

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 88.5 and 2017 Iowa Acts, House File 529, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 3, “Inspections, Citations and Proposed Penalties,” Iowa Administrative Code.

In 2015, federal lawmakers passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) that required many federal agencies to increase the amounts of their civil penalties. The Act also required that the same federal agencies make annual adjustments to their civil penalty amounts. Among the federal agencies that were required by the Act to increase civil penalties was the federal Occupational Safety and Health Administration.

The Iowa Labor Commissioner administers Iowa’s occupational safety and health program, and the state program must be at least as effective as the federal program. As a result, 2017 Iowa Acts, House File 529, was enacted to enable the Labor Commissioner to modify the Iowa occupational safety and health civil penalty structure to conform with the federal penalty structure. The proposed amendment in Item 4 of this Notice is a direct result of House File 529. Additional proposed amendments contained in this rule making consist of conforming amendments, editorial changes, and the removal of obsolete language.

The principal reasons for these proposed amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code section 88.14 as amended by 2017 Iowa Acts, House File 529, the Labor Commissioner shall adopt rules to align state and federal penalty amounts.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on November 14, 2017, a public hearing will be held on November 16, 2017, at 1:30 p.m. at 150 Des Moines Street, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)725-5615 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 16, 2017, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5.

These amendments are intended to implement Iowa Code chapter 88 as amended by 2017 Iowa Acts, House File 529.

The following amendments are proposed.

ITEM 1. Amend **875—Chapter 3**, title, as follows:

POSTING, INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

ITEM 2. Amend subrule 3.1(1) as follows:

3.1(1) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the department of workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the ~~occupational safety and health bureau of the~~ division of labor services.

Reproductions or ~~facsimiles~~ facsimiles of the state poster shall constitute compliance with the posting requirements of Iowa Code section 88.6(3)“a” where such reproductions or ~~facsimiles~~ facsimiles are at least 8½ inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

ITEM 3. Renumber subrules **3.11(1)** to **3.11(5)** as **3.11(2)** to **3.11(6)**.

ITEM 4. Adopt the following new subrule 3.11(1):

3.11(1) The civil penalties proposed by the labor commissioner on or after January 27, 2018, are as follows:

a. Willful violation. The penalty for each willful violation under Iowa Code section 88.14(1) as amended by 2017 Iowa Acts, House File 529, shall not be less than \$8,908 and shall not exceed \$124,709.

b. Repeated violation. The penalty for each repeated violation under Iowa Code section 88.14(1) as amended by 2017 Iowa Acts, House File 529, shall not exceed \$124,709.

c. Serious violation. The penalty for each serious violation under Iowa Code section 88.14(2) as amended by 2017 Iowa Acts, House File 529, shall not exceed \$12,471.

d. Other-than-serious violation. The penalty for each other-than-serious violation under Iowa Code section 88.14(3) as amended by 2017 Iowa Acts, House File 529, shall not exceed \$12,471.

e. Failure to correct violation. The penalty for failure to correct a violation under Iowa Code section 88.14(4) as amended by 2017 Iowa Acts, House File 529, shall not exceed \$12,471 per day.

ITEM 5. Amend renumbered subrule 3.11(5) as follows:

3.11(5) Any employer failing to comply with the provisions of subrules ~~3.11(4)~~ 3.11(2) and ~~3.11(2)~~ 3.11(3) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14 as amended by 2017 Iowa Acts, House File 529.

ITEM 6. Amend rule ~~875~~—**3.11(88)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections 88.7(3) and 88.8~~ chapter 88 and 2017 Iowa Acts, House File 529.

ITEM 7. Amend subrule 3.13(2) as follows:

3.13(2) A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition and notice informing affected employees of their rights to party status has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with 3.13(3)“a” and a certification of the date upon which the posting and service was made. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner's designee: ~~IOSH Administrator, Occupational Safety and Health Bureau,~~ Iowa OSHA, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

ITEM 8. Amend subrule 3.19(3) as follows:

3.19(3) *Abatement certification.*

a. to *c.* No change.

~~NOTE: Appendix A contains a sample abatement certification letter.~~

ITEM 9. Amend subrules 3.19(5) and 3.19(6) as follows:

3.19(5) *Abatement plans.*

a. and *b.* No change.

~~NOTE: Appendix B contains a sample abatement plan form.~~

3.19(6) *Progress reports.*

a. and *b.* No change.

~~NOTE: Appendix B contains a sample progress report form.~~

ITEM 10. Amend paragraph **3.19(9)“b”** as follows:

b. The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. A sample tag is available at osha.gov as Appendix C to 29 CFR 1903.19.

~~NOTE: Appendix C (nonmandatory) contains a sample tag that employers may use to meet this requirement.~~

ITEM 11. Rescind and reserve rule ~~875—3.24(88)~~.

ITEM 12. Amend ~~875—Chapter 3~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A and 88 and ~~sections 84A.1, 84A.2 and 88.2~~ 2017 Iowa Acts, House File 529.

ITEM 13. Amend ~~875—Chapter 3~~ by rescinding the Note and Appendices A through C at the end thereof.