Regulatory Analysis

Notice of Intended Action to be published: 265—Chapter 5
"Debarment from Participation in Authority Programs and Transactions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5E and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code section 16.5E

Public Hearing

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

June 3, 2025	1963 Bell Avenue
9:30 to 9:45 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Iowa Finance Authority no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

The Authority proposes to adopt a new Chapter 5 to implement Iowa Code section 16.5E as enacted by 2024 Iowa Acts, Senate File 2387. The new chapter establishes the factors the Authority will consider and the process that will be followed to prohibit bad actors from participating in Authority programs and transactions.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Persons subject to debarment or proposed debarment will bear the costs of the proposed rulemaking.

- **Classes of persons that will benefit from the proposed rulemaking:**

Persons subject to debarment or proposed debarment will benefit from a clear explanation of considerations and processes in the rules. Additionally, the Authority will benefit from being able to proactively prohibit bad actors from participating in its programs and transactions.

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

- **Quantitative description of impact:**

Persons subject to debarment or proposed debarment may incur costs to research and draft responses to the Authority's communications associated with debarment. The amount of the costs will vary depending on the complexity of the issues and the compensation of staff or service providers who draft the documents.

- **Qualitative description of impact:**

The proposed rulemaking will provide clarity about the Authority's processes for debarment.

3. **Costs to the State:**

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

The Authority will incur staff time to administer and oversee debarment.

- **Anticipated effect on state revenues:**

The proposed rulemaking has no anticipated effect on state revenues. Debarment will be administered and overseen by existing Authority staff positions.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

The proposed rulemaking imposes costs only on persons the Authority has reason to believe have engaged in conduct that constitutes a cause for debarment identified in Iowa Code section 16.5E. Iowa Code section 16.5E establishes the causes for debarment and some aspects of the process but does not give persons subject to proposed debarment or debarment sufficient notice of how the Authority will make its debarment decisions.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Authority has not identified any less costly methods or less intrusive methods that exist for addressing debarment.

6. **Alternative methods considered by the agency:**

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

The Authority did not consider any alternative methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Authority did not consider any alternative methods because the Authority did not identify a less costly or less intrusive method.

Small Business Impact

If the rulemaking 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 rulemaking on small business:

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

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

The proposed rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 265—Chapter 5:

CHAPTER 5
DEBARMENT FROM PARTICIPATION IN AUTHORITY PROGRAMS AND TRANSACTIONS

265—5.1(16) Definitions.

"Affiliate" means any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity or person. "Control" as used in this definition means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise. A voting interest of 10 percent or more creates a rebuttable presumption of control.

"Authority" means the Iowa finance authority created in Iowa Code section 16.1A.

"Debar" or *"Debarment"* means action taken by the authority to prohibit a person from receiving an award of financial assistance or from being selected as a vendor pursuant to Iowa Code section 16.5E and this chapter.

"Director" means the director of the authority.

"Person" means the same as defined in Iowa Code section 4.1(20).

"Principal" means an officer, director, or owner.

"Respondent" means a person the authority intends to debar or has debarred.

"Vendor" means a person who provides goods or services to the authority.

265—5.2(16) Factors considered.

5.2(1) The authority may debar a person in any of the circumstances listed in Iowa Code section 16.5E(1). The authority will consider the following factors to determine whether debarment is warranted:

a. Whether the person had effective standards of conduct and internal control systems in place at the time the cause for debarment occurred or has adopted such procedures.

b. Whether the person brought the cause for debarment to the attention of the authority in a timely manner.

c. Whether the person has fully investigated the circumstances surrounding the cause for debarment and, if so, has made the result of the investigation available to the authority.

d. Whether the person cooperated fully with the authority or other government agencies during any investigation or court or administrative action related to the cause for debarment.

e. Whether the person has paid or has agreed to pay all applicable criminal, civil, and administrative liability relating to the cause for debarment, including any investigative or administrative costs incurred by the authority, and has made or agreed to make full restitution as applicable.

f. Whether the person has taken appropriate disciplinary action against the individuals responsible for the cause for debarment.

g. Whether the person has implemented or agreed to implement remedial measures, including any identified by the authority.

h. Whether the person has had adequate time to eliminate the circumstances that led to the cause for debarment.

i. Whether the person or relevant principals in an organization recognize and understand the seriousness of the misconduct giving rise to the cause for debarment.

j. Whether the federal government, another state, or another state agency has issued a debarment or other prohibition comparable to debarment based on the same or similar conduct that constitutes cause for debarment by the authority.

k. Any other factors deemed relevant to the cause for debarment by the authority.

