Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 140
"Public Safety/Emergency Response Right to Know"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89B.17
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 140 enhances the safety of fire departments by requiring certain employers to communicate information on their hazardous chemicals.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Employers that are required to communicate information about their stored hazardous chemicals and fire departments who receive that communication will bear the costs.

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

Fire departments benefit by knowing of hazardous chemicals prior to engaging in an emergency response.

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 costs are small.

- 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:

This is enforced by Iowa Occupational Safety and Health, which receives few inquiries under 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 increased hazards to fire departments when making emergency responses to employers that store hazardous chemicals.

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?

Given the nature of the hazard, there is no exception for small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 140 and adopt the following **new** chapter in lieu thereof:

CHAPTER 140
PUBLIC SAFETY/EMERGENCY RESPONSE RIGHT TO KNOW

875—140.1(89B) Employer waiver applications. An employer may, in writing, apply to the commissioner for a waiver for less stringent sign posting requirements.

140.1(1) The employer has the burden of proof to show that compliance imposes an undue hardship and that the less stringent sign posting requirements as proposed by the employer offer substantially the same degree of notice and protection to emergency responders as if Iowa Code section 89B.14 were strictly applied.

140.1(2) Reserved.

875—140.2(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 providing for the posting of signs for the most hazardous chemical in each principal category. The agreement is subject to the approval of the division pursuant to the procedure for a waiver. If the waiver 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" in block letters at least 3 inches in height.

875—140.3(89B) Information submitted to local fire department. 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.

140.3(1) This rule applies to any amount of a hazardous chemical that meets at least one of the following criteria:

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 a National Fire Protection Association (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.

140.3(2) This rule applies 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 has:

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

b. An NFPA 704-2022 flammability rating of greater than or equal to 3; or

c. An NFPA 704-2022 reactivity rating of greater than or equal to 2.

140.3(3) In addition to a list of the hazardous chemicals, the employer shall provide the following:

a. The employer's name;

b. The name, phone number, and email address of the employer's contact person;

c. The employer's mailing address;

d. The address of the facility where hazardous chemicals are present;

e. The NFPA numerical hazard rating in health, flammability, and reactivity for each hazardous chemical;

f. Any information that 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 that may be relevant.

140.3(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 that 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 the safety data sheets.

875—140.4(89B) Procedure for noncompliance. If an employer fails to comply with the requirements of this chapter, the fire chief in the jurisdiction of the employer may file a written complaint with the commissioner.

875—140.5(89B) Notice of noncompliance. The commissioner may rely on the information provided by the fire chief and immediately issue a notice of noncompliance to the employer.

140.5(1) Opportunity for hearing. The notice of noncompliance shall be sent by certified mail and set forth that the employer may have an opportunity to be heard, upon demand by the employer. In the event the employer demands a hearing, the commissioner may conduct an investigation or an inspection.

140.5(2) In the event the employer does not demand a hearing within 30 days of the receipt of notice of noncompliance, the commissioner shall, without further notice, issue an order for compliance that is a final agency action pursuant to Iowa Code chapter 17A.

140.5(3) In the event the issue of noncompliance comes for hearing before the commissioner, the commissioner may, at the conclusion of the hearing, issue an order for compliance that is final agency action pursuant to Iowa Code chapter 17A or dismiss the complaint.

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