## Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 155
"Asbestos Removal and Encapsulation"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 88B.3
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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Des Moines, Iowa 50321-1270
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*Purpose and Summary*

This proposed rulemaking repromulgates Chapter 155 in accordance with the goals and directives of Executive Order 10. Proposed Chapter 155 requires permitting, training, licensing of asbestos contractors and provides procedures for 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 asbestos removal will bear the costs.

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

Employees of asbestos removal contractors and the public will benefit from safe asbestos removal.

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:

Asbestos removal contractors pay a $500 fee for an annual permit.

- 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 Inspection, 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:

There is an insubstantial impact on state revenues.

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

Inaction would result in increased hazards from improper asbestos removal.

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?

Due to the gravity of asbestos hazards, requirements are the same for small businesses.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 875—Chapter 155 and adopt the following **new** chapter in lieu thereof:

CHAPTER 155
ASBESTOS REMOVAL AND ENCAPSULATION

**875—155.1(88B) Definitions.**

*"Business entity"* means a partnership, firm, association, corporation, sole proprietorship, or other business concern. A business entity that uses its own employees in removing or encapsulating asbestos for the purpose of renovating, maintaining or repairing its own facilities is not included.

*"Contractor/supervisor"* means a person who supervises workers on asbestos projects or a person who enters into contracts to perform asbestos projects and personally completes the work.

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

*"Director"* means the director of the department or the director's designee.

*"Friable asbestos material"* means any material containing more than 1 percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder by hand pressure when dry.

*"Inspector"* means a person who inspects for asbestos-containing building materials in a school or a public or commercial building.

*"License"* means an authorization issued by the department permitting an individual to be employed as a worker, contractor/supervisor, inspector, management planner, or project designer.

*"Management planner"* means a person who prepares asbestos management plans for a school building.

*"Permit"* means an authorization issued by the department permitting a business entity to remove or encapsulate asbestos.

*"Project designer"* means a person who designs asbestos response or maintenance projects for a school or a public or commercial building.

*"Worker"* means a person who performs response or maintenance activities on one or more asbestos projects.

*"Working days"* means Monday through Friday including holidays that fall on Monday through Friday. The first working day shall be the date of actual delivery or the postmark date, whichever is earlier. However, documents with Saturday or Sunday postmark dates will be treated as though postmarked on the following Monday.

**875—155.2(88B) Permit application procedures.**

**155.2(1)** *Application.* To apply for or to renew a permit, a business entity shall complete and submit the form provided by the department. All requested applicable information and attachments must be provided. A $500 nonrefundable application fee shall accompany each permit application.

**155.2(2)** *Action on application.* A new permit is valid for one year from the date of issuance. A renewal permit is valid for one year from the expiration date of the applicant's prior permit. A permit may be denied for the reasons set forth in rule 875—155.8(17A,88B,252J,272D) or if the application package is incomplete. Within 60 days of receiving a completed application package for a new permit, the department will issue a permit or deny the application. Within 30 days of receiving a completed application package for a permit renewal, the department will issue a permit or deny the application. Applications received after expiration of a prior permit will be considered applications for new permits rather than renewals.

**875—155.3(88B) Other asbestos regulations.** Regulation of encapsulation, removal and abatement procedures are found in 875—Chapters 10 and 26 and 567—Chapter 23. Nothing in this chapter provides an exemption, waiver, or variance from any otherwise applicable regulation or statute.

**875—155.4(88B) Asbestos project records.** The permittee shall keep a record of each asbestos project it performs and make the record available to the department at any reasonable time. Records required by this rule shall be kept for at least six years. These records include:

**155.4(1)** The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project.

**155.4(2)** The location and a description of the project and the amount of asbestos material that was removed.

**155.4(3)** The start and completion dates of each instance of removal or encapsulation.

**155.4(4)** A summary of the procedures that were used to comply with all applicable standards.

**155.4(5)** The name and address of each asbestos disposal site where the asbestos-containing waste was deposited.

**155.4(6)** A receipt from the asbestos disposal site indicating the amount of asbestos and disposal date.

**875—155.5(88B) Ten-day notices.**

**155.5(1)** *General.* Permittees shall notify the department at least ten working days before an asbestos project begins. A project begins when site preparations for asbestos abatement, encapsulation, or removal begin; when asbestos abatement, encapsulation, or removal begins; or when any demolition begins, whichever is soonest. Legible electronic transmissions of ten-day notices in the proper format will be accepted. If work on the asbestos-removal project does not commence within 30 calendar days of the original start date identified in the ten-day notice given by permittees to the department, a revised ten-day notice shall be submitted to the department.

**155.5(2)** *Emergency.* When there is an immediate danger to life, health or property, the permittee may file the notice within five days after beginning the project. An explanation of the emergency must be included.

**155.5(3)** *Format.* The notice shall be submitted online or be on an 8½″ by 11″ sheet of paper and contain the following information:

*a.* The name, address, and telephone number of a contact person for the permittee performing the project.

*b.* The name, address, and telephone number of the project.

*c.* A description of the structure and work to be performed, including type and quantity of asbestos-containing material.

*d.* The scheduled dates of the project's start and end.

*e.* Designation of the asbestos disposal site.

*f.* The signature and printed name of the person who completed the form.

*g.* The shift or work schedule on which the project will be performed.

**155.5(4)** *Disaster emergency proclamations.* For structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, the permittee shall file the notice described by this rule as early as possible, but not later than the working day following the initiation of the project. A description of the disaster and the disaster emergency proclamation shall be included in the notice.

