

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 APPROVING REGULATORY ANALYSIS

On January 10, 2023, Gov. Kim Reynolds issued Executive Order Number 10 (Executive Order), which put a moratorium on agency rulemaking 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 rulemaking 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 language. As 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.

Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules. Each review includes a technical conference for the Board to discuss a draft Regulatory Analysis with interested persons. For chapter 8, this technical conference was held on September 21, 2023.

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; the Iowa Communications Alliance (ICA); MidAmerican Energy Company (MidAmerican); and Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy

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(Black Hills) filed comments regarding the draft regulatory analysis. OCA and ICA indicated support for full rescission of chapter 8. Black Hills stated it neither supported nor opposed full rescission of chapter 8. MidAmerican identified three provisions within chapter 8 that the company believes should be retained: (1) introductory language regarding the Board's authority to assess civil penalties described in rule 8.1, (2) the 180-day limit to bring a request for civil penalties described in rule 8.2, and (3) the 35-day limit to pay civil penalties described in rule 8.4.

The Board has reviewed the oral and written comments received. The Board finds that the goals of the Executive Order are best achieved through full rescission of chapter 8. Additionally, the Board finds that the value of retaining the rules identified by MidAmerican does not outweigh the value of achieving the goals of the Executive Order.

Accordingly, as part of the final Regulatory Analysis, the Board is suggesting full rescission of chapter 8. The Board will seek authority to commence a formal rulemaking in the above-captioned docket by submitting the Request to Initiate Rulemaking, attached to this order as Attachment B, as required by the Red Tape Review Process. See <https://dom.iowa.gov/red-tape-review> (last accessed on October 5, 2023) (setting forth Executive Order 10 forms and processes).

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IT IS THEREFORE ORDERED:

The final regulatory analysis for 199 Iowa Administrative Code chapter 8 is approved.

UTILITIES BOARD

Erik M. Helland Date: 2023.10.27
14:44:56 -05'00'

ATTEST:

Keetah A Horras Date: 2023.10.30
08:15:23 -05'00'

Sarah Martz Date: 2023.10.27
12:07:48 -05'00'

Dated at Des Moines, Iowa, this 30th day of October, 2023.

Final Regulatory Analysis Template

TEXT BOXES WILL EXPAND AS YOU TYPE

Agency Name Iowa Utilities BoardRule # 199 IAC chapter 8Iowa Code Section Authorizing Rule Iowa Code §§ 17A.3, 476.51, 476.103(4), 476A.14, 478.29, 478.31, 479B.21State 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 was 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

Michael Eppink

Address

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

Email and/or phone number

michael.eppink@iub.iowa.gov**Purpose and summary of proposed rule:**

The purpose of chapter 8 is to describe the IUB's authority and process for assessing civil penalties. Since chapter 8 is largely a restatement of statute, recession of chapter 8 is proposed.

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.

Final Regulatory Analysis Template

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 of 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 Low Income Heating and Energy Assistance Program (LIHEAP).

- 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 it also 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:

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

Final Regulatory Analysis Template

- 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

**Executive Order 10 – Red Tape Review
Request to Initiate New Rulemaking**

Agency Name Iowa Utilities Board

Rule Number(s) 199 Iowa Administrative Code Chapter 8

Agency Point of Contact (POC) Maison Bleam

Agency POC Phone 515-380-9587 Email maison.bleam@iub.iowa.gov

This new rulemaking action was directed by the Administrative Rules Coordinator.

If the new rulemaking action was not directed by the ARC:

This new rulemaking action is narrowly-tailored to achieve the following objective(s):

- Reduce or remove a regulatory burden, including reducing restrictive terms.
 - Remove obsolete, outdated, inconsistent, incompatible, redundant, or unnecessary regulations, including instances where rule language is duplicative of statutory language.
 - Comply with a new statutory requirement, court order, or federal mandate where no waiver is permitted.
 - Provide bill# or statutory citation _____ or attach copy of court order.
 - Prevent a substantiated and well-documented threat to public health, peace, or safety.
 - Attach substantiated and well-documented evidence of threat to public health, peace, or safety.
 - Reduce state spending
 - Attach fiscal estimate
 - Repeal a rule chapter as specified in Executive Order 10
 - Re-promulgate a rule chapter as specified in Executive Order 10
- A copy of the final regulatory analysis required under Executive Order 10 is attached.
- Date of the public hearing on the regulatory analysis 09 / 21 / 2023

ARC Preclearance

Date _____ / _____ / _____