

CHAPTER 5210
DEPARTMENT OF LABOR AND INDUSTRY
SAFETY AND HEALTH ADMINISTRATION

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PROMULGATION OF STANDARDS

5210.0010 PURPOSE.

The purpose of this chapter is to provide a procedure for standards promulgation.

Statutory Authority: *MS s 182.657*

5210.0020 SCOPE.

Parts 5210.0010 to 5210.0100 set forth procedures for promulgating, modifying, or revoking occupational safety and health standards under Minnesota Statutes, section 182.655. The purpose of parts 5210.0010 to 5210.0100 is to provide a procedure for standards promulgation.

Statutory Authority: *MS s 182.657*

5210.0030 DEFINITIONS.

“Standard” means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promulgated under Minnesota Statutes, section 182.655 establishing, modifying, or revoking an occupational safety and health standard.

Statutory Authority: *MS s 182.657*

5210.0040 PETITION FOR PROMULGATION, MODIFICATION, OR REVOCATION OF A STANDARD.

Any interested person may file with the commissioner of the Department of Labor and Industry, a written petition for the promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed standard, a statement of the intended effect, and the reasons for the standard.

Statutory Authority: *MS s 182.657*

5210.0050 INITIATION.

The commissioner shall initiate promulgation of a standard in the following manner:

A. the commissioner may request the recommendations of the governor’s Occupational Safety and Health Advisory Council appointed under Minnesota Statutes, section 182.656. In such event, the commissioner shall submit to the council any proposal of the commissioner’s own or of the Department of Health, together with all pertinent factual information available to the commissioner, including the results of research, demonstration, and experiments. The council shall submit to the commissioner a report with its recommendations regarding the rule to be promulgated within the period prescribed by the commissioner; or

B. the commissioner may publish in the State Register a notice of proposed rule-making. The notice shall include:

- (1) the terms of the proposed rule;
- (2) a reference to the act and to the appropriate section of any particular statute applicable to the employments affected by the rule;
- (3) notification to interested persons of their right to submit, within 30 days after publication of the notice, written data, comments, or objections, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;
- (4) notification to interested persons that they may request a public hearing on their objections within 30 days after publication of the notice; and
- (5) any other appropriate provisions with regard to the proceeding.

Initiation of standards promulgation under item B may occur whether or not the governor’s Occupational Safety and Health Advisory Council recommends proposals submitted by the commissioner and shall be followed by the commissioner if promulgation is desired after receipt of the advisory council’s report.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0060 OBJECTIONS.

Subpart 1. **Conditions.** Objections submitted pursuant to part 5210.0050, item B, subitem (3) shall comply with the following conditions:

- A. the objections must include the name and address of the objector;
- B. the objections must be postmarked on or before the 30th day after the publication of the notice of proposed rulemaking;
- C. the objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor; and
- D. each objection must be separately stated and numbered.

Subp. 2. **Notice of public hearing.** Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with subpart 1 and the objecting party

requests a public hearing, the commissioner shall, and in any other case may, publish in the State Register a notice of a public hearing. The notice shall contain:

- A. a statement of the time, place, and nature of the hearing;
- B. a reference to the authority under which the hearing is to be held;
- C. a specification of the provisions of the proposed rule which have been objected to, and on which a hearing has been requested;
- D. a specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;
- E. the requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;
- F. the designation of a presiding officer to conduct the hearing; and
- G. any other appropriate provisions with regard to the proceeding.

Subp. 3. **Participants.** Any objecting party requesting a hearing on a proposed standard, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.

Statutory Authority: *MS s 182.657*

5210.0070 CONDUCT OF HEARING.

The hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The presiding officer shall be an administrative law judge from the Office of Administrative Hearings.

The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

Statutory Authority: *MS s 182.657*

History: *L 1984 c 640 s 32*

5210.0080 POWERS OF PRESIDING OFFICER.

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

- A. to regulate the course of the proceedings;
- B. to dispose of procedural requests, objections, and comparable matters;
- C. to confine the presentations to the issues specified in the notice of hearing, or, where no issues are specified, to matters pertinent to the proposed rule;
- D. to regulate the conduct of those present at the hearing by appropriate means;
- E. in the officer's discretion, to permit cross-examination of any witness;
- F. to take official notice of material facts not appearing in the evidence in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary; and
- G. in the officer's discretion, to keep the record open for a reasonable stated time, to receive written recommendations, and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0090 CERTIFICATION OF THE HEARING RECORD.

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing com-

ments, recommendations, and supporting reasons shall be certified by the presiding officer to the commissioner.

Statutory Authority: *MS s 182.657*

5210.0100 DECISION.

Subpart 1. Publication of determination. Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the commissioner shall publish in the State Register either an appropriate rule promulgating, modifying, or revoking a standard, or a determination that such a rule should not be issued. The action of the commissioner shall be taken after consideration of all relevant matter presented in written submissions and in any hearings held under parts 5210.0010 to 5210.0100.

Subp. 2. Additional comments. A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. In which event, an appropriate rule or other determination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

Subp. 3. Statement of basis and purpose. Any rule or standard adopted under subparts 1 and 2 shall incorporate a concise general statement of its basis and purpose. Although the statement is not required to include specific and detailed findings and conclusions, it shall show the significant issues which have been faced, and shall articulate the rationale for their solution.

