

CHAPTER 3
POSTING, INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

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

[Prior to 10/7/98, see 347—Ch 3]

875—3.1(88) Posting of notice; availability of the Act, regulations and applicable standards.

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 division of labor services.

Reproductions or 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 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.

3.1(2) “*Establishment*” means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, central administrative office or governmental agency or subdivision thereof.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, or the division of labor services. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications and electric, gas and sanitary services, the notice or notices required by this rule shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as harbor workers, traveling salespersons, technicians, engineers, and similar personnel, such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subrule 3.1(1).

3.1(3) Copies of the Act, all regulations published and all applicable safety and health rules are available from the division of labor services. If an employer has obtained copies of these materials from the division of labor services or the U.S. Department of Labor, the employer shall make them available upon request to any employee or authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or authorized employee representative and the employer.

3.1(4) Any employer failing to comply with the provisions of this rule shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

This rule is intended to implement Iowa Code section 88.6(3) “a.”

[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.2(88) Objection to inspection.

3.2(1) Upon a refusal to permit a compliance safety and health officer, in the exercise of official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records or to question any employer, owner, operator, agent or employee, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised. The compliance safety and

health officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefor to the labor commissioner or the commissioner's designee. The labor commissioner shall promptly take appropriate action, including compulsory process, if necessary.

3.2(2) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the labor commissioner or a designee, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed, or

b. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

3.2(3) For the purposes of this rule, the term "compulsory process" shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.3(88) Entry not a waiver. Any permission to enter, inspect, review records or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation or penalty under the Act. Compliance safety and health officers are not authorized to grant any such waiver.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.4(88) Advance notice of inspections.

3.4(1) Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

d. In other circumstances where the labor commissioner or the commissioner's designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

3.4(2) In situations described in 3.4(1), advance notice of inspections may be given only if authorized by the labor commissioner or the commissioner's designee, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health officer without such authorization if the labor commissioner or the commissioner's designee is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of the representative is known to the employer. Upon the request of the employer, the compliance safety and health officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health officer with the identity of the representative and with other information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection. An employer who fails to comply with the obligation under this rule promptly to inform the authorized representative of employees of the inspection, or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection, may be subject to citation and penalty under Iowa Code section 88.14(3). Advance notice in any of the situations described in subrule 3.4(1) shall not be given more than 24 hours before

the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.14(6).

875—3.5(88) Conduct of inspections.

3.5(1) Inspections shall take place at the times and in the places of employment as the labor commissioner or the commissioner's designee may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records they wish to review. However, such designation of records shall not preclude access to additional records.

3.5(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of the establishment. As used herein the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of cameras, audio and videotaping equipment, devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

3.5(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

3.5(4) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

3.5(5) At the conclusion of the inspection, the compliance safety and health officer shall confer with the employer or representative and informally advise the employer or representative of any apparent safety or health violations disclosed by the inspection. During the conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.

3.5(6) Inspections shall be conducted in accordance with the requirements of this chapter.

This rule is intended to implement Iowa Code section 88.6(1).

[ARC 8522B, IAB 2/10/10, effective 3/17/10]

875—3.6(88) Representatives of employers and employees.

3.6(1) Compliance safety and health officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the compliance safety and health officer during the physical inspection of any workplace for the purpose of aiding the inspection. A compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany the compliance safety and health officer where the compliance safety and health officer determines that the additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

3.6(2) Compliance safety and health officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the representative, the compliance safety and health officer should consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3.6(3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health officer, good cause has been shown

why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, the third party may accompany the compliance safety and health officer during the inspection.

3.6(4) Compliance safety and health officers are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.7(88) Complaints by employees.

3.7(1) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the commissioner or a designee. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or agent by the commissioner's designee no later than at the time of inspection, except that, upon the request of the person giving the notice, the identity and the identities of individual employees referred to therein shall not appear in the copy or on any record published, released, or made available by the division of labor services.

3.7(2) If upon receipt of notification the commissioner or a designee determines that the complaint meets the requirements set forth in subrule 3.7(1), and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if the alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

3.7(3) During any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer of any violation of the Act which they have reason to believe exists in the workplace.

875—3.8(88) Trade or governmental secrets.

3.8(1) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal trade or governmental secrets. If the compliance safety and health officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs and environmental samples, shall be labeled "confidential-trade/governmental secrets" and shall not be disclosed except in accordance with the provisions of Iowa Code section 88.12.

3.8(2) Upon the request of an employer, any authorized representative of employees in an area containing trade or governmental secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no representative or employee, the compliance safety and health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.12.

875—3.9(88) Imminent danger. Whenever and as soon as a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, the affected employees and employers shall be notified as provided in Iowa Code section 88.11(3). Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of the danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate the danger.

875—3.10(88) Consultation with employees. Compliance safety and health officers may consult with employees concerning matters of occupational safety and health to the extent that they deem necessary for

the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which the employee has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.11(88) Citations.