**875—155.6(88B) License application procedures.**

**155.6(1)** *Application form.* Except as noted in this subrule, the applicant must complete and submit the entire form provided by the department with the necessary attachments. Respirator fit tests and medical examinations must have occurred within the past 12 months. Only worker and contractor/supervisor license applicants must submit the respiratory protection and physician's or physician assistant's certification forms.

**155.6(2)** *Training.* A certificate of appropriate training as established by the U.S. Environmental Protection Agency must accompany all applications. Applicants for a license must be trained by training providers other than themselves. Applicants who completed initial training under a prior set of applicable rules will not be required to take another initial training course if they complete all annual refresher courses.

**155.6(3)** *Photograph.* A photograph clearly showing the applicant's face shall accompany all license applications.

**155.6(4)** *Worker licenses.* All persons seeking a license as an asbestos abatement worker shall complete an initial four-day training course and thereafter complete an annual one-day asbestos abatement worker refresher training course. A nonrefundable fee of $20 shall accompany the application.

**155.6(5)** *Contractor/supervisor licenses.* All persons seeking a license as an asbestos abatement contractor/supervisor shall complete an initial five-day training course and thereafter complete an annual one-day asbestos abatement contractor/supervisor refresher training course. A nonrefundable fee of $50 shall accompany the application.

**155.6(6)** *Inspector licenses.* All persons seeking a license as an asbestos inspector shall complete an initial three-day training course and thereafter complete an annual one-half-day asbestos inspector refresher training course. A nonrefundable fee of $20 shall accompany the application.

**155.6(7)** *Management planner licenses.* All persons seeking a license as an asbestos management planner shall complete an initial three-day inspector training course and an initial two-day management planning training course. Thereafter, an annual one-half-day asbestos inspector refresher training course plus an additional one-half-day course on management planning are required. A nonrefundable fee of $20 shall accompany the application.

**155.6(8)** *Abatement project designer licenses.* All persons seeking a license as an asbestos abatement project designer shall complete an initial three-day abatement project designer training course. Thereafter, an annual one-day asbestos abatement project designer refresher training course is required. A nonrefundable fee of $50 shall accompany the application.

**155.6(9)** *Action on application.* Within 30 days of receiving a completed application, the department will issue a license or deny the application. If a license is issued, it will expire one year from the date the training was completed. An application may be denied for the reasons set forth in rule 875—155.8(17A,88B,252J,272D) or if the application package is incomplete.

**155.6(10)** *License on job site.* While conducting asbestos work that requires a license, the license or a legible copy of the license shall be in the licensee's possession at the work site. However, if the department's website reflects that a license has been issued to a particular person, that person may perform work consistent with the type of license issued without the license or a copy of the license for up to 14 days from the issuance date.

**155.6(11)** *Disaster emergency proclamations.* For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, the director deems an individual to be licensed and authorized for asbestos abatement if all of the criteria in either paragraph 155.6(11)*"a"* or *"b"* are met:

*a.* The individual contractor, supervisor, or worker makes the following immediately available on the work site:

(1) A copy of a certificate for training that was provided within the past 12 months as established by the U.S. Environmental Protection Agency and that pertains to the work being performed;

(2) A copy of a physician's or physician assistant's statement indicating that a licensed physician or physician assistant has examined the individual within the past 12 months and approved the individual to work while wearing a respirator;

(3) For a worker wearing or intending to wear a tight-fitting respirator, documentation of a respirator fit test within the past 12 months;

(4) A valid, current asbestos license issued by another state that pertains to the type of work being performed; and

(5) A photo identification card; or

*b.* The individual working as a project designer, inspector, or management planner makes the following immediately available on the work site:

(1) A copy of a certificate for training as established by the U.S. Environmental Protection Agency and that pertains to the work being performed;

(2) A valid, current asbestos license issued by another state that pertains to the type of work being performed; and

(3) A photo identification card.

**875—155.7(88B) Duplicate permits and licenses.** Duplicate original permits and licenses are available from the department for a $10 fee.

**875—155.8(17A,88B,252J,272D) Denial, suspension and revocation.**

**155.8(1)** *Grounds.* In addition to the grounds in Iowa Code section 88B.8, the department may deny an application or suspend or revoke a permit or license when an investigation reasonably determines any of the following:

*a.* The department received a certificate of noncompliance from the centralized collection unit of the department of revenue or the child support recovery unit of the department of health and human services.

*b.* Penalties or other debts are owed by the applicant to the department and are 30 days or more in arrears.

**155.8(2)** *Relinquishing license or permit.* A licensee or permittee must return the original license or permit to the department when a revocation or suspension becomes final.

**155.8(3)** *Suspension period.* Unless ordered otherwise, a suspension lasts for 12 months.

**875—155.9(17A,88B) Contested cases.**

**155.9(1)** *Scope.* This rule applies to civil penalty assessments and to denials, revocations and suspensions of asbestos licenses and permits.

**155.9(2)** *Procedures.* The director shall serve a notice of intended action by restricted certified mail, return receipt requested, or by other service as permitted by Iowa Code section 17A.18. A notice of contest must be received by the director within 20 days after service of the notice of intended action. If a notice of contest is not timely filed, the action stated in the notice of intended action shall automatically be effective. Hearing procedures for asbestos contested cases are set forth in 875—Chapter 1, Division V. However, if a contested case is based on receipt by the department of a certificate of noncompliance, procedures outlined in Iowa Code chapter 252J or 272D apply.

These rules are intended to implement Iowa Code chapters 17A, 88B, 252J, and 272D.