Subp. 4. Advice of advisory council. Where the advisory council has been consulted in the formulation of a proposed rule, the commissioner may seek the advice of the advisory council as to the disposition of the proceeding. In giving advice to the commissioner, the advisory council shall consider all matter presented to the commissioner. The advice of the advisory council shall take the form of written recommendations to be submitted to the commissioner within a period to be prescribed by the commissioner. When the recommendations are contained in the transcript of the meeting of the advisory council, they shall be summary in form.

Statutory Authority: *MS s 182.657*

ACCESS TO EMPLOYEE EXPOSURE AND MEDICAL RECORDS

5210.0150 INCORPORATION BY REFERENCE OF FEDERAL STANDARDS.

Federal Occupational Safety and Health Standard 1910.20, Access to Employee Exposure and Medical Records, Code of Federal Regulations, title 29, section 1910.20 as published at Federal Register, volume 53, number 189, on September 29, 1988, and the clarification published at Federal Register, volume 55, number 125, on June 28, 1990, are adopted by reference.

Revisions to Code of Federal Regulations, title 29, section 1910, subpart T (Commercial Diving Operations) and subpart Z (Toxic and Hazardous Substances) adopted by the Federal Occupational Safety and Health Administration on May 23, 1980, and published at Federal Register, volume 45, number 102, pages 35281 to 35284 are adopted by reference.

Statutory Authority: *MS s 182.657*

History: *17 SR 2156*

5210.0160 MODIFIED DEFINITION.

The terms "Assistant Secretary of Labor for Occupational Safety and Health" and "assistant secretary" as used in Code of Federal Regulations, title 29, section 1910.20 shall mean the commissioner of the Department of Labor and Industry for the purpose of part 5210.0150.

Statutory Authority: *MS s 182.657*

EMPLOYEE DISCRIMINATION

5210.0200 AUTHORITY AND BACKGROUND.

Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 prohibit discrimination against an employee because the employee exercised any rights granted under

the act on the employee's behalf or on behalf of others. Any employee who believes that he or she has been discharged or discriminated against by any person because the employee exercised any right authorized by the act as described in parts 5210.0230 to 5210.0280, may file a discrimination complaint with the commissioner of the Department of Labor and Industry.

Statutory Authority: *MS s 182.657*

History: 9 SR 56

5210.0210 PURPOSE AND SCOPE.

Parts 5210.0200 to 5210.0340 implement Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 and set forth general policies for enforcement of the discrimination provisions of the act.

Statutory Authority: *MS s 182.657*

History: 9 SR 56

5210.0220 DEFINITION.

For the purpose of parts 5210.0200 to 5210.0340 "act" means the Minnesota Occupational Safety and Health Act of 1973.

Statutory Authority: *MS s 182.657*

5210.0230 OCCUPATIONAL SAFETY AND HEALTH COMPLAINTS.

An employee or authorized employee representative may file a complaint about unsafe or unhealthful working conditions with an employer and may request personal protective equipment from the employer. An employee or authorized employee representative may also file a written complaint about unsafe or unhealthful working conditions with the commissioner of the Department of Labor and Industry. Written complaints may be given to an occupational safety and health investigator prior to or during an inspection of the place of employment.

Statutory Authority: *MS s 182.657*

5210.0240 REFUSAL TO WORK UNDER UNSAFE CONDITIONS.

Subpart 1. **Potentially unsafe conditions.** Unless provided by parts 5210.0200 to 5210.0340 there is no right granted by the act for employees to leave the job because of potentially unsafe conditions at the workplace. Initially an employer should be notified of hazardous conditions. If corrections are not accomplished or if a dispute arises about the existence of a hazard, the employee or authorized employee representative may request an occupational safety and health inspection of the workplace by giving notice to the commissioner of the hazardous condition.

Subp. 2. **Hazardous condition.** If an employee has a choice between not performing assigned tasks or subjecting himself or herself to serious injury or death arising from a hazardous condition in the workplace, an employee acting in good faith may refuse to work if there is no reasonable alternative. The condition must be so hazardous that a reasonable person would conclude that there is a real danger of death or serious injury and that there is insufficient time to eliminate the danger through enforcement procedures. The employee must, where possible, request the employer to correct the hazardous condition. An employer may not discharge or discipline an employee who refuses to perform assigned tasks under these conditions. An employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer must, in addition to retaining a right to continued employment, be paid for the tasks which would have been performed if:

A. the employee requests, within 24 hours of the refusal, excluding weekends and state holidays, the commissioner to inspect and determine the nature of the hazardous condition; and

B. the commissioner determines that the employee, by performing the assigned tasks, would have been placed in imminent danger of death or serious physical harm.

Subp. 3. **Hazardous substance.** An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under parts

5206.0700 and 5206.0800, and who, after notifying the employer of the hazardous condition, has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks, been provided the required training, or had the hazardous condition promptly abated, by the employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

A. the employee requests, within 24 hours of the refusal, excluding weekends and state holidays, the commissioner to inspect and determine if a hazardous condition exists; and

B. the commissioner determines that the employer has failed to provide the training required under part 5206.0700 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under parts 5206.0700 and 5206.0800 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

Statutory Authority: *MS s 182.657*

History: *9 SR 56; 17 SR 1279*

5210.0250 INSPECTION PARTICIPATION.

The authorized employee representative may participate in the opening conference prior to the inspection and the closing conference following the inspection. The employer shall pay the authorized employee representative regular wages for time spent participating in the inspection and opening and closing conferences.

Statutory Authority: *MS s 182.657*

5210.0260 PROTECTION FOR TESTIFYING.

An employee may not be discriminated against because the employee has testified or is about to testify in proceedings under or related to the act. This protection includes testifying in proceedings instituted by the employee or any statement or testimony given in judicial, quasi-judicial, and administrative proceedings.

