

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rule making related to community right to know

The Labor Commissioner hereby rescinds Chapter 110, “Hazardous Chemical Risks Right to Know—General Provisions,” and amends Chapter 130, “Community Right to Know,” and Chapter 140, “Public Safety/Emergency Response Right to Know,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 89B.8.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 89B.

Purpose and Summary

These amendments eliminate duplicative language, update obsolete references, and make editorial changes. Chapter 110 is being rescinded due to the chapter being duplicative and obsolete in relation to a federal standard that has been adopted by reference in rule 875—10.20(88). The remainder of the amendments in Chapters 130 and 140 are editorial in nature and remove obsolete language.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 9, 2022, as **ARC 6177C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commissioner on March 16, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 11, 2022.

The following rule-making actions are adopted:

ITEM 1. Rescind and reserve **875—Chapter 110**.

ITEM 2. Amend rule 875—130.2(89B) as follows:

875—130.2(89B) Records accessibility.

130.2(1) Records do not need to be accessible to the public if the information is a trade secret or the employer has notified the division in writing that certain information should not be accessible to the public ~~for reasons that~~ because the information is not relevant to public health and safety or the release of the information is proven to cause damage to the employer.

130.2(2) Accessible records include ~~the material~~ safety data sheets. The employer shall also provide information concerning the quantity of each hazardous chemical stored or used. Quantity information may include the manner of purchase such as in gallon containers, barrels, tankers, etc. Additionally, the employer shall provide information specifying the quantity as less than 500 pounds, between 500 pounds and 1000 pounds, between 1000 pounds and 5000 pounds, or in excess of 5000 pounds.

130.2(3) An employer is not required to make a copy of a ~~material~~ safety data sheet if the interested person is given an opportunity to review and make notes regarding the ~~material~~ safety data sheet.

If an employer provides a copy of a ~~material~~ safety data sheet at the request of the interested person, a reasonable fee can be charged for the actual cost of copying.

ITEM 3. Amend rule 875—130.3(89B) as follows:

875—130.3(89B) Application for exemption. To obtain an order from the commissioner pursuant to Iowa Code chapter 89B and rule 875—130.2(89B), an employer shall make a written application to the commissioner setting forth the specific grounds for the claimed exemption. Upon receipt of an application, the commissioner shall give the applicant notice and opportunity to be heard at a full evidentiary hearing before the commissioner.

ITEM 4. Rescind paragraph **130.4(1)“a”** and adopt the following **new** paragraph in lieu thereof:

a. The commissioner may take official notice that similar information of the employer-applicant has been deemed a trade secret for the purpose of 29 CFR 1910.1200, and may summarily grant the exemption based on the official notice.

ITEM 5. Amend paragraph **130.4(1)“b”** as follows:

b. The criteria for determining a trade secret under this ~~rule~~ chapter shall be identical to that under ~~rule 875—110.6(88,89B)~~ 29 CFR 1910.1200.

ITEM 6. Amend rule 875—130.7(89B) as follows:

875—130.7(89B) Filing with division. Upon receipt of application for information, the division shall determine if the applicant has a legitimate interest, and if so, the division shall make a written demand upon the employer to provide the requested information to the division. If the employer complies, the division shall forward copies to the interested person. Requests for the information under rule 875—130.6(89B) will be kept confidential. The division shall not disclose the name of the interested person to any person.

ITEM 7. Amend subrule 130.8(1) as follows:

130.8(1) The division has not received a reply within 30 days of the request for information pursuant to rule 875—130.7(89B); or

ITEM 8. Amend subrule 130.8(2) as follows:

130.8(2) The division finds on an ~~IOSH~~ occupational safety and health inspection that the employer's records materially distort the information given the public or an emergency response ~~group~~ department so as to pose a serious hazard to community health, environment, or emergency response personnel.

