

**CHAPTER 5210**  
**DEPARTMENT OF LABOR AND INDUSTRY**  
**SAFETY AND HEALTH ADMINISTRATION**

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**5210.0005 DEFINITIONS.**

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp 2. **Act.** "Act" means the Minnesota Occupational Safety and Health Act of 1973, Minnesota Statutes, chapter 182.

Subp 3. **Administrative law judge.** "Administrative law judge" means a person assigned by the chief administrative law judge under Minnesota Statutes, section 14.50, to hear a contested case

Subp. 4. **Affected employee.** "Affected employee" has the meaning given it in Minnesota Statutes, section 182.651

Subp. 5. **Authorized employee representative.** "Authorized employee representative" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 6. **Board.** "Board" means the occupational safety and health review board established pursuant to Minnesota Statutes, section 182.664.

Subp. 7. **Citation and notification of penalty.** "Citation and notification of penalty" means the citation and notification of penalty form prescribed by the commissioner and issued to the employer under Minnesota Statutes, sections 182.66 and 182.661, subdivision 1.

Subp. 8. **Commissioner.** "Commissioner" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 9. **Days.** "Days" means calendar days unless otherwise provided.

Subp. 10. **Employee.** "Employee" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 11. **Employer.** "Employer" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 12. **Investigation or inspection.** "Investigation" or "inspection" means the actions taken by the commissioner, including examination, observation, inquiry, and analysis, to determine whether violations of the act or of standards, rules, or orders adopted by the commissioner under the authority of the act, exist at a place of employment and includes, but is not limited to, the physical inspection of the place of employment.

Subp. 13. **Investigator.** "Investigator" means an occupational safety and health investigator or investigators authorized by the commissioner of labor and industry to conduct occupational safety and health investigations under Minnesota Statutes, chapter 182.

Subp. 14. **Letter of contest.** "Letter of contest" means a written communication filed with the commissioner by an employee or authorized employee representative contesting the citation and notification of penalty or the notification of failure to abate.

Subp. 15. **Notice of contest.** "Notice of contest" means the notice of contest and service to affected employees form prescribed by the commissioner under part 5210.0533.

Subp. 16. **Notification of failure to abate.** "Notification of failure to abate" means the notification of failure to abate and proposed additional penalty form prescribed by the commissioner and issued to the employer under Minnesota Statutes, section 182.661, subdivision 2.

Subp. 17. **Person.** "Person" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 18. **Proceeding.** "Proceeding" means any proceeding before the board or before an administrative law judge.

Subp. 19. **Respondent.** "Respondent" has the meaning given it in Minnesota Statutes, section 182.651.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0010** [Repealed, 20 SR 2428]

**5210.0020 SCOPE.**

Parts 5210.0020 to 5210.0100 set forth procedures for adopting, modifying, or revoking occupational safety and health standards under Minnesota Statutes, section 182.655.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0030** [Repealed, 20 SR 2428]

**5210.0040 PETITION FOR ADOPTION, MODIFICATION, OR REVOCATION OF A STANDARD.**

Any interested person may file with the commissioner, a written petition for the adoption, 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*

**History:** *20 SR 2428*

**5210.0050 INITIATION.**

The commissioner shall initiate adoption of a standard by publishing in the State Register a notice of proposed rulemaking. The notice shall include:

- A. the terms of the proposed rule;
- B. a reference to the act and to the appropriate section of any statute applicable to the employments affected by the rule;
- C. 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 information, the disclosure of which is prohibited by law;
- D. notification to interested persons that they may request a public hearing on their objections within 30 days after publication of the notice; and

E. any other appropriate provisions with regard to the proceeding.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0060 OBJECTIONS.**

Subpart 1. **Conditions.** Objections submitted pursuant to part 5210.0050 must comply with the following conditions:

- A. the objections must include the name and address of the objecting party,
- 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 the provision of the proposed rule to which objection is made, and must state the reasons for the objections; 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 25 or more persons request 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 must contain:

*[For text of items A to C, see M.R.]*

- D. a specification of the issues to be discussed at the hearing;
- E. the requirement for interested persons to file a notice of intention to appear at the hearing together with a statement of the position to be taken with regard to the issues and of the evidence to be presented in support of the position;

*[For text of items F and G, see M.R.]*

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 testify at a hearing.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **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, who shall be an administrative law judge, is empowered to permit cross-examination under such circumstances. The intent of the hearing is to provide an opportunity for effective oral presentation by participants which can be carried out expeditiously.