Statutory Authority: *MS s 182.657*

5210.0270 CONTEST BY EMPLOYEE.

An employee or authorized employee representative may file a written notice of contest with the Occupational Safety and Health Review Board contesting a citation, proposed assessment of penalty, type of violation, or the time fixed for abatement in a citation issued to an employer.

Statutory Authority: *MS s 182.657*

5210.0280 INFORMAL CONFERENCES.

An employee or authorized employee representative may participate in informal conferences held between the employee's employer and the Department of Labor and Industry.

Statutory Authority: *MS s 182.657*

5210.0290 DISCIPLINE PERMITTED BY EMPLOYER.

That certain of an employee's activities are protected by the act does not protect an employee from discipline or discharge for other legitimate reasons.

Statutory Authority: *MS s 182.657*

5210.0300 PROTECTED AND UNPROTECTED ACTIVITIES COMBINED.

If participation in an activity protected by the act was a substantial reason for discharge or other adverse action by an employer, the employee's rights under the act have been violated. Whether a discharge or other adverse action was because of protected activity will be determined on the facts in each particular case.

Statutory Authority: *MS s 182.657*

5210.0310 CLAIM PROCEDURES.

Subpart 1. **Who may file.** A complaint alleging discrimination under Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 may be filed by an employee or an authorized employee representative.

Subp. 2. **Time for filing.** The complaint must be filed, either orally or in writing, with the commissioner of the Minnesota Department of Labor and Industry within 30 days after the alleged discriminatory act occurred.

Subp. 3. **Form of filing.** Verbal complaints must be reduced to written form by the Department of Labor and Industry and sent to the complainant for signature. The form must be signed and returned to the department within 15 days of receipt by the complainant. Upon receipt of the signed complaint, the commissioner will make an investigation as the commissioner deems appropriate. If the complainant fails to sign and return the written statement within the 15 days, the case shall be closed.

Subp. 4. **Notice of commissioner's determination.** The commissioner shall notify the complainant of the commissioner's determination regarding the complaint within 90 days of receipt of a signed complaint.

Statutory Authority: *MS s 182.657*

History: *9 SR 56; 17 SR 1279*

5210.0320 DEFERRAL OF ACTION ON COMPLAINT.

The commissioner may defer action on a complaint filed concurrently with the Department of Labor and Industry and another agency until a determination by the other agency has been made if the rights asserted in other proceedings are substantially the same as rights given under the act and the other proceedings will not violate the rights guaranteed by the act.

Statutory Authority: *MS s 182.657*

5210.0330 ACCEPTING OTHER DECISIONS AS FINAL DETERMINATION.

The commissioner may accept the results of other proceedings as a final determination of a complaint if those proceedings dealt adequately with all factual issues; were fair, impartial, and valid; and the outcome of the proceedings is not contradictory to the purpose of the act. If the other action is dismissed without proper hearing, the dismissal is not a final determination of the complaint filed with the commissioner.

Statutory Authority: *MS s 182.657*

5210.0340 ENFORCEMENT PROCEEDINGS.

Subpart 1. **Court action.** Minnesota Statutes, section 182.669 authorizes the commissioner to bring an action against the employer in the district court in the county where the alleged discrimination occurred or in a county where the employer transacts business if it is determined that a discriminatory act has been committed against an employee.

Subp. 2. **Settlement.** Upon completion of an investigation, the commissioner may decide upon a settlement acceptable to all concerned parties rather than proceeding with court action.

Subp. 3. **Complaint withdrawal.** An employee may withdraw a discrimination complaint at any point following the initial submission.

Subp. 4. **Independent commissioner action.** If an employee voluntarily withdraws a discrimination complaint, the commissioner may decide to proceed with an investigation on the commissioner's own if the commissioner believes a discriminatory act has been committed.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

5210.0400 STATUTORY AUTHORITY.

The Minnesota Occupational Safety and Health Act of 1973 requires in part that every employer covered under the act furnish to employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. The act also requires that employers comply with occupational safety and health standards promulgated under the act and that employees comply with standards, rules, regulations, and orders which are applicable to their own actions and

conduct. The act authorizes the Department of Labor and Industry to conduct inspections and to issue citations and propose penalties for alleged violations. The act, under Minnesota Statutes, section 182.659, authorizes the commissioner to conduct inspections and question employers and employees in connection with research and other related activities. The act contains provisions for adjudication of violations, periods prescribed for the abatement of violations and proposed penalties by the Occupational Safety and Health Review Board if contested by an employer or by an employee or authorized representative of employees, and for judicial review.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0410 PURPOSE.

The purpose of parts 5210.0400 to 5210.0560 is to prescribe rules and set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the act.

Statutory Authority: *MS s 182.657*

5210.0420 POSTING OF NOTICES.

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 Labor and Industry. Such 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 material.

Statutory Authority: *MS s 182.658*

5210.0430 AVAILABILITY OF RULES.

Parts 5210.0400 to 5210.0560 and the Minnesota Compliance Manual for Occupational Safety and Health will be available at the Print Communications Division, 117 University Avenue, Saint Paul, Minnesota 55155.

If an employer has obtained copies of these, the employer shall make them available upon request to any employee or employee representative for review at the place of employment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee, employee representative, and the employer.

Statutory Authority: *MS s 182.658*

History: *17 SR 1279*

5210.0440 PENALTY FOR NONCOMPLIANCE.

Any employer failing to comply with the provisions of parts 5210.0400 to 5210.0560 shall be subject to citation and penalty in accordance with the provisions of Minnesota Statutes, section 182.666.