ITEM 9. Amend subrule 130.10(1) as follows:

130.10(1) If after conducting an investigation or inspection of the employer's workplace the commissioner finds that the complaint is meritorious, the commissioner shall issue an order to comply to the employer which shall set forth with specificity the employer's noncompliance with ~~the Act~~ Iowa Code chapter 89B or rules. The commissioner shall give the employer a period of 30 days to take remedial steps for compliance. The commissioner may establish a shorter period of time if justification is provided in the order to comply.

ITEM 10. Amend subrule 140.2(3) as follows:

140.2(3) Procedure. The employer application ~~which~~ shall be procedurally processed in the same manner as an application for ~~exemption under 875—~~ subrule 130.5(5) waiver pursuant to 875—Chapter 1.

ITEM 11. Amend rule 875—140.3(89B) as follows:

875—140.3(89B) Agreement between an employer and fire department. In instances where the posting of a sign for each hazardous chemical would be ambiguous, repetitive, or where space is limited by the physical characteristics of the structure, or in situations, such as in a building, structure, or location, where a wide variety of materials may be stored having varying degrees of hazards, the identifying symbol shall indicate the most severe degree of hazard in each category except when a high hazard rating would be misleading because of the presence of an insignificant quantity of the material requiring the rating.

The employer ~~and the local fire department~~ may enter into a written agreement ~~with the fire chief of the local fire department which provides~~ providing for the posting of signs for the most hazardous chemical in each principal category as set forth in subrule 140.1(2). The agreement is subject to the approval of the division pursuant to the procedure for a variance, as specified in rule ~~875—~~140.2(89B). If the variance is approved, the employer shall post in the same location as the required posted signs a sign stating: "Signs not posted for all hazardous chemicals." The sign shall be in block letters at least 3 inches in height.

ITEM 12. Rescind rule 875—140.4(89B) and adopt the following new rule in lieu thereof:

875—140.4(89B) Information submitted to local fire department. Via certified mail, the employer shall submit to the local fire department a list of hazardous chemicals that the employer's facility consistently generates, uses, stores, or transports. The employer shall submit updated information as it becomes available to the employer.

140.4(1) This rule shall apply to any amount of a hazardous chemical that meets at least one of the following:

- a. Is a U.S. Department of Transportation Division 1.1, Division 1.2, or Division 1.3 explosive;
- b. Is a U.S. Department of Transportation Division 2.3 toxic gas;
- c. Is a U.S. Department of Transportation Division 6.1 toxic substance;
- d. Is a U.S. Department of Transportation Division 4.3 material;
- e. Is a U.S. Department of Transportation Radioactive Yellow III material;
- f. Has an NFPA 704-2022 health rating of greater than or equal to 3;
- g. Has an NFPA 704-2022 flammability rating of 4; or
- h. Has an NFPA 704-2022 reactivity rating of 4.

140.4(2) This rule shall apply to a hazardous chemical that is present in aggregate quantities of 25 gallons of liquid; 250 pounds of nonliquid; or 250 combined pounds of liquid and nonliquid, and is classified as:

- a. NFPA 704-2022 health rating of greater than or equal to 2;

- b.* NFPA 704-2022 flammability rating of greater than or equal to 3; or
- c.* NFPA 704-2022 reactivity rating of greater than or equal to 2.

140.4(3) In addition to a list of the hazardous chemicals, the employer shall provide the following:

- a.* Employer's name;
- b.* Name, phone number, and email address of employer's contact person;
- c.* Employer's mailing address;
- d.* Address of the facility where hazardous chemicals are present;
- e.* NFPA numerical hazard rating in health, flammability, and reactivity for each hazardous chemical;
- f.* Any information which constitutes a special hazard pursuant to NFPA 704-2022, Chapter 5, for each listed chemical; and
- g.* Any other special hazard information from the safety data sheets which may be relevant.

140.4(4) If requested by the fire department, the employer shall provide to the fire department the information listed in this subrule, unless the fire department tours the facility annually.

- a.* A 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
- b.* A copy of safety data sheets.

ITEM 13. Rescind and reserve rule **875—140.5(89B)**.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/6/22.