5.2(2) The existence or nonexistence of any mitigating factors or remedial measures, including those set forth in subrule 5.2(1), is not necessarily determinative of whether the authority will debar a person.

265—5.3(16) Debarment procedure.

5.3(1) Upon receipt of information that a person has engaged in conduct that could constitute cause for debarment, the director will determine whether to debar the person based on all information available to the authority or whether additional information is required to make such a determination.

5.3(2) If the director determines debarment is warranted, the person and any affiliates, principals, or employees to be debarred will be given prompt notice in writing of the following:

a. That the person is debarred and the identity of any affiliates, principals, or employees who are debarred;

b. The circumstance(s) in Iowa Code section 16.5E(1) relied on by the authority to impose debarment;

c. The conduct or information upon which the debarment is based;

d. The period of debarment, including effective dates; and

e. The effect of the proposed debarment, including identification of authority programs or transactions to which the debarment applies.

5.3(3) If the director determines that additional information is required, the person and any affiliates, principals, or employees who may be debarred will be given prompt notice in writing of the following:

a. That debarment is being considered;

b. The circumstance(s) in Iowa Code section 16.5E(1) relied on by the authority to propose debarment;

c. The conduct or information upon which the proposed debarment is based;

d. The period of proposed debarment, including effective dates;

e. The effect of the proposed debarment, including identification of authority programs or transactions to which the debarment may apply; and

f. The additional information sought by the authority to determine whether debarment is warranted, when the respondent must provide such information, and the effect of failure to provide such information to the satisfaction of the authority.

5.3(4) After following the procedure identified in subrule 5.3(3), the director will promptly notify in writing the person and any affected affiliates, employees, or principals whether debarment is imposed. If debarment is imposed, notification will be provided in accordance with subrule 5.3(2).

5.3(5) The authority may, in its discretion, enter into an agreement with a person establishing terms and conditions for continued or future participation in authority programs or transactions in lieu of debarment.

265—5.4(16) Period and scope of debarment.

5.4(1) Debarment will be for a period commensurate with the acts or omissions of the person to be debarred. A person will not be debarred for an initial period that exceeds three years. The authority may impose an additional period of debarment if, prior to the expiration of an initial period of debarment, the authority determines an additional period of debarment is warranted.

5.4(2) A person may be debarred from one or more authority programs or transactions or from all authority programs and transactions.

265—5.5(16) Request for review and response.

5.5(1) A person that has been debarred by the authority may request a review of the authority's determination pursuant to Iowa Code section 16.5E(3). The request may include any information relevant to demonstrate that the authority's determination was based on a clear error of material factor or law or that the authority's determination was arbitrary, capricious, or an abuse of discretion.

5.5(2) The authority will issue a decision on the request for review in accordance with Iowa Code section 16.5E(3).

265—5.6(16) Request for reinstatement after debarment.

5.6(1) A person that has been debarred may submit a request for reinstatement during the period of debarment if:

a. New information becomes available that is relevant to the cause for debarment and that was not previously discoverable;

b. Criminal charges or civil or administrative actions related to the cause for debarment have been dismissed or a criminal conviction or civil judgment related to the cause for debarment has been reversed;

c. A debarment or comparable prohibition imposed by the federal government, another state, or another state agency upon which the authority debarment was based has been reversed;

d. A bona fide change in ownership or management of the person debarred has occurred; or

e. The person is able to supply other proof that the causes for debarment have been eliminated.

5.6(2) A request for reinstatement must be submitted to the director. The petition must be accompanied by written evidence that supports the request.

5.6(3) The authority will issue a decision on a request for reinstatement within 60 calendar days of the receipt of the request. The authority may approve, deny, or modify the debarment based on all information available to the authority and based upon the factors identified in rule 265—5.2(16). The authority shall issue its decision in writing and provide written notice of the decision to the person and any affected affiliates, principals, or employees.

265—5.7(16) Additional remedies. The authority may impose additional consequences for a cause for debarment that are allowed under any authority programs in which a debarred person is participating or any existing agreements between the authority and a debarred person.

These rules are intended to implement Iowa Code section 16.5E.