3.11(1) The civil penalties proposed by the labor commissioner on or after June 30, 2018, are as follows:

a. Willful violation. The penalty for each willful violation under Iowa Code section 88.14(1) shall not be less than \$9,239 and shall not exceed \$129,336.

b. Repeated violation. The penalty for each repeated violation under Iowa Code section 88.14(1) shall not exceed \$129,336.

c. Serious violation. The penalty for each serious violation under Iowa Code section 88.14(2) shall not exceed \$12,934.

d. Other-than-serious violation. The penalty for each other-than-serious violation under Iowa Code section 88.14(3) shall not exceed \$12,934.

e. Failure to correct violation. The penalty for failure to correct a violation under Iowa Code section 88.14(4) shall not exceed \$12,934 per day.

3.11(2) Upon receipt of any citation under the Act, the employer shall immediately post the citation or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided in this rule. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, the citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced or covered by other material. Notices of de minimis violations need not be posted.

3.11(3) Each citation or a copy thereof shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect the posting responsibility under this rule unless and until the employment appeal board issues a final order vacating the citation.

3.11(4) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the employment appeal board and the notice may explain the reasons for the contest. The employer may also indicate that specified steps have been taken to abate the violation.

3.11(5) Any employer failing to comply with the provisions of subrules 3.11(2) and 3.11(3) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

3.11(6) Any employer to whom a citation and notification of penalty have been issued may, under Iowa Code section 88.8, notify the commissioner of the employer's intention to contest the citation or notification of penalty. The notice of contest shall be in writing. The notice of contest shall be received by the division of labor services or postmarked no later than 15 working days after the receipt by the employer of the citation and notification of penalty. The notice of contest may be provided to the division of labor services by mail, personal delivery or facsimile transmission.

This rule is intended to implement Iowa Code chapter 88.

[ARC 3557C, IAB 1/3/18, effective 2/11/18; ARC 3810C, IAB 5/23/18, effective 6/30/18]

875—3.12(88) Informal conferences. At the request of an affected employer, employee, or representative of employees, the labor commissioner or the commissioner's designee may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at the conference shall be subject to the rules of procedure prescribed by the employment appeal board. If the conference is

requested by the employer, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. Any party may be represented by counsel at the conference. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest.

This rule is intended to implement Iowa Code sections 17A.3(1) "b" and 17A.10.

875—3.13(88) Petitions for modification of abatement date.

3.13(1) An employer may file a petition for modification of abatement date when the employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond its reasonable control.

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: 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).

3.13(3) A petition for modification of abatement date shall be filed with the labor commissioner or the commissioner's designee no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of the petition and a notice of employee rights complying with 3.13(2) "e" shall be posted in a conspicuous place where all affected employees will have notice thereof or near the location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition and notice of employee rights.

b. Affected employees or their representatives may file an objection in writing to a petition with the labor commissioner or the commissioner's designee. Failure to file the objection within ten working days of the date of posting of the petition and notice of employee rights or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

c. The labor commissioner or the commissioner's designee shall have the authority to approve any filed petition for modification of abatement date. Uncontested petitions shall become final orders pursuant to Iowa Code section 88.8.

d. The labor commissioner or the commissioner's designee shall not exercise approval power until the expiration of 15 working days from the date the petition and notice of employee rights were posted or served by the employer.

3.13(4) Where any petition is objected to by the labor commissioner or the commissioner's designee or affected employees, the petition, citation, and any objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-day period set out in subrule 3.13(3) "d."

This rule is intended to implement Iowa Code section 88.8.
[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.14 to 3.18 Reserved.

875—3.19(88) Abatement verification.

3.19(1) Scope and application. This rule applies to employers who receive a citation for a violation of the Iowa Occupational Safety and Health Act.

3.19(2) Definitions.

"Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

"Abatement date" means:

1. For an uncontested citation item, the later of:
 - The date in the citation for abatement of the violation;
 - The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or
 - The date established in a citation by an informal settlement agreement.
2. For a contested citation item for which the employment appeal board has issued a final order affirming the violation, the later of:
 - The date identified in the final order for abatement; or
 - The date computed by adding the period allowed in the citation for abatement to the final order date;
 - The date established by a formal settlement agreement.

"Affected employees" means those employees who are exposed to the hazard(s) identified as a violation(s) in a citation.

"Final order date" means:

1. For an uncontested citation item, the fifteenth working day after the employer's receipt of the citation;
2. For a contested citation item:
 - The thirtieth day after the date on which a final order was entered by the employment appeal board or
 - The date on which a court issues a decision affirming the violation in a case in which a final order of employment appeal board has been stayed.

"Movable equipment" means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between work sites.

