Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 215
"Minimum Wage Scope and Coverage"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Division of Labor Services 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

Proposed Chapter 215 primarily provides definitions and exceptions that apply to subsequent wage chapters.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed rulemaking does not impose any meaningful costs. Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by knowing what wages are due.

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:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The rules provide clarity for proper payment of wages.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of clarity in minimum wage payments overrides any costs of employer compliance.

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

The Department has not identified less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Alternative methods were rejected because this chapter imposes no significant burden.

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 chapter is shorter and more understandable. The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 215 and adopt the following **new** chapter in lieu thereof:

MINIMUM WAGE

CHAPTER 215
MINIMUM WAGE SCOPE AND COVERAGE

875—215.1(91D) Initial employment wage rate.

215.1(1) The 90-calendar-day period set forth in Iowa Code section 91D.1(1)*"d"* is counted from the employee's initial day of work.

215.1(2) If the state minimum initial employment wage rate changes during the 90-calendar-day period, the employer shall pay the new effective rate.

215.1(3) If, after less than 90 calendar days from the initial day of work, the employee's employment is terminated and the employee is rehired by the same employer within three years of the initial hiring, the initial employment wage rate in effect at rehiring may be paid until the 90-calendar-day employment period is reached. If, after 90 calendar days from the initial day of work, the

employee's employment is terminated and the employee is rehired in less than three years from the last date of employment, the employee shall not be employed at the initial employment wage rate.

875—215.2(91D) Definitions. As used in 875—Chapters 216 to 220:

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities; the raising of livestock, bees, furbearing animals, or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

"Commerce" means trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof.

"Director" means the director of the department of inspections, appeals, and licensing or the director's designee.

"Employee" means any individual employed by an employer. In the case of an individual employed by a public agency, the term means any individual employed by the state, political subdivision of the state, or an interstate governmental agency, other than the individual:

1. Who is not subject to the civil service laws of the state, political subdivision, or agency that employs the individual; and
2. Who:

- Holds a public elective office of that state, political subdivision, or agency,
- Is selected by the holder of the office to be a member of the holder's personal staff,
- Is appointed by the officeholder to serve on a policy-making level,
- Is an immediate adviser to the officeholder with respect to the constitutional or legal powers of the office, or
- Is an employee in the legislative branch or legislative body of that state, political subdivision, or agency and is not employed by the legislative library of the state, political subdivision, or agency.

"Employee" does not mean:

1. For purposes of the definition of "person-day," any individual employed by an employer engaged in agriculture if the individual is the parent, spouse, child, or other member of the employer's immediate family.
2. Any individual who volunteers to perform services for a public agency that is the state, a political subdivision of the state, or an interstate government agency, if:

- The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
- The services are not the same type of services that the individual is employed to perform for the public agency.

However, an employee of a public agency that is the state, political subdivision of the state, or an interstate governmental agency may volunteer to perform services for any other state, political subdivision, or interstate governmental agency, including a state, political subdivision or agency with which the employing state, political subdivision, or agency has a mutual aid agreement.

"Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of the labor organization.

"Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements. Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member

of the immediate family of the owner is considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of an enterprise.

"Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

"Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

"Person-day" means any day during which an employee performs any agricultural labor for not less than one hour.

"Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any state; and an employee is engaged in the production of goods if the employee is employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on the goods, or in any closely related process or occupation directly essential to the production thereof, in any state.

"Public agency" means the government of the state of Iowa, its various departments and agencies, and any political subdivision of the state.

"Resale" does not include the sale of goods to be used in residential or farm building construction, repair, or maintenance, provided that the sale is recognized as a bona fide retail sale in the industry.

"Sale" or *"sell"* includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

"Tipped employee" means any employee engaged in an occupation in which the employee customarily received more than $30 a month in tips.

"Wage" paid to any employee includes the reasonable cost, as determined by the director, to the employer of furnishing the employee with board, lodging, or other facilities. SOURCE: 29 U.S.C. 203.

875—215.3(91D) Exceptions. The rules contained in 875—Chapters 216 through 220 do not apply with respect to:

215.3(1) Any employee employed by an establishment that is an amusement or recreational establishment, organized camp, or religious or nonprofit education conference center, if:

a. It does not operate for more than seven months in any calendar year, or

b. During the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 percent of its average receipts for the other six months of the year, except that the exemption provided does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.

215.3(2) Any employee employed in agriculture:

a. If the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 person-days of agricultural labor;

b. If the employee is the parent, spouse, child, or other member of the employer's immediate family;

c. If the employee:

(1) Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

(2) Commutes daily from the employee's permanent residence to the farm on which the employee is employed, and

(3) Has been employed in agriculture less than 13 weeks during the preceding calendar year;

d. If the employee (other than an employee described in paragraph 215.3(2)*"c"*):

(1) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

(2) Is employed on the same farm as the employee's parent or person standing in the place of the employee's parent, and

(3) Is paid at the same piece rate as employees over age 16 are paid on the same farm; or

e. If the employee is principally engaged in the range production of livestock.

215.3(3) Any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.

SOURCE: 29 U.S.C. 213.

875—215.4(91D) Interpretative guidelines. The rules contained in 875—Chapters 216 to 220 are based on the federal rules indicated at the end of each rule. The federal rules contained illustrative examples of the application of the rule. The examples are not adopted, but the commissioner will be guided in enforcement by the examples provided in the rules. The Secretary of Labor has adopted statements of general policy and interpretations not directly related to regulations at 29 CFR Parts 776, 779, 780, and 785. The commissioner will follow these statements and interpretations in the application and enforcement of Iowa Code chapter 91D.

These rules are intended to implement Iowa Code chapter 91D.