

Red Tape Review Rule Report (Due: September 1, 2023)

Department Name:	Department of Insurance and Financial Services	Date:	8/31/2023	Total Rule Count:	10
IAC #:	191	Chapter/ SubChapter/ Rule(s):	16	Iowa Code Section Authorizing Rule:	CH. 507B
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PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

The rules in Chapter 16 regulate the activities of producers and establish minimum standards of conduct with respect to the replacement of existing life insurance and annuities. The rules conform with model laws issued by the National Association of Insurance Commissioners (NAIC).

Is the benefit being achieved? Please provide evidence.

Yes. This rule making is being proposed pursuant to Executive Order 10.

What are the costs incurred by the public to comply with the rule?

There are no known costs.

What are the costs to the agency or any other agency to implement/enforce the rule?

There are no known costs.

Do the costs justify the benefits achieved? Please explain.

The proposed rules streamline and eliminate redundant and repetitive language.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

The Division did not find any less restrictive alternatives. The proposed changes align the rules with model law and industry standards.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

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191—16.23
191—16.24
191—16.25
191—16.26
191—16.27

RULES PROPOSED FOR REPEAL (list rule number[s]):

None.

RULES PROPOSED FOR RE-PROMULGATION (list rule number[s] or include rule text if available):

The following rulemaking action proposed:

ITEM 1. Amend rule 191—16.23(507B) as follows:

191—16.23(507B) Exemptions.

16.23(1) Unless otherwise specifically included, these rules shall not apply to transactions involving:

a. Credit life insurance.

b. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group,

assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct-response solicitation shall be subject to the provisions of rule 191—16.28(507B).

c. Group life insurance and annuities used to fund formal prepaid funeral contracts.

d. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner.

e. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

f. Except as noted below, policies or contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(3) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the Internal Revenue Code; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

These rules shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. ~~As used in this subrule, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan~~

~~or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee.~~

g. New coverage provided under a life insurance policy or contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member.

h. Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed.

i. Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter.

j. Structured settlement annuities.

16.23(2) Registered contracts shall be exempt from the requirements of paragraph 16.26(1) "b" and subrule 16.27(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

ITEM 2. Amend rule 191—16.24(507B) as follows:

191—16.24 (507B) Duties of producers.

16.24(1) A producer who initiates an application for a policy or a contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the applicant does not have an existing policy or contract, the producer's duties with respect to replacement are complete.

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as

described in Appendix A or other substantially similar form approved by the commissioner. ~~No approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced.~~

a. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and that a copy of the notice was left with the applicant.

b. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

16.24(3) In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. A copy of any electronically presented sales material shall be provided to the policyholder in printed form no later than at the time of policy ~~or contract~~ delivery.

16.24(4) Except as provided in subrule 16.26(3), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented a copy of each document required by this subrule, a statement identifying any preprinted or electronically presented insurer-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

ITEM 3. Amend rule 191—16.25(507B) as follows:

191—16.25 (507B) Duties of all insurers that use producers on or after January 1, 2001.

16.25(1) Each insurer that uses producers shall maintain a system of supervision and control to ensure compliance with the requirements of these rules that shall include at least the following:

- a.* Informing its producers of the requirements of these rules and incorporating the requirements of these rules into all relevant producer training manuals prepared by the insurer;
- b.* Providing to each producer a written statement of the insurer's position with respect to the acceptability of replacements including providing guidance to its producer as to the appropriateness of these transactions;
- c.* Reviewing the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph 16.25(1) "b" above;
- d.* Confirming that the requirements of these rules have been met; and
- e.* Detecting transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such by the applicant or producer. Compliance with this subrule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring.

16.25(2) Each insurer that uses producers shall have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer and shall, upon request, make such records available to the insurance division. The capacity to monitor shall include the ability to produce records for each producer's:

- a.* Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
- b.* Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
- c.* Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

d. Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by paragraph "e" of subrule 16.25(1); and

e. Replacements, indexed by replacing producer and existing insurer.

16.25(3) Each insurer that uses producers shall require with or as a part of each application for life insurance or for an annuity a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

16.25(4) Each insurer that uses producers shall require with each application for life insurance or for an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A.

16.25(5) When the applicant has existing policies or contracts, each replacing insurer that uses producers shall be able to produce completed and signed copies of the notice regarding replacements for at least five years after the termination or expiration of the proposed policy or contract.

16.25(6) In connection with a replacement transaction, each replacing insurer that uses producers shall be able to produce copies of any sales material required by subrule 16.24(4), the basic illustration and any supplemental illustrations related to the specific policy or contract which is purchased and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract.

16.25(7) Each insurer that uses producers shall ascertain that the sales material and illustrations required by subrule 16.24(4) meet the requirements of these rules and are complete and accurate for the proposed policy or contract.

16.25(8) If an application does not meet the requirements of these rules, each insurer that uses producers shall notify the producer and applicant and fulfill the outstanding requirements.

16.25(9) Records required to be retained by this rule may be maintained ~~in paper, photographic, microprocessed, magnetic, mechanical or electronic media~~ or by any process which accurately reproduces the actual document.

ITEM 4. Amend rule 191—16.26(507B) as follows:

191—16.26 (507B) Duties of replacing insurers that use producers.

16.26(1) Where a replacement is involved in the transaction, the replacing insurer that uses producers shall:

- a.* Verify that the required forms are received and are in compliance with these rules;
- b.* Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;
- c.* Be able to produce copies of the notification regarding replacement required in subrule 16.24(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and
- d.* Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. The notice may be included in Appendix A or C.

16.26(2) Where a replacement is involved in the transaction and where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. ~~With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.~~

16.26(3) Where a replacement is involved in the transaction and where an insurer prohibits the use of sales material other than that approved by the insurer, the insurer may, as an alternative to the requirements of subrule 16.24(4) do all of the following:

a. Require of and obtain from the producer a signed statement with each application that:

- (1) Represents that the producer used only insurer-approved sales material; and
- (2) Represents that copies of all sales material were left with the applicant in accordance with

subrule 16.24(3).

b. Provide to the applicant a letter or by verbal communication by a person whose duties are separate from the marketing area of the insurer, within ten days of the issuance of the policy or contract, which shall include:

(1) Information that the producer has represented that copies of all sales material have been left with the applicant in accordance with subrule 16.24(3);

(2) The toll-free number by which the applicant can contact company personnel involved in the compliance function if copies of all sales material were not left with the applicant; and

(3) Information regarding the importance of retaining copies of the sales material for future reference.

c. Be able to produce a copy of the letter or other verification obtained pursuant to this subrule in the policy file for at least five years after the termination or expiration of the policy or contract.

ITEM 5. Amend rule 191—16.27(507B) as follows:

191—16.27 (507B) Duties of the existing insurer. Where a replacement is involved in the transaction, the existing insurer shall:

16.27(1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

16.27(2) Send a letter to the policy or contract owner notifying the owner of the right to receive information regarding the existing policy or contract values including, if available, an in-force illustration or policy summary if an in-force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

16.27(3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send to the applicant a notice, advising the policyowner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyowner. ~~In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.~~

****For rules being re-promulgated with changes, you may attach a document with suggested changes.***

METRICS

Total number of rules repealed:	0
Proposed word count reduction after repeal and/or re-promulgation	162
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	4

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

None.