

*RIGHT TO KNOW*CHAPTER 110
HAZARDOUS CHEMICAL RISKS RIGHT TO KNOW—
GENERAL PROVISIONS

[Prior to 9/24/86, see Labor, Bureau of[530]]

[Prior to 10/21/98, see 347—Ch 110]

875—110.1(88,89B) Purpose, scope and application.

110.1(1) Purpose. The purpose of Chapters 110, 120, 130, and 140 is to implement Iowa Code chapter 89B. The rules in Chapter 110 are to ensure that the hazards of all chemicals produced or imported are evaluated and that the information is transmitted to affected employees. This chapter is enforced under Iowa Code chapters 88 and 89B.

Chapter 120 provides that information concerning chemical hazards is transmitted to affected employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets, and employee training. This chapter is enforceable under Iowa Code chapter 88.

Chapter 130 addresses the procedures for the public to gain access to information on hazardous chemicals used in the community, the administrative procedures to determine the extent of the information required to be presented, and the actions to compel the release of the information when the employer does not voluntarily release the information.

Chapter 140 addresses the procedures by which an employer submits information to the local fire department on the hazardous chemicals at the employer's workplace.

110.1(2) Scope, application, and exemptions. These chapters require chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers, except those exempted in subrule 110.1(3), to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers. These rules apply to any chemical which is known to be present in the workplace so that employees may be exposed under normal conditions of use or in a foreseeable emergency.

110.1(3) Exemption of employers—laboratories. These rules apply to laboratories only as follows:

- a. Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;
- b. Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees; and
- c. Employers shall ensure that laboratory employees are apprised of the hazards of chemicals in their workplaces in accordance with rule 875—120.6(88,89B).

110.1(4) Exemption of employers—minimal exposure operations. In working operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), 875—Chapters 110 and 120 apply to these operations only as follows:

- a. Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;
- b. Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and

c. Employers shall ensure that employees are provided with information and training in accordance with rule 875—120.6(88,89B) except for the location and availability of the written hazard communication program under paragraph 120.6(1)“c,” to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container.

110.1(5) Exemptions. This chapter and 875—Chapter 120 do not require labeling of the following chemicals:

a. Any pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of the Act and labeling regulations issued under that Act by the Environmental Protection Agency;

b. Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (e.g., flavors and fragrances), as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Food and Drug Administration;

c. Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulation issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and

d. Any consumer product or hazardous substance as defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission.

e. These rules do not apply to:

1. Any hazardous waste as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

2. Tobacco or tobacco products;

3. Wood or wood products;

4. Articles;

5. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

6. Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposure experienced by consumers; and

7. Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), when it is in solid, final form for direct administration to the patient (i.e., tablets or pills).

This rule is intended to implement Iowa Code subsections 89B.4(1) and 89B.8(5).

875—110.2(88,89B) Definitions.

“*Act*” means the hazardous chemical risk right to know Act, Iowa Code chapter 455D.

“*Appeal board*” means the employment appeal board created under Iowa Code section 10A.601.

“*Article*” means a manufactured item:

1. Which is formed to a specific shape or design during manufacture;

2. Which has end use function(s) dependent in whole or in part upon its shape or design during end use; and

3. Which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

“*Chemical*” means any element, chemical compound, or mixture of elements or compounds.

“*Chemical manufacturer*” means an employer with a workplace where chemical(s) are produced for use or distribution.

“*Chemical name*” means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

“*Combustible liquid*” means any liquid having a flash point at or above 100°F (37.8°C), but below 200°F (93.3°C), except any mixture having components with flash points of 200°F (93.3°C), or higher, the total volume of which makes up 99 percent or more of the total volume of the mixture.

“*Commissioner*” means the labor commissioner or designee.

“*Common name*” means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by chemical name.

“*Compressed gas*” means:

1. A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70°F (21.1°C);

2. A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C); or

3. A liquid having a vapor pressure exceeding 40 psi at 100°F (37.8°C) as determined by ASTM D-323-72.

“*Container*” means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of 875—Chapters 110, 120, 130, and 140, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

“*Designated representative*” means an individual or organization to whom an employee gives written authorization to exercise such employee’s rights under 875—Chapter 120. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

“*Distributor*” means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

“*Division*” means the division of labor services of the department of workforce development.

“*Emergency response department*” means any governmental department which might be reasonably expected to be required to respond to an emergency involving a hazardous chemical, including, but not limited to, local fire, police, medical rescue, disaster, and public health departments.