Statutory Authority: *MS s 182.658*

5210.0450 OBJECTION TO INSPECTION.

Upon a refusal to permit an occupational safety and health investigator (OSHI), 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 OSHI during the physical inspection of any workplace, the OSHI 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 OSHI shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the commissioner.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0460 WAIVER NOT IMPLIED.

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. OSHI are not authorized to grant any such waiver.

Statutory Authority: *MS s 182.657*

5210.0470 INSPECTIONS.

Subpart 1. **Investigator's conduct.** Inspections shall take place at such times and in such places of employment as the commissioner or the OSHI may direct. At the beginning of an inspection, OSHI 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 which they wish to review. However, such designation of records shall not preclude access to additional records.

Subp. 2. **Investigator's authority.** OSHI 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 an establishment.

Subp. 3. **Safety.** In taking photographs and samples, OSHI shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment would not be hazardous. OSHI 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.

Subp. 4. **Disruption prohibited.** The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

Subp. 5. **Conference with employer.** At the conclusion of an inspection, the OSHI shall confer with the employer or the employer's representative and informally advise the person of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the OSHI any pertinent information regarding conditions in the workplace.

Subp. 6. **Compliance required.** Inspections shall be conducted in accordance with the requirements of parts 5210.0400 to 5210.0560

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0480 REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES TO ACCOMPANY INVESTIGATORS.

Subpart 1. **Accompanying the investigator.** OSHI 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 OSHI during the physical inspection of any workplace for the purpose of aiding such inspection. An OSHI may permit additional employer representatives and additional representatives authorized by employees to accompany the investigator where the investigator determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the OSHI during each different phase of an inspection if this will not interfere with the conduct of the inspection.

The representative authorized by employees shall be an employee of the employer.

Subp. 2. **Right to accompany.** OSHI are authorized to deny the right of accompaniment under this part to any person whose conduct interferes with fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of Minnesota Statutes, section 182.668.

A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the OSHI during the physical inspection of any workplace under Minnesota Statutes, section 182.659 for the purpose of aiding such inspection.

Subp. 3. **Disputes as to who the representative is.** OSHI shall have authority to resolve all disputes as to who is the representative authorized by the employer and employee for the purpose of this section. If there is no authorized representative of employees, or if the OSHI

is unable to determine with reasonable certainty who is such representative, the investigator shall consult with a reasonable number of employees concerning matters of safety and health in the workplace. Where there are no authorized employee representatives, the OSHI shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

Statutory Authority: *MS s 182.659 subd 3*

History: *17 SR 1279*

5210.0490 CONSULTATION WITH EMPLOYERS AND EMPLOYEES.

OSHI may consult with employees concerning matters of occupational safety and health to the extent the investigator deems 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 OSHI.

The authorized representative of employees shall also be given the opportunity to participate in any conference or discussion held prior to or during any such inspection. The investigator will, however, hold a private conference with either the employee representative or the employer at either's request.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0500 EMPLOYEE RIGHTS DURING INSPECTION.

No employee as a consequence of aiding such inspection under this section shall lose any privilege or payment that the employee would otherwise earn, such loss being a discriminatory act subject to sanctions. Any employee taking part in the inspection is entitled to the employee's regular pay for the time spent in such inspection.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0510 TRADE SECRETS.

At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the OSHI 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 Secret" and shall not be disclosed except in accordance with the provisions of Minnesota Statutes, section 182.668.

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

Statutory Authority: *MS s 182.657*

5210.0520 INSPECTION NOT WARRANTED; INFORMAL REVIEW.

If the commissioner determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under this part, the commissioner shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the employee or the employer, the commissioner, at the commissioner's discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the commissioner shall

affirm, modify, or reverse the determination and furnish the complaining party and the employer a written notification of the decision and the reasons therefor.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0530 CITATIONS; NOTICES OF DE MINIMIS VIOLATIONS.

Subpart 1. Issuance. The commissioner shall review the inspection report of the OSHI. If on the basis of the report the commissioner believes that the employer has violated a requirement of Minnesota Statutes, section 182.653, subdivision 2, 3, or 4, or any standard or rule promulgated pursuant to the act the commissioner shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. A copy of the citation and the proposed assessment of penalty shall also be issued by certified mail to the authorized representative of affected employees and, in the case of the death of an employee, to the next of kin if requested. An appropriate citation or notice of de minimis violations shall be issued even though, after being informed of alleged violation by the OSHI, the employer immediately abates or initiates steps to abate each 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 part after the expiration of six months following the occurrence of any alleged violation.

Subp. 2. Contents. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the act, standard, rule, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the act has occurred unless there is a failure to contest as provided for in the act or, if contested, unless the citation is affirmed by the review board.

Statutory Authority: *MS s 182.66 subd 3*

History: *17 SR 1279*

5210.0540 PETITIONS FOR MODIFICATION OF ABATEMENT DATE.

Subpart 1. Right to file. 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 the employer's reasonable control.

Subp. 2. Contents. 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 such 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 such 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; and

E. a certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with subpart 4 and a certification of the date upon which such posting and service was made.

Subp. 3. Time to file. A petition for modification of abatement date shall be filed with the commissioner of the Department of Labor and Industry 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.