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:** *20 SR 2428*

#### **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:

*[For text of items A to D, see M.R.]*

- E. to permit cross-examination of any witness;

*[For text of item F, see M.R.]*

- G. 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:** *20 SR 2428*

#### **5210.0090 CERTIFICATION OF HEARING RECORD.**

Upon completion of the oral presentations, a certified transcript of the hearing, together with written submissions on the proposed rule, exhibits filed during the hearing, and all post-

hearing comments, recommendations, and supporting reasons shall be transmitted to the commissioner.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **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 adopting, modifying, or revoking a standard, or a determination that the 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 5210.0020 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. 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.

*[For text of subp 3, see M.R.]*

Subp. 4. [Repealed, 20 SR 2428]

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0200** [Repealed, 20 SR 2428]

#### **5210.0210 PURPOSE AND SCOPE.**

Parts 5210.0210 to 5210.0340 establish general policies for enforcement of Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669, which prohibit the discharge of or discrimination against an employee who exercises any rights granted under the act on the employee's behalf or on behalf of others.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0220** [Repealed, 20 SR 2428]

**5210.0230** [Repealed, 20 SR 2428]

**5210.0240** [Repealed, 20 SR 2428]

**5210.0250** [Repealed, 20 SR 2428]

**5210.0260** [Repealed, 20 SR 2428]

**5210.0270** [Repealed, 20 SR 2428]

**5210.0280** [Repealed, 20 SR 2428]

**5210.0290** [Repealed, 20 SR 2428]

#### **5210.0300 PARTICIPATION IN PROTECTED ACTIVITIES.**

If the participation by an employee in an activity protected by the act or the exercise by an employee on behalf of the employee or others of any right granted under the act was a substantial causative factor entering into a person's decision to discharge an employee or take other adverse action against an employee, the person has committed a discriminatory action in violation of the act.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0310 CLAIM PROCEDURES.**

*[For text of subpart 1, see M.R.]*

Subp. 2. **Manner of filing.** The complaint may be filed, either orally or in writing, with the commissioner. Written complaints must be filed in accordance with part 5210.0554.

Subp. 3. [Repealed, 20 SR 2428]

Subp. 4. [Repealed, 20 SR 2428]

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

#### **5210.0320 DEFERRAL OF ACTION ON DISCRIMINATION COMPLAINT.**

The commissioner may defer action on a discrimination 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 the other proceeding are substantially the same as rights granted under the act and the other proceeding will not violate the rights guaranteed by the act.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

#### **5210.0330 ACCEPTING OTHER DECISIONS AS FINAL DETERMINATION.**

The commissioner may accept the results of other proceedings as a final determination of a discrimination complaint if those proceedings dealt adequately with substantially all of the factual and legal issues; were fair, impartial, and valid; and the outcome of the proceedings is not contradictory to the purpose of the act.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

#### **5210.0340 ENFORCEMENT PROCEEDINGS.**

Subpart 1. [Repealed, 20 SR 2428]

Subp. 2. **Settlement.** If the commissioner determines that a discriminatory act has been committed against an employee, the commissioner may enter into a settlement rather than proceeding with an administrative hearing.

