**Regulatory Analysis**

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 150
"Construction Contractor Registration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91C.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:

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|---|---|
| October 23, 2024<br>9 to 9:30 a.m. | Geode Conference Room<br>6200 Park Avenue, Suite 100<br>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:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
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*Purpose and Summary*

This proposed rulemaking repromulgates Chapter 150 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 150 requires the registration of construction contractors. The chapter provides procedures for applications, fees, investigations, and sanctions.

*Analysis of Impact*

1. Persons affected by the proposed rulemaking:

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

Employers engaged in construction will bear the costs.

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

Employees will more likely be covered by workers compensation and unemployment insurance.

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:

Employers pay a $50 fee for registration.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

There are no specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department of Inspections, Appeals, and Licensing's statutory duties. This rulemaking does not add to the costs of the Department beyond existing personnel assigned to implement this chapter.

- Anticipated effect on state revenues:

Contractor registration fees add to state revenues.

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

Inaction would result in more contractors being unaccounted for and consequently better able to avoid employer obligations under Iowa law.

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

No less costly or less intrusive methods are known.

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:

Not applicable.

*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?

Certain small businesses are exempt from the registration fee pursuant to subrule 150.4(9).

*Text of Proposed Rulemaking*

ITEM 1. Rescind 875—Chapter 150 and adopt the following **new** chapter in lieu thereof:

*CONSTRUCTION—REGISTRATION AND BONDING*

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION

**875—150.1(91C) Scope.** This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than $2,000 annually or who performs work or has work performed on the person's own property.

**875—150.2(91C) Definitions.**

*"Construction"* means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites that may be dispersed geographically. Examples of construction activities, adopted by reference, are in rule 871—23.82(96) for purposes of the Iowa employment security law.

*"Contractor"* means a person who engages in the business of construction as the term is defined in rule 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors.

*"Department"* means the department of inspections, appeals, and licensing.

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

*"File"* means deliver to the department.

*"Out-of-state contractor"* means a contractor whose principal place of business is in another state, and who contracts to perform construction in this state.

*"Principal place of business"* means the state in which a substantial part of the contractor's business is transacted and from which the centralized supervision is exercised. Factors to be reviewed include:

1. State designated as home office on documents filed with governmental agencies.
2. State where payroll is prepared.
3. State where business transactions are performed.
4. State where officers, owners, or partners reside and work.
5. State in which bank accounts are located.
6. State in which fixed business property is located.
7. State where management decisions are made.

*"Same phase of construction"* means in the same type of construction operations or trade, such as but not limited to electrical work; masonry, stonework, tile setting and plastering; roofing; sheet metal work; excavation work; concrete work; glasswork; painting, paper hanging and decorating; plumbing, heating and air conditioning work; carpentry work; and miscellaneous special trade contractors.

*"Working days"* means Mondays through Fridays but not Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice is not to be included, and the last day of the 15 working days is included.

**875—150.3(91C) Registration required.** Before performing any construction work in this state, a contractor shall be registered with the department. A joint venture is an independent entity and is registered independently.

**875—150.4(91C) Application.** A contractor that is covered by the license requirements of Iowa Code chapter 105 applies for a contractor registration number by using the application system of the Iowa plumbing and mechanical systems board. All other contractors file an application with the department on forms provided by the department. The application contains the applicable information and documents specified in this rule.

**150.4(1)** *Name.* The name of the contractor.

**150.4(2)** *Place of business.* The complete mailing address of the principal place of business of the contractor.

**150.4(3)** *Telephone number.* The business telephone number of the contractor.

**150.4(4)** *Business classification.* The type of business entity of the contractor (e.g., corporation, partnership, sole proprietorship, trust, etc.).

**150.4(5)** *Ownership information.*

*a.* If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation.

*b.* If the contractor is other than a corporation, the name, address, and telephone number of each owner.

**150.4(6)** *Workers' compensation coverage information.*

*a.* A certificate of insurance from the insurer showing proof of workers' compensation insurance, the effective dates of coverage, and listing the department of inspections, appeals, and licensing as a certificate holder;

*b.* Employer's release from the insurance requirements under workers' compensation law form provided to self-insured employers by the commissioner of insurance under Iowa Code section 87.11; or

*c.* A statement that the contractor is not required to carry workers' compensation coverage.

**150.4(7)** *Account number.* The employer account number issued by the unemployment insurance services division of the workforce development department before the contractor applies for a contractor registration number.

**150.4(8)** *Business description.* A description of the business to include:

*a.* The employer's North American Industry Classification System (NAICS) code; or

*b.* The principal products and services provided.

**150.4(9)** *Fee or fee exemption.* A contractor who is eligible to register without paying a fee shall submit a completed fee exemption form. All other contractors must submit the nonrefundable fee as set forth below.

*a.* The standard fee is $50 per year or $150 for a three-year registration.

*b.* Contractors who apply for a contractor registration number through the Iowa plumbing and mechanical systems board must pay a fee that is prorated in accordance with the length of the registration period.

**150.4(10)** *Social security number.* The contractor, if a natural person, shall include the contractor's social security number.

