

**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 15 days' advance notice will be given before the effective date of the action. The right to appeal shall not be granted in the following circumstances:

- 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.
- 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.

**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.

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