*[For text of subps 3 and 4, see M.R.]*

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0400** [Repealed, 20 SR 2428]

#### **5210.0410 PURPOSE.**

The purpose of parts 5210.0410 to 5210.0542 is to prescribe rules and set forth general policies for enforcement of the act.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

#### **5210.0420 POSTING OF NOTICES.**

Each employer shall post and keep posted the "Safety and Health Protection on the Job" poster issued by the Department of Labor and Industry, informing employees of the protections and obligations provided for in the act. The poster must direct employees to contact the employer or the Department of Labor and Industry for assistance and information, including copies of the act and of specific safety and health standards. The poster shall be posted by the employer in each place of employment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that the posters are not altered, defaced, or covered by other material.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0430** [Repealed, 20 SR 2428]

**5210.0440** [Repealed, 20 SR 2428]

**5210.0450 OBJECTION TO INVESTIGATION.**

Upon a refusal to permit an occupational safety and health investigator, in the exercise of official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect and investigate, to review documents, or to question privately any employer, owner, operator, agent, or employee, or to permit a representative of employees to accompany the investigator during the physical inspection of any place of employment, the investigator shall terminate the investigation or confine the investigation to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, documents, or interviews concerning which no objection is raised. The investigator shall endeavor to ascertain the reason for the refusal, and shall immediately report the refusal and the reason for the refusal to the commissioner.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0460 WAIVER NOT IMPLIED.**

Permission to enter, inspect and investigate, review documents, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the act. Investigators are not authorized to grant waivers.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0470 INVESTIGATIONS.**

Subpart 1 **Opening conference; investigator's conduct.** The investigators shall present their credentials to the owner, operator, or agent in charge at the place of employment at the earliest opportunity upon entering the place of employment; and conduct an opening conference during which the investigator shall explain the nature and purpose of the investigation; and indicate generally the scope of the physical inspection and the documents which they wish to review. However, such designation of documents shall not preclude review of additional documents.

Subp. 2. **Investigator's authority.** The investigator shall have the authority to take samples, conduct tests, and take or obtain photographs and videotapes, make or obtain copies of documents, and employ other investigative techniques related to the purpose of the investigation.

Subp 3. [Repealed, 20 SR 2428]

Subp 4. [Repealed, 20 SR 2428]

Subp. 5. **Closing conference.** At the conclusion of an investigation, the investigator shall confer with the employer or the employer's representative and describe apparent safety or health violations disclosed by the investigation. During this conference, the employer shall be afforded an opportunity to bring to the attention of the investigator pertinent information regarding conditions in the workplace.

Subp. 6. [Repealed, 20 SR 2428]

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0480 REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES TO ACCOMPANY INVESTIGATORS.**

Subpart 1. **Accompanying the investigator.** The investigator shall be in charge of all aspects of an investigation. A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the investigator during the physical inspection of the workplace for the purpose of aiding the investigation. An investigator may permit additional employer representatives and additional representatives authorized by employees to accompany the investigator where the investigator determines that additional representatives will aid the investigation. A different employer and employee representative may accompany the investigator during different phases of a physical inspection if the investigator determines that this will not interfere with the conduct of the investigation.

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

Subp. 2. **Denial of right to accompany.** The investigator is authorized to deny the right of accompaniment under this part to any person whose conduct interferes with a fair and orderly investigation. The right of accompaniment in areas containing trade secrets shall be subject to Minnesota Statutes, section 182.668.

Subp. 3. **Identification of representatives.** The investigator has authority to resolve all disputes as to who are the representatives authorized by the employer and employees for the purpose of this part. If there is no representative authorized by employees, or if the investigator is unable to determine with reasonable certainty who is the employee representative, a reasonable number of employees shall be consulted by the investigator concerning matters of safety and health in the workplace.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0490 CONSULTATION WITH EMPLOYER AND EMPLOYEES.**

The investigator 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 investigation. During the course of an investigation, employees shall be afforded an opportunity to bring any violation of the act which the employees have reason to believe exists in the workplace to the attention of the investigator.