“*Employee*” means an individual employed by an employer in a workplace in this state who may be exposed to hazardous chemicals under normal operating conditions or foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in nonrecurring, isolated instances are not covered.

“*Employer*” means a person engaged in a business in this state where chemicals are either used, distributed, or produced for use or distribution including a contractor or subcontractor.

“*Explosive*” means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

“*Exposure*” or “*exposed*” means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (e.g., accidental or possible) exposure.

“*Flammable*” means a chemical that falls into one of the following categories:

1. “*Aerosol, flammable*” means an aerosol that, when tested by the method described in 16 CFR 1500.45 (1985), yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

2. “*Gas, flammable*” means:

A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of 13 percent by volume or less; or

A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than 12 percent of volume, regardless of the lower limit;

3. “*Liquid, flammable*” means any liquid having a flash point below 100°F (37.8°C), except any mixture having components with flash points of 100°F (37.8°C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

4. “*Solid, flammable*” means a solid, other than a blasting agent or explosive as defined in subsection 29 CFR 1910.109(a) (1984), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44 (1985), it ignites and burns with a self-sustained flame at a rate greater than 1/10 inch per second along its major axis.

“*Flashpoint*” means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

1. Tagliabue Closed Tester (see American National Standard Method of Test for Flash Point by Tag Closed Tester, ASTM D 56-82) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

2. Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, ASTM D 93-85) for liquids with a viscosity equal to or greater than 45 SUS at 100°F (37.8°C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

3. Setafash Closed Tester (see American National Standard Method of Test for Flash Point by Setafash Closed Tester ASTM D 3278-82E1).

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flash point determination methods specified above.

“*Foreseeable emergency*” means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

“*Hazard warning*” means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which conveys the hazard(s) of the chemical(s) in the container(s).

“*Hazardous chemical*” means any chemical which is a physical hazard or a health hazard.

“*Health hazard*” means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term “health hazard” includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatoxins, nephrotoxins, neurotoxins, agents which act on hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A (available from the division) provides further definitions and explanations of the scope of health hazards covered by this rule, and Appendix B (available from the division) describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this chapter.

"Identity" means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Immediate use" means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Importer" means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

"Information in sufficient specificity" means a list of hazardous chemicals which are consistently generated by, used by, stored at, or transported from the employer's facility. A form is not specified. The information shall be submitted on an 8½" by 11" page and shall include:

1. Name of the employer;
2. Name of contact person of the employer;
3. Mailing address of the employer;
4. Address of the establishment for which the information is provided; and
5. A list of the chemicals which includes:
 - a. Identity of the hazardous chemical;
 - b. NFPA numerical hazard rating in health, flammability, and reactivity as well as any information which constitutes a special hazard pursuant to NFPA 704-1980, chapter 5, for each listed chemical; and
 - c. Any other special hazard information from the material safety data sheets which may be relevant.

If the fire department is unable to tour the facility annually due to limits by the fire department or employer, the fire chief shall be provided upon request with the following:

1. A plane view scale diagram which shows the permanent location of each hazardous chemical within the employer's facility, as well as easily recognizable reference points such as doorways, stairs, and windows; and
2. A copy of requested material safety data sheets.

"Interested person" means any person who is requesting information from an employer, but does not include an employee of that employer.

"Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical which is prepared in accordance with rule 875—120.5(88,89B).

"Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

"Organic peroxide" means an organic compound that contains the bivalent-O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in 875—10.20(88), specifically 29 CFR 1910.109(a)(1985), that initiates or promotes combustion in other materials thereby causing fire either of itself or through the release of oxygen or other gases.

"Permanently stored hazardous material" means a substance that is located in an area designated by the employer or located in an area which is established through common use and practice as being the location where the hazardous chemical is stored or can be obtained.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

“*Produce*” means to manufacture, process, formulate, or repackage.

“*Pyrophoric*” means a chemical that will ignite spontaneously in air at a temperature of 130°F (54.4°C) or below.

“*Responsible party*” means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary. A chemical manufacturer or importer shall be deemed a responsible party.

“*Specific chemical identity*” means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

“*Trade secret*” means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer’s business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D (available from the division) sets out the criteria to be used in evaluating trade secrets.

“*Unstable (reactive)*” means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure, or temperature.

“*Use*” means to package, handle, react, or transfer.

“*Water-reactive*” means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

“*Work area*” means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

“*Workplace*” means an establishment, job site, or project, at one geographical location containing one or more work areas.