**150.4(11)** *Out-of-state contractor bond.* An out-of-state contractor shall:

*a.* File a $25,000 surety bond that is prepared using the bond form provided by the department, or

*b.* Provide a copy of a letter from the department of transportation stating that the contractor is prequalified to bid on projects for the department of transportation pursuant to Iowa Code section 314.1.

**875—150.5(91C) Amendments to application.**

**150.5(1)** A contractor shall report to the director any change in the information originally reported on or with the application within 15 working days of the change, except that the contractor shall notify the director of changes to workers' compensation coverage within ten days prior to any change in coverage.

**150.5(2)** After the time specified in subrule 150.5(1), with good cause shown, the director may determine that an amendment may be made to correct an application.

**150.5(3)** Amendments to applications are not permitted where a change occurs in the business classification, such as but not limited to a change from a sole proprietorship to a corporation.

**875—150.6(91C) Fee.**

**150.6(1)** *New applications.* A new application deposited in the U.S. mail must include the fee effective on the date the application is postmarked. A new application delivered in any other manner must include the fee effective on the date the application is received by the department.

**150.6(2)** *Renewal applications.* A timely renewal application shall include the fee effective on the expiration date of the contractor's expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor's expiring registration shall include the fee effective on the date the application is postmarked. An application for renewal delivered to the

department in a manner other than U.S. mail and after the expiration date of the contractor's expiring registration shall include the fee effective on the date the application is received by the department.

**150.6(3)** *Amendments to applications.* A fee is not required for a permissible amendment to an application.

**875—150.7(91C) Registration number issuance.** Within 30 days of receipt of a completed application, the director will issue to the contractor a registration number. The registration number will consist of the letter "C" followed by six unique digits.

**875—150.8(91C) Workers' compensation insurance cancellation notifications.**

**150.8(1)** *Insurance company coverage.* The department shall be notified by the insurance company carrying the contractor's workers' compensation insurance at the time of cancellation. The notice shall contain:

*a.* The name of the insurance carrier;

*b.* The name of the insured contractor; and

*c.* The date the workers' compensation coverage cancellation is effective.

**150.8(2)** *Self-insured contractors.* The contractor shall notify the department ten days prior to any cessation in self-insurance.

**150.8(3)** *Noninsured contractors.* The contractor shall notify the department whenever the required notice is not posted or in any change in insurance status.

**875—150.9(91C) Investigations and complaints.**

**150.9(1)** *Investigations.* The conduct of the investigation will be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the department. At the initiation of an investigation at the contractor's establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the director may seek an administrative warrant.

**150.9(2)** *Complaints.* A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant's identity would be protected under other statutes or rules (e.g., a complaint filed under both Iowa Code chapters 88 and 91C).

**875—150.10(91C) Citations/penalties and appeal hearings.**

**150.10(1)** *Citations.* The director will issue a citation to a contractor where an investigation reveals the contractor has violated:

*a.* The requirement that the contractor be registered;

*b.* The requirement that the contractor's registration information be substantially complete and accurate; or

*c.* The requirement that an out-of-state contractor file a bond with the department.

**150.10(2)** *Penalties.* If a citation is issued, the director shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than $500 in the case of the first violation and not more than $5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

**150.10(3)** *Appeal.* The contractor has 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest is filed with the director who will forward it to the employment appeal board.

**150.10(4)** *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

**875—150.11(91C) Revocation of registrations and appeal hearings.**

**150.11(1)** *Reason for revocation.* The director shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

**150.11(2)** *Notice of revocation.* The director shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding interview.

**150.11(3)** *Fact-finding interview.* The purpose of the fact-finding interview is to ensure the contractor is not in compliance before the registration is revoked. The contractor may notify the fact finder of a telephone number to use at least 24 hours before the fact-finding interview is scheduled to begin. Otherwise, the fact finder will call the number on file for the contractor. The fact-finding interview may be conducted via videoconference or in person if the fact finder and the contractor make arrangements in advance.

**150.11(4)** *Decision.* The director serves the decision of the fact-finding interview on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the director will serve the decision by other service as permitted in the Iowa Rules of Civil Procedure.

**150.11(5)** *Effective date of revocation.* Revocations are effective 21 days after certified mailing of the decision.

**150.11(6)** *Notice of contest.* The contractor has 15 working days from receipt of the decision to file a notice of contest. The notice of contest shall be filed with the director, who will forward it to the employment appeal board.

**150.11(7)** *Notice of contest procedures.* The rules of procedure of the employment appeal board apply to notices of contest.

**150.11(8)** *Effect of revocation.* A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

**150.11(9)** *Relinquishing registration certificate.* A contractor shall return the original registration certificate to the department when a revocation or suspension becomes final.

**875—150.12(91C) Concurrent actions.** Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

**875—150.13(91C) Bond release.**

**150.13(1)** *Notifications.* Prior to releasing a bond, the director will notify the department of revenue, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The director shall provide ten days for the filing of objections to the release of the bond. The director may deem any failure to respond to the notice within the time provided as an approval of the release.

**150.13(2)** *Conditions for release.* A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, that may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

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