acts or practices.

103.6(1) Defamation. A service company is prohibited from, directly or indirectly, doing, or aiding, abetting or encouraging, the following: the making, publishing, disseminating, or circulating of any oral or written statement, or of any pamphlet, circular, article or literature which is false or maliciously critical as to the financial condition of any person and which is calculated to injure that person.

103.6(2) Boycott, coercion, and intimidation. A service company is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the residential service contract industry.

103.6(3) False statements. A service company is prohibited from knowingly filing with any supervisory or other public official, or knowingly making or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

103.6(4) False entries. A service company is prohibited from knowingly making any false entry of a material fact in any book, report or statement of any person and from knowingly omitting to make a true entry of any material fact pertaining to the business of that person in any book, report or statement of that person.

103.6(5) Misrepresentation, false advertising, and unfair practices.

a. A service company shall not:

(1) Use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company. This subparagraph does not apply to a residential service company also licensed as an insurance company.

(2) Represent or imply in any manner that the service company has been sponsored or recommended, or that the service company's abilities or qualifications have in any respect been passed upon, by the division or by the state of Iowa. Nothing in this subrule prohibits a statement, other than in a paid advertisement, that a person has received a license, if the statement is true in fact and if the effect of the license's issuance is not misrepresented.

(3) Without the written consent of the residential customer, knowingly charge for duplication of coverage or duties required by state or federal law, or duplication of a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller or manufacturer of a product.

(4) Make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a service contract.

(5) Permit or cause the omission of any material statement that, under the circumstances, should have been made in connection with the sale, offer to sell, or advertisement of a service contract, in order that other statements also made in connection with the sale, offer to sell or advertisement of a service contract would not be misleading.

(6) Make, permit or cause any false or misleading statements, either oral or written, about the benefits or services available under the service contract.

(7) Make, permit or cause any statement or practice which has the effect of creating or maintaining a fraud.

INSURANCE DIVISION[191](cont'd)

(8) Cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the residential service contract industry or with respect to any service company which is untrue, deceptive or misleading.

b. A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a residential service contract as a condition of a loan and shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required.

191—103.7(523C) Service company licenses.

103.7(1) A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation, limited liability company, partnership or limited liability partnership and has procured a service company license from the division.

103.7(2) Service company licenses shall not be transferable. A service company which sells its business shall cancel its service company license, and the purchaser of the business shall apply for a new service license under the purchaser's name.

191—103.8(523C) Annual form filing. In addition to the information required by Iowa Code section 523C.15, a licensed service company shall include with its annual report one copy of each residential service contract form to be issued or used in this state, filed for review as an exhibit to the annual report; and a form review fee of 3 percent of the aggregate amount of payments the service company received for residential service contracts in the state during the preceding fiscal year, but the fee shall in no case be less than \$100 or more than \$50,000.

191—103.9(523C) Financial statements and calculation of net worth.

103.9(1) All financial statements, including balance statements, filed pursuant to or prepared for purposes of Iowa Code chapter 523C or this chapter shall be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

103.9(2) For purposes of Iowa Code section 523C.6, "net worth" means the excess of all assets over liabilities, and any required reserves shall be treated as a liability rather than as an asset.

191—103.10(523C) Records.

103.10(1) All licensed service companies and independent depositories shall keep accurate accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C.

103.10(2) A licensed service company's accounts, books, and records shall include:

- a.* Copies of all contracts;
- b.* The name and address of each residential customer;
- c.* The name and address of each independent depository; and
- d.* The dates and amounts of all receipts and expenditures.

103.10(3) A licensed service company shall retain all required accounts, books, and records pertaining to each residential service contract for at least two years after the expiration of the specified period of time.

103.10(4) All licensed service companies and independent depositories shall make all accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C available to the division for the purpose of examination.

103.10(5) A licensed service company discontinuing business in this state shall maintain its records until it furnishes the division satisfactory proof that it has discharged all obligations to contract holders in this state.

191—103.11 to 103.14 Reserved.

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191—103.15(523C) Violations. Failure to comply with this chapter or with Iowa Code chapter 523C shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523C.

These rules are intended to implement Iowa Code chapter 523C.

[Filed 9/8/16, effective 11/2/16]

[Published 9/28/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.

ARC 2730C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 523A.809, the Insurance Division (the Division) hereby amends Chapter 100, "Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services," Iowa Administrative Code.

