

CHAPTER 140
PUBLIC SAFETY/EMERGENCY RESPONSE RIGHT TO KNOW

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

[Prior to 10/21/98, see 347—Ch 140]

875—140.1(89B) Signs required and adoption by reference. The employer shall post signs which will comply with this rule. An employer need not comply with the sign posting requirements of subrule 140.1(2) if the building, structure, or location within the building or structure does not contain a significant amount of the hazardous chemical as defined in subrule 140.4(1). The National Fire Protection Association's standard system for identifying fire hazards of chemicals based on NFPA standard 704-1980 is adopted by reference.

140.1(1) Size. The signs shall be at least 7½ inches on each side. The sign shall have four spaces each at least ¾ inches on a side. Numbers and symbols within each of the four spaces shall be at least 3 inches in height.

140.1(2) Location. If a building or structure has a floor space of 5000 square feet or less, an employer shall post signs on the outside of the building or structure identifying the type of each hazardous chemical contained in the building or structure. If the building has more than 5000 square feet, the employer shall post a sign at the place within the building where each hazardous chemical is permanently stored to identify the type of hazardous chemical. If the hazardous chemical is moved within the building, the employer shall also move the sign or post an additional sign at the location where the hazardous chemical is moved. This subrule applies to significant amounts of a hazardous chemical as defined in subrule 140.4(1).

140.1(3) Categories. The signs shall identify hazards of a chemical in terms of three principal categories, namely, "health," "flammability," and "reactivity (instability)"; and indicate the order of severity numerically by five classifications ranging from four, indicating a severe hazard, to zero, indicating no special hazard. This information is to be presented by a spatial system of diagrams with "health" always being on the left; "flammability" at the top; and "reactivity (instability)" on the right. Color backgrounds and numbers are used for the three categories with blue representing "health" hazard, red representing "flammability," and yellow representing "reactivity (instability)." The fourth space shall be at the bottom and used to indicate unusual reactivity or other special hazard warnings in black and white colors.

140.1(4) Explosives exemption. Any building or structure, other than an explosives manufacturing building, approved for the storage of explosive materials shall have signs located so as to minimize the possibility that a bullet shot at the sign will hit the magazine.

875—140.2(89B) Employer variance applications. An employer may make application to the commissioner for less stringent sign posting requirements.

140.2(1) The employer shall make written application for a variance.

140.2(2) The employer shall have the burden of proof to show that compliance imposes an undue hardship on the employer 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.

140.2(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).

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 may enter into a written agreement with the fire chief of the local fire department which provides 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 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.

875—140.4(89B) Significant amounts.

140.4(1) Definition. A "significant amount" means the amount of a hazardous chemical(s) meeting any of the following criteria:

- a.* Any amount of a hazardous chemical which is classified as follows:
- (1) A U.S. Department of Transportation Class A or Division 1.1 or 1.2 explosive;
 - (2) A U.S. Department of Transportation Class B or Division 1.3 explosive;
 - (3) A U.S. Department of Transportation Class A poison, a Division 2.3 poison gas or a Division 6.1 package group I inhalation hazard poison;
 - (4) Reserved;
 - (5) A U.S. Department of Transportation flammable solid or Division 4.3 material with a "dangerous when wet" warning;
 - (6) A U.S. Department of Transportation yellow III label radioactive material;
 - (7) An NFPA 704-1980 health rating of greater than or equal to 3;
 - (8) An NFPA 704-1980 flammability rating of 4; or
 - (9) An NFPA 704-1980 reactivity rating of 4.
- b.* The aggregate amount of hazardous chemicals stored, placed, or used at the building, structure, or location is greater than or equal to 25 gallons of liquid or 250 pounds of nonliquid where the numerical rating of the hazardous chemical based on the NFPA 704-1980 system meeting any of the following criteria:
- (1) Health rating of greater than or equal to 2;
 - (2) Flammability rating greater than or equal to 3; or
 - (3) Reactivity rating of greater than or equal to 2.

If the hazardous chemical in both a liquid and nonliquid state, the aggregate amount measurement shall be made considering the combined poundage.

140.4(2) The requirements of this rule shall be superseded by other state or federal laws where those regulations are more restrictive.

875—140.5(89B) Information submitted to local fire department. The employer shall submit to the local fire department a list of hazardous chemicals which are consistently generated by, used by, stored at, or transported from the employer's facility. The employer shall submit updated information as it becomes available to the employer. The employer shall submit information in sufficient specificity as defined in rule 875—110.2(88,89B). This subrule shall not apply to hazardous chemicals which are not in significant amounts. The employer shall send the information by certified mail.

875—140.6(89B) Recommended communications. It is recommended that local fire departments and employers meet to collaborate on the types and amounts of hazardous chemicals as well as any unusual hazards which may be encountered by emergency response personnel.

875—140.7(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—140.8(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.

140.8(1) Opportunity for hearing. The notice of noncompliance shall be sent by certified mail and shall 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 pursuant to 875—Chapter 3.

140.8(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 which shall be a final agency action pursuant to Iowa Code chapter 17A.

140.8(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 which shall be a final agency action pursuant to Iowa Code chapter 17A or dismiss the complaint. Any hearing shall be conducted pursuant to the rules contained in 875—Chapter 300.

875—140.9(30,89B) Relationship to Emergency Planning and Community Right-to-know Act. The requirements of this chapter are in addition to those of the Iowa emergency response commission at 605—104.3(30). Information and forms required to be submitted pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11021 and 11022, shall be sent to the Emergency Response Commission, Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319. The federal Tier Two Form is a mandatory reporting form under Section 312 (42 U.S.C. 11022) and is to be submitted annually by March 1 for the inventory of chemicals from the previous year.

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

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¹ Two ARCs