Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 130
"Community Right to Know Hazardous Chemicals"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89B.12
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:

September 25, 2024 9 to 9:30 a.m.	Woods Conference Room 6200 Park Avenue, Suite 100 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
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 130 requires employers that store hazardous chemicals to provide information about those chemicals to certain interested persons in the community.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
- Classes of persons that will bear the costs of the proposed rulemaking:

Businesses storing hazardous chemicals will bear the costs.
- Classes of persons that will benefit from the proposed rulemaking:

Members of the community who could undergo exposure to the hazardous chemicals will benefit.

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:

The cost of compliance is not high.
- 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:

Costs are low to the Division of Labor Services. There are not many inquiries about this chapter.
- Anticipated effect on state revenues:

There is no anticipated effect 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 potential hazards to members of the community.

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

No less costly 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?

Given the nature of the hazards and protected interest, there is no small business exception.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 130 and adopt the following **new** chapter in lieu thereof:

CHAPTER 130
COMMUNITY RIGHT TO KNOW HAZARDOUS CHEMICALS

875—130.1(89B) Employer's duty. Upon request, an employer has a duty to inform the public of the presence of hazardous chemicals in the community and the potential health and environmental hazards that the chemicals pose. Requests shall be made during normal office hours of the employer. The employer shall provide the information or reason for refusal within ten days. If the request is from a health professional, the information shall be provided immediately.

875—130.2(89B) Records accessibility.

130.2(1) Accessible records include 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 1,000 pounds, between 1,000 pounds and 5,000 pounds, or in excess of 5,000 pounds.

130.2(2) An employer is not required to make a copy of a safety data sheet if the interested person is given an opportunity to review and make notes regarding the safety data sheet. If an employer provides a copy of a safety data sheet at the request of the interested person, a reasonable fee can be charged for the actual cost of copying.

875—130.3(89B) Application for exemption. An employer shall make a written application to the commissioner setting forth the specific grounds for a claimed exemption. Upon receipt of an application, the commissioner will give the applicant notice and opportunity to be heard at a full evidentiary hearing before the commissioner.

875—130.4(89B) Burden of proof and criteria.

130.4(1) *Trade secrets.* The employer-applicant has the burden of proof in showing that the information claimed as exempted qualifies as a trade secret. The commissioner may take official notice that similar information of the employer-applicant has been deemed a trade secret and may summarily grant the exemption based on the official notice.

130.4(2) *Relevance of public health and safety/damage to employer.* The employer-applicant has the burden of proof in showing that the information is not relevant to public health and safety or that the release of the information would damage the employer. Notification in writing by the employer is not, in and of itself, sufficient to allow the employer to obtain the exemption.

875—130.5(89B) Formal ruling. The commissioner will issue a formal ruling upon application. The ruling will set forth findings of fact and conclusions of law and grant or deny the application. The ruling is the final agency action for purposes of Iowa Code chapter 17A.

875—130.6(89B) Request for information. An interested person may request information from an employer. If the request is denied by the employer, the requesting party may then file an application for information with the division. The application will set forth the information being requested and that the information was refused by the employer or that the employer denies access or that the employer alleges that no records were kept. The applicant shall state the interest in the information requested to be received.

875—130.7(89B) Filing with division. Upon receipt of application for information, the division will determine if the applicant has a legitimate interest, and if so, the division will make a written demand upon the employer to provide the requested information to the division. If the employer complies, the division will 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.

875—130.8(89B) Grounds for complaint against the employer. The commissioner may cite the employer on a formal written complaint on any of the following grounds:

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

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

875—130.9(89B) Investigation or inspection upon complaint. Within 15 days of determining that there are grounds for a complaint, the commissioner shall either notify the employer in writing of the grounds for the complaint and request information or conduct an unannounced inspection of the employer's workplace at reasonable times and in a reasonable manner. Within 30 days of initiating an investigation or inspection, the division may find that the complaint is invalid and unfounded and so inform the interested person and the employer in writing.

875—130.10(89B) Order to comply.

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 that shall set forth with specificity the employer's noncompliance with 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.

130.10(2) An employer may request an administrative hearing on the order to comply at any time prior to the time set forth for compliance in the order to comply.

130.10(3) If the employer has not requested a hearing, the commissioner, after the time set forth for compliance with the order to comply, may reexamine records submitted by the employer or may reinspect the premises. If the employer has not taken the necessary remedial steps required by the order to comply, the commissioner, upon notice and administrative hearing, may issue a decision on the order to comply that is a final agency action pursuant to Iowa Code chapter 17A.

130.10(4) In the event that the employer fails to comply with a decision on the order to comply, the commissioner may commence an action in the Iowa district court for injunctive and other equitable relief that may be just and equitable.

These rules are intended to implement Iowa Code section 30.7 and chapter 89B.