Chapter 100 provides for the Iowa Insurance Commissioner's administration of the provisions of Iowa Code chapter 523A, relating to the regulation of the sales of cemetery merchandise, funeral merchandise, and funeral services; the establishment and maintenance of trust funds; and the administration of violations of Iowa Code chapter 523A or Chapter 100. The amendments to Chapter 100 do the following:

- Clarify that preneed sellers must maintain records of the sales agents who have made sales on behalf of the preneed sellers and that preneed sellers shall report to the Division each year the names of any affiliated sales agents.
- Clarify how preneed sellers and financial institutions should create and report funds and transactions of master trust agreement accounts.
- Remove references to 2015 Iowa Acts, as the Acts have been incorporated into the 2016 Iowa Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2667C**. A public hearing was held on August 23, 2016, and written comments were accepted through that date. No comments were received. Since publication of the Notice, one nonsubstantive, technical change has been made. For consistency, the term "transaction" was changed to "transactions" in subparagraph 100.19(2)"b"(3).

These amendments are subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

These amendments impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 523A.

These amendments shall become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 191—100.1(523A) as follows:

191—100.1(523A) Purpose. This chapter is promulgated to implement and administer Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632, which regulates the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items.

ITEM 2. Amend subrule 100.15(1) as follows:

100.15(1) Procedure for renewal. The commissioner shall renew preneed sellers' licenses, pursuant to Iowa Code section 523A.501(7) as amended by 2015 Iowa Acts, House File 632, section 38, or sales agents' licenses, pursuant to Iowa Code section 523A.502(5) as amended by 2015 Iowa Acts, House File 632, section 39, for both active and restricted status licenses, if the preneed sellers or sales agents

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provide to the commissioner all of the following, which must be received by the commissioner on or before April 15 of each year:

a. Annual report. A preneed seller or sales agent shall file a complete and accurate annual report in the form and manner directed by the commissioner. A preneed seller's report must include information on affiliated sales agents as provided in the instructions. The form and instructions may be obtained through the commissioner's Web site.

b. and c. No change.

ITEM 3. Adopt the following **new** rule 191—100.19(523A):

191—100.19(523A) Master trusts.

100.19(1) Creation of master trusts. Pursuant to Iowa Code section 523A.203, a preneed seller may commingle the care funds of multiple beneficiaries in a master trust. When a preneed seller enters into a master trust agreement and establishes a master trust agreement at a financial institution:

a. The title of the financial account shall include the name of the preneed seller and be identified as a master trust account.

b. Either the preneed seller or the financial institution shall be the trustee of the master trust account.

c. Either the preneed seller or the financial institution shall maintain the detailed listing as required by Iowa Code section 523A.203(3) by keeping the following:

(1) One listing of the amount deposited in trust for each beneficiary; and

(2) A separate accounting of each purchaser's principal, interest, and income, and balance in trust for each beneficiary who has care funds in the master trust account.

100.19(2) Reporting of master trusts.

a. As part of the preneed seller's annual report required by paragraph 100.15(1) "a," a preneed seller shall submit all of the following:

(1) The aggregate amount of deposits made to the master trust account during the calendar year.

(2) The aggregate amount of withdrawals made from the master trust account during the calendar year.

(3) Information detailing the name of any beneficiary related to a deposit to or withdrawal from the master trust account with the amount deposited or withdrawn by the beneficiary. The report shall include aggregate amounts of deposits and withdrawals for each beneficiary.

(4) Transactions, as described in the division's instructions for the annual report, for the calendar year in which the transactions took place.

b. A financial institution shall submit a report annually that includes all of the following information relating to activities in the master trust:

(1) The aggregate amount of deposits made to the master trust account for each beneficiary during the calendar year.

(2) The aggregate amount of withdrawals made from the master trust account for each beneficiary during the calendar year.

(3) Transactions, as described in the division's instructions for the annual report, for the calendar year in which the transactions took place.

(4) A copy of the bank account statement for the master trust account.

ITEM 4. Adopt the following **new** paragraph **100.33(1) "f"**:

f. Record of sales agents. A preneed seller shall maintain a list of all sales agents who sold purchase agreements on behalf of the preneed seller during each calendar year. The records shall include the license number of each sales agent and the dates of the sales agent's employment. Upon the commissioner's request, these records shall be provided to the commissioner.

INSURANCE DIVISION[191](cont'd)

ITEM 5. Amend **191—Chapter 100**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632.

[Filed 9/8/16, effective 11/2/16]

[Published 9/28/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.

