

IOWA UTILITIES BOARD

IN RE:

EXECUTIVE ORDER 10 — REVIEW OF
PROCEDURE FOR DETERMINING THE
COMPETITIVENESS OF A
COMMUNICATIONS SERVICE OR
FACILITY [199 IOWA ADMINISTRATIVE
CODE CHAPTER 5]

DOCKET NO. RMU-2023-0005

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 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 lowans, 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

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docket for purposes of conducting a comprehensive review of chapter 5, which contains the Board's procedure for determining the competitiveness of a communications service or facility. Attached to this order as Attachment A is the Board's retrospective analysis (Red Tape Review Rule Report) of chapter 5, 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 5, which the Board will submit in the legislative Rules Management System for publication in the Iowa Administrative Bulletin. The Board is proposing to rescind chapter 5. The draft regulatory analysis attached to this order as Attachment B will be submitted to the Administrative Rules Code Editor for review and publication in the Iowa Administrative Bulletin and may contain changes from the version attached to this order.

The Board is also scheduling a technical conference for September 26, 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 5. Additionally, the Board is accepting written comments concerning the regulatory analysis and the proposed repeal of chapter 5 through September 26, 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-2023-0005 is opened for the purpose of conducting a comprehensive review of 199 Iowa Administrative Code chapter 5 pursuant to Executive Order Number 10.

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2. A technical conference is set for 2 p.m. Tuesday, September 26, 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 webpage.

3. Comments regarding the draft regulatory analysis shall be filed by 4:30 p.m. Tuesday, September 26, 2023.

UTILITIES BOARD

Joshua Byrnes Date: 2023.08.01
17:32:00 -05'00'

ATTEST:

Keetah Horras 2023.08.02
12:13:00 -05'00'

Sarah Martz Date: 2023.08.01
16:42:40 -05'00'

Dated at Des Moines, Iowa, this 2nd day of August, 2023.

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

| | | | | | |
|-------------------------|----------------------|---------------------------------------|-------------------------------|--|----------------------------|
| Department Name: | Iowa Utilities Board | Date: | July 21, 2023 | Total Rule Count: | 8 rules in Chapter 5 |
| IAC #: | 199 | Chapter/ Subchapter / Rule(s): | 199 IAC chapter 5 | Iowa Code Section Authorizing Rule: | Iowa Code §§ 476.1; 476.1D |
| Contact Name: | Lynzey Kenworthy | Email: | lynzey.kenworthy@iub.iowa.gov | Phone: | 515-725-0554 |

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

The intended benefit of Chapter 5 is to describe the procedure for determining the competitiveness of a communications service or facility. The current iteration of the rule provides either consolidated or verbatim references to the statutory provisions authorizing the Board to regulate and deregulate impacted telecommunications providers.

Is the benefit being achieved? Please provide evidence.

The agency is enforcing the requirements of Iowa Code as required; it is unclear whether the rules provide any additional support in achieving that benefit that could not be achieved through the statute alone. The benefit is being achieved, as evidenced by a series of de-regulation actions taken by the Board. (See Docket No. INU-2016-0001, in which the Board issued its "Order Deregulating Retail Local Exchange Service Quality" pursuant to the authority set forth in Iowa Code.)

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 set forth in statute.

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

Chapter 5 does not impose any costs to any other agency because it merely restates statute.

Do the costs justify the benefits achieved? Please explain.

Chapter 5 does not impose any costs if it remains, but there are no appreciable benefits to keeping it because the relevant statutes are sufficient.

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.

ATTACHMENT A

The Iowa General Assembly has provided a sufficient framework through statute, a rule restating the same is unnecessary. Any additional details desired for the administrative handling of such a request for determination are appropriate for an internal policy and procedure document.

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

Yes. The agency believes chapter 5, in its entirety, is redundant and unnecessary.

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

- 199 IAC 5.1
- 199 IAC 5.2
- 199 IAC 5.3
- 199 IAC 5.4
- 199 IAC 5.5
- 199 IAC 5.6
- 199 IAC 5.7
- 199 IAC 5.8

(plus 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: | 8 |
| Proposed word count reduction after repeal and/or re-promulgation | 995 |
| Proposed number of restrictive terms eliminated after repeal and/or re-promulgation | 9 |

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 Iowa Admin. Code ch. 5

Iowa Code Section Authorizing Rule Iowa Code § 476.1D

State or Federal Law(s) Implemented by the Rule Iowa Code chapter 476

Public Hearing

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

Date/Time: September 26, 2023 2:00 p.m.

Location: Board Hearing Room 1375 East Court Avenue 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 Iowa Utilities Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Contact Name
IT Support

Address
Iowa Utilities Board

Email and/or phone number
Phone: 515.725.7300 Email: ITsupport@iub.iowa.gov

Purpose and summary of proposed rule:

This chapter is proposed to be rescinded.

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:

Because Chapter 5 merely restates and references existing statutes, there are no costs to the public, the agency, or any other agency and rescinding the chapter will not disturb the Board's authority in Iowa Code § 467.1D.

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

Chapter 5 is proposed to be rescinded. The benefit of Chapter 5 is derived from statutory language, not from restatement in the rules.

Regulatory Analysis

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:

There is no quantitative impact.

- Qualitative description of impact:

There is no qualitative impact.

3. Costs to the state

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

There is no cost.

- Anticipated effect on state revenues:

There is not an anticipated effect on state revenues.

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

Chapter 5 does not impose any costs if the chapter remains in Board rules. The primary benefit is a simplified regulatory framework.

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

Chapter 5 can be rescinded because it does not add to or further clarify existing statutory authority. The agency has determined that it is less intrusive to simply utilize the existing statutory language without the additional burden of a rule restating the same.

6. Alternative methods considered by the agency

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

Rescinding most of Chapter 5 but 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 and consistency in administrative workup can be achieved through the statute alone.

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:

ATTACHMENT B

Regulatory Analysis

- 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 the rule chapter has an adverse impact on small business, nor would rescinding the chapter.

Text of Proposed Rule:

ITEM 1. Rescind and reserve 199—Chapter 5.