Subp. 4. Posting. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation oc-

curred. The petition shall remain posted for a period of ten days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

Subp. 5. Objections. Affected employees or their representatives may file an objection in writing to such petition with the commissioner. Failure to file such objection within ten days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

Subp. 6. Uncontested petitions. The commissioner or a duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to subparts 2 and 3. Such uncontested petitions shall become final orders.

Subp. 7. Time for approval. The commissioner or an authorized representative shall not exercise approval power until the expiration of 15 days from the date the petition was served pursuant to subparts 4 and 5 by the employer.

Subp. 8. Contested petitions. Where any petition is objected to by the commissioner or affected employees, such petition shall be processed as follows:

A. The petition, citation, and any objections shall be forwarded to the board within three days after the expiration of the 15 day period set out in subpart 7.

B. The board shall docket and process such petition in the same manner as any other contested case, except that all hearings on such petitions shall be handled in an expeditious fashion.

C. An employer petitioning for a modification of abatement period shall have the burden of proving that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

D. Within ten days after the receipt of notice of the docketing by the board of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0550 POSTING OF CITATIONS.

Subpart 1. Employer's duty. Upon receipt of any citation and proposed penalty under the act, the employer shall immediately post such citation and proposed penalty, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation and proposed penalty at or near each place of alleged violation, such citation and proposed penalty 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 and proposed penalty 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 and proposed penalty 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 and proposed penalty are not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

Subp. 2. Operation of posting. Each citation and proposed penalty, or a copy thereof, shall remain posted until the violation has been abated, or for 15 days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect the employer's posting responsibility under this part unless and until the review board issues a final order vacating the citation and proposed penalty.

Subp. 3. Notice of contest. 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 review board, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

Subp. 4. **Noncompliance.** Any employer failing to comply with the provisions of subparts 1 and 2 shall be subject to citation and penalty in accordance with the provisions of Minnesota Statutes, section 182.666.

Statutory Authority: *MS s 182.66 subd 2*

History: *17 SR 1279*

5210.0560 INFORMAL CONFERENCE WITH COMMISSIONER.

At the request of an affected employer, employee, or representative of employees, the commissioner 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. Any affected party may be represented by counsel at such conference. No such conference or request for conference shall operate as a stay of any 15 working day period for filing a notice of intention to contest.

Statutory Authority: *MS s 182.657*

RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

5210.0600 STATUTORY AUTHORITY.

Parts 5210.0600 to 5210.0760 implement Minnesota Statutes, section 182.663 of the Minnesota Occupational Safety and Health Act of 1973.

Statutory Authority: *MS s 182.663 subd 2*

5210.0610 SCOPE.

Parts 5210.0600 to 5210.0760 provide for record keeping and reporting by employers covered under the act as necessary or appropriate for enforcement of the act, for developing information regarding the cause and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

Statutory Authority: *MS s 182.663 subd 2*

5210.0620 DEFINITIONS.

Subpart 1. **Act.** "Act" means the Minnesota Occupational Safety and Health Act of 1973.

Subp. 2. **Establishment.** "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 theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract construction activities operated from the same physical location as a lumberyard, each activity shall be treated as a separate establishment.

For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas, and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling salespersons, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

For political subdivisions, an establishment shall be defined as an activity or department within a political subdivision, for example: a police department, fire department, hospital, maintenance activity, or administrative units.

Subp. 3. **First aid.** "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and any follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

Subp. 4. **Lost workdays.** "Lost workdays" means the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would

have worked but could not do so; that is, could not perform all or any part of the employee's normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

Subp. 5. Medical treatment. "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

Subp. 6. Recordable occupational injuries or illnesses. "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

A. fatalities, regardless of the time between the injury and death, or the length of the illness; or

B. lost workday cases, other than fatalities, that result in lost workdays; or

C. nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

Subp. 7. Statutory definitions. The definitions and interpretations contained in Minnesota Statutes, section 182.651 shall be applicable to such terms when used in parts 5210.0600 to 5210.0760.

Statutory Authority: *MS s 182.663 subd 2*

History: *17 SR 1279*

5210.0630 LOG AND SUMMARY OF OCCUPATIONAL INJURIES AND ILLNESSES.

Subpart 1. Employer duty. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in subpart 2 an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter each recordable occupational injury and illness on the log as early as practicable but no later than six working days after receiving information that a recordable case has occurred. For this purpose OSHA Form No. 200 or any private equivalent may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and the instructions contained in OSHA Form No. 200. If an equivalent to OSHA Form No. 200 is used, such as a printout from data processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data processing equipment as the OSHA Form No. 200 itself.

Subp. 2. Where log is kept. Any employer may maintain the log of occupational injuries and illnesses at a place other than the establishment or by means of data processing equipment, or both, under the following circumstances:

A. there is available at the place where the log is maintained sufficient information to complete the log to a date within six working days after receiving information that a recordable case has occurred, as required by subpart 1; and

B. at each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

Subp. 3. Period covered. Logs shall be established on a calendar year basis. The initial log shall include recordable occupational injuries and illnesses occurring on or after January 1, 1974.

Statutory Authority: *MS s 182.663 subd 2*

5210.0640 SUPPLEMENTARY RECORD.

In addition to the log of occupational injuries and illnesses provided for under part 5210.0630, subparts 1 and 2, each employer shall have available for inspection at each establishment within six working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for the establishment.

The record shall be completed in the detail prescribed in the instructions accompanying OSHA Form No. 101. Worker's compensation, insurance, or other reports are acceptable alternative records if they contain the information required by OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

Statutory Authority: *MS s 182.663 subd 2*

5210.0650 ANNUAL SUMMARY.

Subpart 1. Duty to post. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. Each annual summary shall consist of a copy of the year's totals contained in the log and summary of occupational injuries and illnesses for the particular establishment. OSHA Form No. 200 shall be used for this purpose, and shall be completed in the form and detail as provided in the instructions contained therein.