ARC 2723C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)“r,” 16.35 and 17A.3(1)“b,” the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments replace the current qualified allocation plans (QAPs) for the Low-Income Housing Tax Credit Program with two updated qualified allocation plans, one for 9 percent tax credits (9% QAP) and another for 4 percent tax credits (4% QAP), both of which are incorporated by reference in rule 265—12.1(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2659C**. The Authority received public comment on the 9% QAP and made certain changes to the 9% QAP based on those comments. The Authority received no comments on the 4% QAP and made only corrections of typographical errors to the 4% QAP. The only changes from the amendments published under Notice were in rules 265—12.1(16) and 265—12.2(16) and reflect the change in the date subsequent to which no amendments to or editions of the QAPs are included. The date was changed from July 6, 2016, to September 7, 2016. The dates of the QAPs were also updated.

The Iowa Finance Authority adopted these amendments on September 7, 2016.

After analysis and review of this rule making, the impact on jobs is expected to be consistent with the impact of previous years' QAPs. The Low-Income Housing Tax Credit Program has a substantial positive impact on job creation in Iowa with many jobs created annually in the construction, finance, and property management fields, among others.

These amendments are intended to implement Iowa Code sections 16.5(1)“r,” 16.35, 17A.12, and 17A.16 and Internal Revenue Code Section 42.

These amendments will become effective on November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plans.

12.1(1) Four percent qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 4% Qualified Allocation Plan (“4% QAP”) dated September 7, 2016, shall be the qualified allocation plan for the allocation of 4 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 4% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 4% QAP does not include any amendments or editions created subsequent to ~~October 8, 2014~~ September 7, 2016.

12.1(2) Nine percent qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2016~~ 2017 Qualified Allocation Plan (“9% QAP”) shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 9% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 9% QAP does not include any amendments or editions created subsequent to ~~October 7, 2015~~ September 7, 2016.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plans.

12.2(1) 4% QAP. The 4% QAP can be reviewed and copied in its entirety on the authority's Web site at <http://www.iowafinanceauthority.gov>. Copies of the 4% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's Web site. The 4% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~October 8, 2014~~ September 7, 2016. Additionally, the 4% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site.

12.2(2) 9% QAP. The 9% QAP can be reviewed and copied in its entirety on the authority's Web site at <http://www.iowafinanceauthority.gov>. Copies of the 9% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's Web site. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~October 7, 2015~~ September 7, 2016. Additionally, the 9% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site.

[Filed 9/8/16, effective 11/2/16]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.

ARC 2722C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Barbering hereby amends Chapter 21, "Licensure," and Chapter 24, "Continuing Education for Barbers," Iowa Administrative Code.

This rule making adopts the required number of continuing education hours a licensed barber must complete during a single biennium. 2015 Iowa Acts, Senate File 434, created new Iowa Code section 158.11 and amended Iowa Code section 272C.2A, reducing from eight hours to three hours the number of continuing education hours licensed barbers are required to complete during a single biennium. Because membership of the Board of Barbering was reduced to two members in April 2015, the Board was unable to hold a meeting due to lack of a quorum of Board members and was therefore unable to adopt administrative rules following the passage of 2015 Iowa Acts, Senate File 434. However, additional board members were appointed during the 2016 Legislative Session, with terms effective May 1, 2016, allowing the Board to resume operations, including amendment of these rules.

Notice of Intended Action was published in the August 3, 2016, Iowa Administrative Bulletin as **ARC 2670C**. No comments were received. These amendments are identical to the amendments published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code chapters 158 and 272C and section 147.10. These amendments will become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend subparagraph **21.16(3)"a"(2)** as follows:

(2) Verification of completion of ~~eight~~ three hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 2. Amend subparagraph **21.16(3)“b”(2)** as follows:

(2) Verification of completion of ~~eight~~ three hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation; and

ITEM 3. Amend subrule 24.2(1) as follows:

24.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year. Each biennium, each person who is licensed to practice as a barber in this state shall be required to complete a minimum of ~~eight~~ three hours of continuing education that meet the requirements of rule 645—24.3(158,272C). ~~Beginning August 1, 2010, a~~ A minimum of one hour of the ~~eight~~ three hours shall be in the content areas of Iowa barbering laws and administrative rules and sanitation. A licensee who is a barber instructor shall obtain four hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the barber license.

ITEM 4. Amend subrule 24.2(2) as follows:

24.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of ~~eight~~ three hours of continuing education per biennium for each subsequent license renewal.

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ARC 2739C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14, 422.16, and 422.68, the Department of Revenue hereby amends Chapter 46, “Withholding,” Iowa Administrative Code.

