

IOWA UTILITIES BOARD

IN RE: EXECUTIVE ORDER 10 — REVIEW OF CIVIL PENALTIES RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 8]	DOCKET NO. RMU-2023-0008
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ORDER OPENING DOCKET AND SETTING TECHNICAL CONFERENCE AND COMMENT DEADLINE

On January 10, 2023, Gov. Kim Reynolds issued Executive Order Number 10 (Executive Order), which put a moratorium on agency rule making and directed agencies, including the Iowa Utilities Board (Board), to engage in a comprehensive evaluation of existing rules. The goals of the Executive Order include increasing public input in the rule-making process, eliminating rules that do not provide substantial benefits to Iowans, reducing the page and word count of the Iowa Administrative Code, and reducing restrictive rule language. As a part of the comprehensive review, agencies are required to repeal each rules chapter and evaluate whether the chapter, or a portion of the chapter, should be re-promulgated. To assist agencies in performing their comprehensive reviews, the Iowa Department of Management developed and published forms and processes. See <https://dom.iowa.gov/resource/red-tape-rulemaking-processes/executive-order-10-rulemaking-processes> (last accessed on July 18, 2023).

Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules, and the Board will open the above-captioned docket for purposes of conducting a comprehensive review of chapter 8, which contains the Board's civil penalties rules. Attached to this order as Attachment A is the Board's

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retrospective analysis (Red Tape Review Rule Report) of chapter 8, which the Board will publish on the Board's website as required by section III.B of the Executive Order. Attached to this order as Attachment B is the Board's draft regulatory analysis of chapter 8, which the Board will submit in the legislative Rules Management System for publication in the Iowa Administrative Bulletin.

The Board recently completed a five-year review of chapter 8 as required by Iowa Code § 17A.7(2) in Docket No. RMU-2021-0008, which simultaneously considered chapters 8, 9, 17, and 38. The Board issued an order adopting amendments in that docket on October 18, 2021. Upon further review, chapter 8 primarily serves as a reference to statutory provisions and/or restates language set forth therein. Therefore, consistent with the Executive Order, the proposed version of chapter 8 attached to this order would repeal the chapter in its entirety.

The Board is scheduling a technical conference for September 21, 2023. Participation may occur in person or by webinar. The purpose of the technical conference is to receive comments regarding the draft regulatory analysis and the proposed repeal of chapter 8. Additionally, the Board is accepting written comments concerning the regulatory analysis and the proposed repeal of chapter 8 through September 29, 2023. The Board will use the oral and written comments received to prepare a final version of the regulatory analysis, which will be uploaded in this docket and published on the Board's website.

IT IS THEREFORE ORDERED:

1. Docket No. RMU-2023-0008 is opened for purposes of conducting a comprehensive review of 199 Iowa Administrative Code chapter 8 pursuant to Executive Order Number 10.

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2. A technical conference is set for 2 p.m. Thursday, September 21, 2023, in the Utilities Board hearing room, located at 1375 East Court Avenue, Des Moines, Iowa. Interested persons may appear in person or by webinar. Information for attending by webinar can be found on the Utilities Board's website on the Hearing and Meeting Calendar page.

3. Comments regarding the draft regulatory analysis shall be filed by 4:30 p.m. Friday, September 29, 2023.

UTILITIES BOARD

Erik M. Helland 2023.07.27 14:01:16 -05'00'

Joshua Byrnes Date: 2023.07.27
15:07:45 -05'00'

ATTEST:

Keetah Horras 2023.07.28
09:05:29 -05'00'

Sarah Martz Date: 2023.07.28
08:12:49 -05'00'

Dated at Des Moines, Iowa, this 28th day of July, 2023.

**Red Tape Review Rule Report
(Due: September 1, 2025)**

Department Name:	Iowa Utilities Board	Date:	July 18, 2023	Total Rule Count:	5 rules in Chapter 8
IAC #:	199	Chapter/ SubChapter/ Rule(s):	199 IAC chapter 8	Iowa Code Section Authorizing Rule:	Iowa Code §§ 17A.3, 476.51, 476.103(4), 476A.14, 478.29, 478.31, 479B.21
Contact Name:	Chris Storey	Email:	chris.storey@iub.iowa.gov	Phone:	515-423-7260

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

The intended benefit of Chapter 8 is to provide clarity regarding the potential imposition of civil penalties for violation of Board-enforced statutes. The current iteration of the rules provides consolidated references to statutory provisions under which the Board may impose civil penalties and otherwise restates the statutes.