Subp. 2. Due date. The summary shall be completed no later than one month after the close of each calendar year.

Subp. 3. Certification. Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer, who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the annual summary is true and complete.

Subp. 4. Posting. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under parts 5210.0420 to 5210.0440. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. For multiestablishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

Subp. 5. Failure to post. A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Minnesota Statutes, section 182.666, subdivision 5.

Statutory Authority: *MS s 182.663 subd 2*

5210.0660 RETENTION OF RECORDS.

Records provided for in parts 5210.0630, 5210.0640, and 5210.0650 shall be retained in each establishment for five years following the end of the year to which they relate.

Statutory Authority: *MS s 182.663 subd 2*

5210.0670 ACCESS TO RECORDS.

Subpart 1. Access by departments. Records provided for in parts 5210.0630, 5210.0640, and 5210.0650 shall be available for inspection and copying by authorized representatives of the Department of Labor and Industry and the Department of Health.

Subp. 2. Access by employees. The log and summary of recordable occupational injuries and illnesses (OSHA Form No. 200) for any establishment in which the employee is or was employed provided for in part 5210.0630 shall, upon request, be made available by the employer to any employee, former employee, and their representatives for examination and copying in a reasonable manner and at reasonable times.

Subp. 3. Bargaining for additional access. Nothing in this rule shall preclude employees and employee representatives from collectively bargaining for access to information relating to occupational injuries and illnesses in addition to the information made available under this rule.

Subp. 4. **Extent of access.** Access to the log and summary provided under this rule shall pertain to all logs and summaries retained under the requirements of part 5210.0660.

Statutory Authority: *MS s 182.663 subd 2*

5210.0680 REPORTING OF FATALITY OR MULTIPLE HOSPITALIZATION ACCIDENTS.

Within 48 hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the Minnesota Department of Labor and Industry. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The commissioner of labor and industry may require such additional reports, in writing or otherwise, as the commissioner deems necessary, concerning the accident.

Statutory Authority: *MS s 182.663 subd 2*

History: *17 SR 1279*

5210.0690 FALSIFICATION OR FAILURE TO KEEP RECORDS OR REPORTS.

Minnesota Statutes, section 182.667 provides that "Whoever knowingly makes any false statement, representation, or certification in any application, record, report plan, or other document filed or required to be maintained pursuant to this act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment, for not more than six months or both."

Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Minnesota Statutes, section 182.667.

Statutory Authority: *MS s 182.663 subd 2*

5210.0700 CHANGE OF OWNERSHIP.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for the period of the year during which the employer owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this chapter. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under part 5210.0660.

Statutory Authority: *MS s 182.663 subd 2*

History: *17 SR 1279*

5210.0710 PETITIONS FOR RECORDKEEPING EXCEPTIONS, PUBLIC EMPLOYMENT SECTOR.

Subpart 1. **Submission of petition.** Any public employer who wishes to maintain records in a manner different from that required by this chapter may submit a petition containing the information specified in subpart 3 to the commissioner of labor and industry.

Subp. 2. **Opportunity for comment.** Affected employees or their representative shall have an opportunity to submit written data, views, or arguments concerning the petition to the commissioner within ten working days following the receipt of notice under subpart 3, item E.

Subp. 3. **Contents of petition.** A petition filed under subpart 1 shall include:

- A. The name and address of the applicant.
- B. The address of the place or places of employment involved.
- C. Specifications of the reasons for seeking relief.
- D. A description of the different recordkeeping procedures which are proposed by the applicant.
- E. A statement that the applicant has informed affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a state-

ment giving a summary of the petition and by other appropriate means. A statement posted pursuant to item E shall be posted in each establishment in the same manner that notices are required to be posted under part 5210.0420. The applicant shall also state that the applicant has informed employees of their rights under subpart 2.

F. In the event an employer has more than one establishment the employer shall submit a list of the addresses of such establishments. In the further event that certain of the employer's establishments would not be affected by the petition, the employer shall identify every establishment which would be affected by the petition.

Subp. 4. **Additional notice and conferences.** In addition to the actual notice provided for in subpart 5, the commissioner may provide, or cause to be provided, such additional notice of the petition as the commissioner may deem appropriate.

The commissioner may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

Subp. 5. **Commissioner's action.** After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the commissioner finds that the alternative procedure proposed will not hamper or interfere with the purposes of the act and will provide equivalent information, the commissioner may grant the petition subject to such conditions as the commissioner may determine appropriate, and subject to revocation for cause.

Subp. 6. **Publication.** Whenever any relief is granted to an applicant under this act, notice of such relief, and the reasons therefor, shall be published according to departmental procedures.

Subp. 7. **Revocation.** Whenever any relief under this section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall be notified in writing of the facts or conduct which may warrant the action and be given an opportunity to demonstrate or achieve compliance.

Subp. 8. **Compliance after submission of petitions.** The submission of a petition or any delay by the commissioner in acting upon a petition shall not relieve any employer from any obligation to comply with this part. However, the commissioner shall give notice of the denial of any petition within a reasonable time.

Subp. 9. **Consultation.** There shall be consultation between the appropriate representatives of the Minnesota Department of Labor and Industry, the Occupational Safety and Health Administration, and the Bureau of Labor Statistics in order to ensure the effective implementation of this part.