This rule is intended to implement Iowa Code sections 89B.4 and 89B.8.

875—110.3(88,89B) Hazard determination.

110.3(1) Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement. Employers who mix or otherwise combine chemicals are chemical manufacturers of that resultant chemical.

110.3(2) Chemical manufacturers, importers, or employers evaluating chemicals shall identify and consider the available scientific evidence concerning the hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in rule 110.2(88,89B). Appendix A (available from the division) shall be consulted for the scope of health hazards covered, and Appendix B (available from the division) shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

110.3(3) The chemical manufacturer, importer, or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

a. 29 CFR Part 1910, Subpart Z, (1986) Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or

b. “Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment,” American Conference of Government Industrial Hygienists (ACGIH) (1986).

The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this chapter.

110.3(4) Chemical manufacturers, importers, and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

- a. National Toxicology Program (NTP), “Annual Report on Carcinogens” (1982);
- b. International Agency for Research on Cancer (IARC) Monographs (1982); or
- c. 29 CFR Part 1910, Subpart Z, (1986) Toxic and Hazardous Substances, Occupational Safety and Health Administration.

NOTE—The “Registry of Toxic Effects of Chemical Substances” published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen. The original document referenced in RTECS must be consulted in all instances. RTECS should be regarded as a locator document only.

110.3(5) The chemical manufacturer, importer, or employer evaluating chemicals shall determine the hazards of mixtures of chemicals as follows:

- a. If a mixture has been tested as a whole to determine its hazards, results of the testing shall be used to determine whether the mixture is hazardous;
- b. If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise 1 percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under subrule 110.3(4);
- c. If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and
- d. If the chemical manufacturers, importers, or employers have evidence to indicate that a component present in the mixture in concentrations of less than 1 percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established division (OSHA) permissible exposure limit or ACGIH Threshold Limit Value (1985-1986), or could present a health hazard to employees in those concentrations, the mixture shall be assumed to present the same hazard.

110.3(6) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The procedures shall be made available as specified in 875—subrule 120.2(2).

875—110.4(88,89B) Labels and other forms of warning.

110.4(1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked with the following information:

- a. Identity of the hazardous chemical(s);
- b. Appropriate hazard warnings; and
- c. Name and address of the chemical manufacturer, importer, or other responsible party.

110.4(2) For solid metal (such as a steel beam or a metal casting) that is not exempted as an article due to its downstream use, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes. The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment. This exception to requiring labels on every container of hazardous chemicals is only for the solid metal itself and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the metal and to which employees handling the metal may be exposed (for example, cutting fluids or lubricants).

110.4(3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this rule in a manner which does not conflict with the requirements of the Hazardous Material Transportation Act (49 U.S.C. 1801 et seq.) and regulations issued under the Act by the Department of Transportation.

110.4(4) If the hazardous chemical is regulated by the division in an OSHA substance-specific health standard, the chemical manufacturer, importer, distributor, or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

110.4(5) The chemical manufacturer, importer, distributor, or employer need not affix new labels to comply with this rule or 875—120.4(88,89B) if existing labels already convey the required information.

875—110.5(88,89B) Material safety data sheets.

110.5(1) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import.

110.5(2) Each material safety data sheet shall be in English and shall contain at least the following information:

a. The identity used on the label, and except as provided for in rule 110.6(88,89B) on trade secrets:

(1) If the hazardous chemical is a single substance, its chemical and common name(s);

(2) If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or

(3) If the hazardous chemical is a mixture which has not been tested as a whole:

1. The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise 1 percent or greater of the composition, except that chemicals identified as carcinogens under subrule 110.3(4) shall be listed if the concentrations are 0.1 percent or greater; and

2. The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise less than 1 percent (0.1 percent for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established division's (OSHA) permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees; and

3. The chemical and common name(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

b. Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

c. The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

d. The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

e. The primary route(s) of entry;

f. The division's (OSHA) permissible exposure limit, ACGIH Threshold Limit Value (1985-1986), and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

g. Whether the hazardous chemical is listed in the National Toxicology Program (NTP) "Annual Report on Carcinogens" (1982) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) "Monographs" (1982), or by the division;

h. Any generally applicable precautions for safe handling and use which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for cleanup of spills and leaks;

i. Any generally applicable control measures which are known to the chemical manufacturer, importer, or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

j. Emergency and first-aid procedures;

k. The date of preparation of the material safety data sheet or the last change to it; and

l. The name, address and telephone number of the chemical manufacturer, importer, employer, or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

110.5(3) If no relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer, or employer preparing the material safety data sheet shall mark it to indicate that no applicable information was found.