Iowa will now require W-2 forms to be filed electronically with the Department on an annual basis. Iowa may require 1099 forms to be filed with the Department for tax year 2016. Iowa will require 1099 forms to be filed with the Department on an annual basis, beginning for tax year 2017. The Department will use the W-2 and 1099 forms to combat tax fraud. The Internal Revenue Service already requires withholding agents to file W-2s at the federal level, and with these amendments, Iowa is conforming with federal practice. Because withholding agents or employers are already required to file W-2s with the Internal Revenue Service, this is not an additional burden on withholding agents or employers. In addition, by reinstating a requirement to file W-2 and 1099 forms with the Department, Iowa will join most other states that have withholding requirements. For tax year 2016, only withholding agents with at least 50 employees will be required to electronically file W-2 forms with the Department, and withholding agents with at least fifty 1099 forms may file 1099 forms with the Department. For tax year 2017, all withholding agents are required to electronically file W-2 and 1099 forms with the Department. In addition, annual verified summary of payment reports will be due on or before the last day of January following the tax year. A withholding agent can request in writing an extension to electronically file due to hardship.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2616C** on July 6, 2016.

Public comments received stated that the rules will help to combat tax fraud, that the rules should conform with federal law, that maintaining the existing exemption for small employers with less than 250 employees will combat an undue burden on small employers, that taxpayers should have access to

REVENUE DEPARTMENT[701](cont'd)

prior year withholding information free of charge, and that the Department should retain withholding information for as long as there is a possibility of assessment or collection activity.

Changes have been made from the amendments published under Notice in order to separate the filing processes for W-2 and 1099 forms. While the Department will still accept electronically filed 1099s beginning with tax year 2016, filing 1099s will not be mandatory for withholding agents until tax year 2017. W-2Gs, which are statements of gambling earnings, are typically required to be filed along with 1099s. As a result, that specific form type is included with the requirements for filing 1099s.

The Department of Revenue adopted these amendments on August 30, 2016.

After analysis and review of this rule making, the Department finds that the amendments to these rules are not likely to have a significant impact on jobs.

These amendments are intended to implement Iowa Code section 422.16(2).

These amendments will become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **46.3(3)“e”** as follows:

e. Annual verified summary of payments reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), 46.1(3), and 46.4(1) is to furnish to the department of revenue on or before the last day of ~~February~~ January following the tax year an annual “Verified Summary of Payments Report” (VSP).

The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental jobs credits, accelerated career education credits and housing assistance credits claimed on withholding returns for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding remitted to the department of revenue for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to report the additional withholding tax due on an amended return and submit payment to the department.

If the Iowa income tax shown as withheld on the W-2s and 1099s issued for the tax year is less than the amount of withholding tax remitted to the department of revenue by the withholding agent, the agent should file an amended return with the department reflecting the excess tax paid.

(2) For Verified Summary of Payments Report forms filed with the department of revenue for the year 2000 ~~and subsequent years through the year 2016~~, the withholding agents are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested by personnel of the department of revenue if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year ~~2000~~ 2013, the request is valid if the request is postmarked, faxed or made on or before December 31, ~~2003~~ 2016.

ITEM 2. Reletter paragraphs **46.3(3)“f”** to **“h”** as **46.3(3)“h”** to **“j.”**

ITEM 3. Adopt the following new paragraph **46.3(3)“f”**:

f. W-2 forms.

(1) Beginning in 2017 for tax year 2016, withholding agents with at least 50 employees are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year. Withholding agents with fewer than 50 employees may, but are not required to, electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in 2018 for tax year 2017, all withholding agents are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2019 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

REVENUE DEPARTMENT[701](cont'd)

ITEM 4. Adopt the following **new** paragraph **46.3(3)“g”**:

g. 1099 forms and W-2G forms.

(1) Beginning in 2017 for tax year 2016, withholding agents with at least fifty 1099 forms and W-2G forms may file 1099 forms and W-2G forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in 2018 for tax year 2017, all withholding agents are required to electronically file all 1099 forms and W-2G forms on or before the last day of January following the tax year.

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2019 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

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AGENCY	RULE	DELAY
Natural Resource Commission[571]	61.7(2)“e” [IAB 8/31/16, ARC 2694C]	Effective date of October 5, 2016, delayed until the adjournment of the 2017 General Assembly by the Administrative Rules Review Committee at its meeting held September 13, 2016. [Pursuant to §17A.8(9)]