Statutory Authority: *MS s 182.663 subd 2*

History: *17 SR 1279*

5210.0720 PETITIONS FOR RECORDKEEPING EXCEPTIONS, PRIVATE EMPLOYMENT SECTOR.

Private employment sector employers who wish to maintain records in a manner different from that required by parts 5210.0600 to 5210.0760 may submit a petition to the Regional Director of the Bureau of Labor Statistics, OSH Statistics Program, U.S. Department of Labor, 9th Floor, 230 South Dearborn Street, Chicago, Illinois 60604.

Statutory Authority: *MS s 182.663 subd 2*

5210.0730 EMPLOYEES NOT IN FIXED ESTABLISHMENTS.

Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair, or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of parts 5210.0630, 5210.0640, and 5210.0660 with respect to such employees by:

A. maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

B. having the address and telephone number of the central place available at each worksite; and

C. having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

Statutory Authority: *MS s 182.663 subd 2*

5210.0740 SMALL EMPLOYERS.

Subpart 1. Exemption. An employer who had no more than ten employees at any one time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this chapter except part 5210.0680 concerning fatalities or multiple hospitalization accidents (i.e., the employer need not prepare the log, OSHA Form No. 200; the supplementary record, OSHA Form No. 101; nor prepare or post the summary, OSHA Form No. 200).

Subp. 2. Limitation of exemption. Subpart 1 shall not apply when an employer has been notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses. If selected, an employer will be required to maintain a log of occupational injuries and illnesses (OSHA Form No. 200) in accordance with part 5210.0630 and to make reports in accordance with part 5210.0760 for the period of time which is specified in the notice.

Statutory Authority: *MS s 182.663 subd 2*

History: *17 SR 1279*

5210.0750 STATISTICS PROGRAM.

The Department of Labor and Industry with the U.S. Bureau of Labor Statistics shall develop and maintain a program of collection, compilation, and analysis of occupational injuries and illnesses.

Statutory Authority: *MS s 182.663 subd 2*

5210.0760 SURVEY FORM.

Upon receipt of an Occupational Injuries and Illnesses Survey Form, OSHA No. 103, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

Statutory Authority: *MS s 182.663 subd 2*

VARIANCES

5210.0800 PURPOSE AND SCOPE.

Parts 5210.0800 to 5210.0870 contain rules of practice for administrative proceedings to grant variances and other reliefs under Minnesota Statutes, section 182.655.

Statutory Authority: *MS s 182.657*

5210.0810 EFFECT ON VARIANCES.

All variances granted pursuant to this part shall have only future effect. In his or her discretion, the commissioner may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Board until the completion of such proceeding.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0820 TEMPORARY VARIANCES.

Subpart 1. Application. Any employer, or class of employers, desiring a temporary variance from a standard or provision thereof, authorized by Minnesota Statutes, section 182.655, subdivisions 5, 6, and 7 may file a written application containing the information specified in subpart 2 with the commissioner.

Subp. 2. **Contents.** An application filed pursuant to subpart 1 shall include:

- A. the name and address of the employer;
- B. the address of the place or places of employment involved;
- C. a specification of the standard or portion thereof from which the employer seeks a variance;
- D. a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the employer is unable to comply with the standard or portion thereof, and a detailed statement of the reasons therefor;
- E. a statement of the steps being taken and which will be taken, with specific dates, to protect employees against the hazards covered by the standard;
- F. a statement of when the employer expects to be able to comply with the standard and what steps have been taken and what steps will be taken, with specific dates, to come into compliance with the standard; and
- G. a certification that the employer has informed the employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means, and that the employer has informed the employees of their right to petition the commissioner for a hearing.

Subp. 3. **Additional facts.** In addition the application should set out sufficient facts to establish that:

- A. the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by effective date;
- B. the employer is taking all available steps to safeguard employees against the hazards covered by the standards; and
- C. the employer has an effective program for coming into compliance with the standard as quickly as practicable.

Subp. 4. **Hearing.** The commissioner may at the commissioner's discretion provide for a hearing on the variance. Affected employees shall be given notice of any such hearing and allowed to participate.

Subp. 5. **Interim orders; application.** An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of facts and arguments as to why the order should be granted.

Subp. 6. **Interim orders; notice of denial or grant.** If an application filed pursuant to subpart 5 is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Subp. 7. **Variance order.** The commissioner shall, by rule or order, grant a temporary variance from a promulgated standard when the commissioner finds by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those provided for by the standard.

The rule or order granting the variance shall prescribe the conditions the employer must maintain, the practices, means, methods, operations, and processes which the employer must adopt and utilize.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0830 PERMANENT VARIANCES.

Subpart 1. Application for variance. Any employer, or class of employers, desiring a permanent variance authorized by Minnesota Statutes, section 182.655, subdivision 8 or 9 may file a written application containing the information specified in subpart 2, with the commissioner of labor and industry.

Subp. 2. Contents. An application filed pursuant to subpart 1 shall include:

- A. the name and address of the employer;
- B. the address of the place or places of employment involved;
- C. a description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;
- D. a statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which variance is sought;
- E. a certification that the applicant has informed employees of the application by:
 - (1) giving a copy thereof to their authorized representative;
 - (2) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself);
 - (3) other appropriate means;
- F. a description of how affected employees have been informed of their right to petition the commissioner for a hearing.

Subp. 3. Hearing. The commissioner may at the commissioner's discretion provide for a hearing on the variance. Affected employees shall be given notice of any such hearing and allowed to participate.