110.5(4) Where complex mixtures have similar hazards and contents (i.e., the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the chemical manufacturer, importer, or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

110.5(5) The chemical manufacturer, importer, or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the chemical manufacturer, importer, or employer preparing the material safety data sheet becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the chemical is not currently being produced or imported the chemical manufacturer or importer shall add the information to the material safety data sheet before the chemical is introduced into the workplace again.

110.5(6) Chemical manufacturers or importers shall ensure that distributors and employers are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is updated. The chemical manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the employer prior to or at the time of the shipment. If the material safety data sheet is not provided with the shipment that has been labeled as a hazardous chemical, the employer shall obtain one from the chemical manufacturer, importer, or distributor as soon as possible.

110.5(7) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers. Retail distributors which sell hazardous chemicals to commercial customers shall provide a material safety data sheet to the employers upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available. Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors which have informed them that the retail distributor does not sell the product to commercial customers or open the sealed container to use it in their own workplaces.

875—110.6(88,89B) Trade secrets.

110.6(1) The chemical manufacturer, importer or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

a. The claim that the information withheld is a trade secret can be supported;

b. Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;

c. The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and

d. The specific chemical identity is made available to health professionals, employees, and designated representatives, in accordance with the applicable provisions of this rule.

110.6(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of subrules 110.6(3) and 110.6(4), as soon as circumstances permit.

110.6(3) In nonemergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under subrule 110.6(1), to a health professional (i.e., physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse), providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

a. The request is in writing;

b. The request describes with reasonable detail one or more of the following occupational health needs for the information:

(1) To assess the hazards of the chemicals to which employees will be exposed;

(2) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

(3) To conduct preassignment or periodic medical surveillance of exposed employees;

(4) To provide medical treatment to exposed employees;

(5) To select or assess appropriate personal protective equipment for exposed employees;

(6) To design or assess engineering controls or other protective equipment for exposed employees; and

(7) To conduct studies to determine the health effects of exposure.

c. The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in 110.6(3) "b":

(1) The properties and effects of the chemical;

(2) Measures for controlling workers' exposure to the chemical;

(3) Methods of monitoring and analyzing worker exposure to the chemical; and

(4) Methods of diagnosing and treating harmful exposures to the chemical;

d. The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

e. The health professional, and the employer or contractor of the services of the health professional (i.e., downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to the division, as provided in subrule 110.6(6), except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

110.6(4) The confidentiality agreement authorized by 110.6(3) "d":

a. May restrict the use of the information to the health purposes indicated in the written statement of need;

b. May provide appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable preestimate of likely damages; and

c. May not include requirements for the posting of a penalty bond.

110.6(5) Nothing in 875—Chapters 110 and 120 is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.

110.6(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to the division, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, the disclosure.

110.6(7) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

- a. Be provided to the health professional, employee, or designated representative, within 30 days of the request;
- b. Be in writing;
- c. Include evidence to support the claim that the specific chemical identity is a trade secret;
- d. State the specific reasons why the request is being denied; and
- e. Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

110.6(8) The health professional, employee, or designated representative whose request for information is denied under subrule 110.6(3) may refer the request and the written denial of the request to the division for consideration.

110.6(9) When a health professional, employee, or designated representative refers the denial to the division under subrule 110.6(8), the division shall consider the evidence to determine if:

- a. The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;
- b. The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and
- c. The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

110.6(10) If the division determines that the specific chemical identity requested under subrule 110.6(3) is not a bona fide trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by the division.

If a chemical manufacturer, importer, or employer demonstrates to the division that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the commissioner may issue an order or impose additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to ensure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

110.6(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the appeal board in accordance with the enforcement scheme established in Iowa Code chapter 88 and the applicable appeal board rules. In accordance with appeal board rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the appeal board may review the citation and supporting documentation in camera or issue appropriate orders to protect the confidentiality of the matters.

110.6(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the commissioner any information which this rule requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, the claim shall be made no later than at the time the information is provided to the commissioner so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

110.6(13) Nothing in this rule shall be construed as requiring disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

875—110.7 Rescinded IAB 6/15/88, effective 8/15/88.

These rules are intended to implement Iowa Code sections 89B.4, 89B.5, 89B.8, and 89B.11.

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CHAPTERS 111 to 119
Reserved

*Two ARCs