3.19(3) Abatement certification.

a. Within ten calendar days after the abatement date, the employer must certify to the division that each cited violation has been abated, except as provided in paragraph "b" of this subrule.

b. The employer is not required to certify abatement if the compliance safety and health officer during the on-site portion of the inspection:

- (1) Observes, within 24 hours after a violation is identified, that abatement has occurred; and
- (2) Notes in the citation that abatement has occurred.

c. The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required in 3.19(8), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

3.19(4) Abatement documentation.

a. The employer must submit to the division, along with the information on abatement certification required by subrule 3.19(3), paragraph "c," documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the division indicates in the citation that the abatement documentation is required.

b. Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

3.19(5) Abatement plans.

a. The division may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

b. The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

3.19(6) Progress reports.

a. An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

- (1) That periodic progress reports are required and the citation items for which they are required;
- (2) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;
- (3) Whether additional progress reports are required; and
- (4) The date(s) on which additional progress reports must be submitted.

b. For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

3.19(7) Employee notification.

a. The employer must inform affected employees and their representative(s) about abatement activities covered by this rule by posting a copy of each document submitted to the division or a summary of the document near the place where the violation occurred.

b. Where posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer shall:

- (1) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or
- (2) Take other steps to communicate fully to affected employees and their representatives about abatement activities.
- (3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the division.

c. An employee or an employee representative shall submit a request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted. The employer shall comply with an employee's or employee representative's request to examine and copy abatement documents within five working days of receiving the request.

d. The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the division and that abatement documents are:

- (1) Not altered, defaced, or covered by other material; and
- (2) Remain posted for three working days after submission to the division.

3.19(8) Transmitting abatement documents.

a. The employer must include, in each submission required by this rule, the following information:

1. The employer's name and address;
 2. The inspection number to which the submission relates;
 3. The citation and item numbers to which the submission relates;
 4. A statement that the information submitted is accurate; and
 5. The signature of the employer or the employer's authorized representative.
- b.* The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the division receives the document is the date of submission.

3.19(9) Movable equipment.

a. For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the work site or between work sites. Attaching a copy of the citation to the equipment is deemed to meet the tagging requirement of this paragraph as well as the posting requirement of rule 875—3.11(88).

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.

c. If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

- (1) For hand-held equipment, immediately after the employer receives the citation; or
- (2) For non-hand-held equipment, prior to moving the equipment within or between work sites.

d. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this rule when the information required by subrule 3.19(9), paragraph "b," is included on the tag.

e. The employer must ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

f. The employer must ensure that the tag or copy of the citation attached to movable equipment remains attached until:

- (1) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the division;
- (2) The cited equipment has been permanently removed from service or is no longer within the employer's control; or
- (3) The appeal board issues a final order vacating the citation.

[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.20(88) Policy regarding employee rescue activities.

3.20(1) The labor commissioner or the commissioner's designee shall review the inspection report of the compliance safety and health officer. If, on the basis of the report, the labor commissioner or the commissioner's designee believes that the employer has violated a requirement of Iowa Code section 88.4 or any rule, the commissioner or the commissioner's designee shall issue to the employer either a citation or a notice of de minimis violations which has no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

3.20(2) Any citation shall describe with particularity the nature of the alleged violation, including a reference to Iowa Code chapter 88, or rule alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

3.20(3) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under subrule 3.7(1) or a notification of violation under subrule 3.7(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

3.20(4) Every citation shall state that the issuance of a citation does not constitute a finding that a violation has occurred unless there is a failure to contest as provided for in Iowa Code chapter 88 or, if contested, unless the citation is affirmed by the appeal board.

3.20(5) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

a. The employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

b. The employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

c. The employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual. Additionally, the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

3.20(6) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

875—3.21 Reserved.

875—3.22(88,89B) Additional hazard communication training requirements.

3.22(1) *Training format.* The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a cassette tape recording of an oral presentation, or a videotape recording of an audio-video presentation of the training relied upon by the employer for compliance with 29 CFR 1910.1200(h), and shall allow employees and their designated representatives access to the written synopsis, tape recording, or videotape recording.

3.22(2) *Review by the division.* The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the employer shall make available the written synopsis, cassette tape recording, or videotape recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer's records of a training program.

875—3.23(88) Definitions. The definitions and interpretations contained in Iowa Code section 88.3 shall be applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

"Act" means the Iowa Occupational Safety and Health Act of 1972, Iowa Code chapter 88.

"Compliance safety and health officer" means a person authorized by the labor commissioner of the department of workforce development, division of labor services, to conduct inspections.

"Division" means the Iowa division of labor of the department of workforce development.

"Inspection" means any inspection of an employer's factory, plant, establishment, construction site or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a filed complaint, and any follow-up inspection, accident investigation or other inspections conducted under the Act.

“*Working days*” means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

This rule is intended to implement Iowa Code section 88.6.

875—3.24(88) Occupational safety and health bureau forms. Rescinded **ARC 3557C**, IAB 1/3/18, effective 2/11/18.

These rules are intended to implement Iowa Code chapters 17A and 88.

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