Subp. 4. Interim orders; application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of facts and arguments as to why the order should be granted.

Subp. 5. Interim orders; notice of denial or grant. If an application filed pursuant to item A is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties. It shall be a condition of the order that the employer shall give notice thereof to affected employees by the same means to be used to inform.

Subp. 6. Variance order. The commissioner shall, by rule or order, grant a permanent variance from a promulgated standard when the commissioner finds by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those provided for by the standard.

The rule or order granting variance shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0840 MODIFICATION, REVOCATION, AND RENEWAL OF RULES OR ORDERS.

Subpart 1. Modification or revocation. A rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance at any time after six months from its issuance.

Subp. 2. Renewal of orders. Temporary orders may be in effect only for the period needed to achieve compliance with the standard or one year, whichever is shorter, except that

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such an order may be renewed not more than twice. Orders will be renewed only if the requirements for issuance are met and an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim order shall remain in effect for longer than 180 days.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0850 ORDER DENYING VARIANCE.

In the event the commissioner denies an application for variance, the commissioner shall prepare an order setting forth:

- A. the name and address of the person or organization requesting the variance;
- B. the rule, or particular provisions thereof, from which the application requested a variance;
- C. the extent and duration of the variance requested; and
- D. a concise statement of the reasons for denial of the application for variance.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0860 CONTEST OF VARIANCE DENIAL BEFORE REVIEW BOARD.

Any employer who has been denied a variance may under Minnesota Statutes, section 182.664, subdivision 2 notify the commissioner in writing that the employer intends to contest such a variance denial before the review board. Such notice of intention to contest shall be postmarked within 15 days of receipt by the employer of the variance denial. The commissioner shall, within seven days of receipt of notice of contest, transmit the original notice to the review board together with copies of all relevant documents in accordance with the rules of procedure prescribed by the board.

Any affected employee shall be given notice of such application and an opportunity to participate in such a hearing as required under Minnesota Statutes, section 182.654, subdivision 5.

Statutory Authority: *MS s 182.657*

History: *17 SR 1279*

5210.0870 MULTISTATE VARIANCES.

Where a federal variance has been granted with multistate applicability, including the state of Minnesota, from a standard or portion thereof, identical to a Minnesota Occupational Safety and Health Standard or a portion thereof, without filing the information required in part 5210.0820 or 5210.0830, such variance shall likewise be deemed an authoritative interpretation of the employer's compliance obligations with regard to a Minnesota Department of Labor and Industry standard or portion thereof, provided no objections of substance are found to be imposed by the Minnesota Department of Labor and Industry.

Statutory Authority: *MS s 182.657*

TRADE SECRET REGISTRATION

5210.0900 REGISTRATION.

A manufacturer or employer who believes that all or part of the information required under the Employee Right to Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as trade secret information. Information which has been classified for national security purposes by appropriate officials of the United States may also be registered with the commissioner provided the commissioner has been granted necessary security clearance and duly authorized to receive such classified information.

Statutory Authority: *MS s 182.657*

History: *9 SR 56*

5210.0910 FORMULATIONS AND PROCEDURES.

Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

Statutory Authority: *MS s 182.657*

History: 9 SR 56

5210.0920 REQUIRED INFORMATION.

Trade secret registration of the name of a hazardous substance must include the following information:

A. the name or names of the substance including any generic or chemical name, trade name, commonly used name, and the American Chemical Society's Chemical Abstract Service (CAS) number for that substance;

B. a brief description of why it is a trade secret; and

C. the name of a person who can be contacted for additional information relevant to the trade secret.

Statutory Authority: *MS s 182.657*

History: 9 SR 56

5210.0930 EXPIRATION OF REGISTRATION.

A registration expires two years after its filing date unless the registration is renewed. The commissioner shall notify registrants of an impending expiration date.

Statutory Authority: *MS s 182.657*

History: 9 SR 56

5210.0940 CLASSIFICATION OF DATA.

Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commissioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national security purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under parts 5210.0900 to 5210.0960, or when otherwise required in order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure.

Nothing in parts 5210.0900 to 5210.0960 may be construed as limiting rights, objectives, or remedies regarding trade secrets covered under Minnesota Statutes, chapter 325C, or the obligations applicable to classified information under rules and regulations of the United States for protecting classified information.

Statutory Authority: *MS s 182.657*

History: 9 SR 56

5210.0950 DISCLOSURE.

If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger or when necessary to expedite provision of medical services to an employee, the commissioner must notify the appropriate manufacturer or employer of the decision by telephone or certified mail and timely disclose the information only to the extent necessary and only to the people necessary to aid in efforts to alleviate the danger.

Statutory Authority: *MS s 182.657*

History: 9 SR 56; 17 SR 1279

5210.0960 DETERMINATION PROCEDURE.

Subpart 1. **Commissioner determination.** On the request of a manufacturer, employer, employee, or employee representative, deemed by the commissioner to have a legitimate

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health or safety interest in the information, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5.

Subp. 2. Notice. If the commissioner determines that information is not a trade secret, the commissioner must notify the registering manufacturer or employer of the decision by certified mail.

Subp. 3. Justification response. The registering manufacturer or employer has 15 days after receipt of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret.

Subp. 4. Commissioner review. The commissioner must review the determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail.

Subp. 5. Final notice. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be disclosed to the requesting party.

Subp. 6. Action for declaratory judgment. Prior to the date specified in the final notice, the registering manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection as a trade secret.

Statutory Authority: *MS s 182.657*

History: *9 SR 56; 17 SR 1279*