Is the benefit being achieved? Please provide evidence.

The agency is enforcing the requirements of Iowa Code as required. It is unclear if the rules provide any additional support in achieving that benefit.

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

There is a risk of confusion by using rules to restate what is already stated in statute.

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

Chapter 8 does not impose any costs to any other agency because it merely restates statute.

Do the costs justify the benefits achieved? Please explain.

Chapter 8 does not impose any costs, but does not provide material benefits.

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 imposition of civil penalties is a necessary enforcement tool to ensure compliance with laws created by the state legislature. Other agencies within the state and in other states have more elaborate rules that lay out formulas or specific approaches and thresholds for violations.

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]

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

ATTACHMENT A

Yes. The agency believes chapter 8, in its entirety, is redundant and unnecessary.

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

8.1,
8.2,
8.3,
8.4,
8.5, and Implementation Sentence.

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

None.

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

METRICS

Total number of rules repealed:	5
Proposed word count reduction after repeal and/or re-promulgation	525
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	14

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

No.

Regulatory Analysis

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities Board **Rule #** 199 IAC chapter 8

Iowa Code Section Authorizing Rule Iowa Code §§ 17A.3, 476.51, 476.103(4), 476A.14, 478.29, 478.31, 479B.21

State or Federal Law(s) Implemented by the Rule Iowa Code § 17A.3

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

Date/Time: September 21, 2023 2:00 p.m.

Location: Utilities Board hearing room, located at 1375 E. Court Ave., Des Moines, Iowa

Any interested person may submit written comments concerning this regulatory analysis. Written comments in response to this regulatory analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Contact Name

Chris Storey

Address

1375 E. Court Ave., Des Moines, Iowa 50319

Email and/or phone number

chris.storey@iub.iowa.gov

Purpose and summary of proposed rule:

To inform the public of the location of Board-approved forms that the public may use in connection with requests for Board action or in proceedings before the Board.

Analysis of Impact of Proposed Rule

1. Persons affected by the proposed rule

- Classes of persons that will bear the costs of the proposed rule:

Chapter 8 imposes no costs on the public

- Classes of persons that will benefit from the proposed rule:

Proposed to be rescinded; benefit derived from statutory language, not from restatement in rule.

ATTACHMENT B

2. Impact of the proposed rule, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred

- Quantitative description of impact:

The agency is responsible for enforcing multiple statutes, each which set forth sufficient detail to implement. The only associated cost is staff time to do so. Any funds received from imposition of civil penalties does not accrue to the IUB's budget. Most are allocated to support the LIHEAP program.

The chapter does not impose costs on the public or any agency, including the Utilities Board, beyond staff time.

- Qualitative description of impact:

Chapter 8 has some level of qualitative impact because it supports ensuring the law is followed as required. The main areas where civil penalties might be assessed are for violations of permits or franchises for electric generating assets, electric transmission lines, telecommunication services, and hazardous pipelines. Each has varying degrees of impact on the health, safety, and level of service to be provided to Iowans.

However, the agency believes the information contained in chapter 8 is also stated with sufficient clarity in the operative statutes themselves, and a Board rule restating them does not improve the agency's ability to effectively manage the responsibilities assigned by the legislature.

3. Costs to the state

- Implementation and enforcement costs borne by the agency or any other agency:

Because chapter 8 merely restates and references existing statutes, there are no costs to the public, the agency, or any other agency.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rule to the costs and benefits of inaction

Chapter 8 does not impose any costs, but does not provide material benefits.

5. Determination if less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule

The agency has determined that it is less intrusive to simply utilize the existing statutory language without additional reference to a rule that essentially states the same thing.

6. Alternative methods considered by the agency

- Description of any alternative methods that were seriously considered by the agency:

ATTACHMENT B

Rescinding all but rule 8.1 of chapter 8, keeping a consolidated reference to the various statutory provisions.

- Reasons why they were rejected in favor of the proposed rule:

Agency believes that the restatement of statute is an unnecessary function of an administrative rule.

Small Business Impact

If the rule will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

- Establish less stringent compliance or reporting requirements in the rule for small business.
- Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
- Consolidate or simplify the rule's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rule for small business.
- Exempt small business from any or all requirements of the rule.

If legal and feasible, how does the rule use a method discussed above to reduce the substantial impact on small business?

The agency does not believe chapter 8 has an adverse impact on small businesses.

Text of Proposed Rule:

ITEM 1. Rescind and reserve 199—Chapter 8