The representative authorized by employees shall be given the opportunity to participate in the opening and closing conferences. The investigator shall hold a private conference with either the employee representative or the employer, at either's request.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0500 EMPLOYEE RIGHTS DURING INVESTIGATION.**

No employee as a consequence of aiding in an investigation shall lose any privilege or payment that the employee would otherwise earn, the loss being a discriminatory act subject to the sanctions contained in Minnesota Statutes, section 182.669. An employee taking part in the physical inspection is entitled to the employee's regular pay for the time spent in the physical inspection and the opening and closing conferences.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0510 TRADE SECRETS.**

At the commencement of a physical inspection, the employer may identify areas in the place of employment which contain or which might reveal a trade secret. If the investigator has no reason to question such identification, information obtained in these 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 Minnesota Statutes, section 182.668.

Upon the request of an employer, a representative authorized by 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 representative authorized by employees working in that area or an employee authorized by the employer to enter the area, the investigator shall consult with a reasonable number of employees working in that area concerning matters of safety and health.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0520 INVESTIGATION NOT WARRANTED; INFORMAL REVIEW.**

If the commissioner determines that a citation will not be issued or that an investigation is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint filed under Minnesota Statutes, section 182.659, subdivisions 4 and 5, the commissioner shall notify the complaining party in writing of that determination. The complaining party may request an informal review of the determination by

submitting a written statement of position to the commissioner and, at the same time, providing the employer with a copy of the statement by certified mail unless the complaining party has requested anonymity when filing the complaint. If the complaining party has requested anonymity when filing the complaint, the commissioner shall summarize the complaining party's written statement leaving out the complaining party's identity and provide the employer with a copy of the summary by certified mail. The employer may submit an opposing written statement of position to the commissioner and, at the same time, provide the complaining party with a copy of the statement by certified mail unless the employer has received a summary of the complaining party's written statement of position. If the employer has received the summary, the commissioner shall provide the complaining party with a copy of the employer's opposing statement by certified mail. Upon the request of the employee or the employer, the commissioner may hold an informal conference or conferences in which the complaining party and the employer may orally present their views together or separately. 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 for the decision.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

### 5210.0530 CITATIONS; POSTING.

**Subpart 1. Issuance.** The commissioner shall review the investigation report of the investigator. If on the basis of the report the commissioner believes that the employer has violated a requirement of Minnesota Statutes, section 182.653, or any standard, rule, or order adopted under the act, the commissioner shall issue to the employer either a citation and notification of penalty or a notification of failure to abate. A copy of the citation and notification of penalty or notification of failure to abate shall also be mailed to the authorized employee representative and, in the case of the death of an employee, to the next of kin if requested by the next of kin. A citation and notification of penalty or notification of failure to abate shall be issued even though, after being informed of an alleged violation by the investigator, the employer immediately abates or initiates steps to abate the alleged violation. A citation and notification of penalty or notification of failure to abate shall be issued with reasonable promptness and in no event later than six months following the completion of the investigation of the alleged violation.

#### **Subp. 2. Contents.**

A. A citation and notification of penalty shall describe with particularity the nature of the alleged violation, including a reference to the provisions of the act, standard, rule, or order alleged to have been violated. A citation and notification of penalty shall also fix a reasonable time or times for the abatement of the alleged violation.

B. A notification of failure to abate shall reference the original citation and standard which the employer has allegedly failed to abate, the date by which the original citation was to have been abated, and the amount of the additional penalty issued by the commissioner under Minnesota Statutes, section 182.661, subdivision 2.

**Subp. 3. Employer's duty to post.** Upon receipt of a citation and notification of penalty or notification of failure to abate, the employer shall immediately post the citation and notification of penalty or notification of failure to abate, or an unedited copy, at or near each place an alleged violation referred to in the citation occurred, except as provided in this subpart. If, because of the nature of the employer's operations, it is not practicable to post the citation and notification of penalty or notification of failure to abate at or near each place of alleged violation, the unedited citation and notification of penalty or notification of failure to abate shall be posted in a prominent place where it will be readily observable by all affected employees. If the employer is engaged in activities that are physically dispersed, the citation and notification of penalty or notification of failure to abate shall be posted at the location to which affected employees report each day. Where affected employees do not primarily work at or report to a single location, the citation and notification of penalty or notification of failure to abate shall be posted at the locations from which the affected employees operate to carry out their activities. The employer shall take steps to ensure that the citation and notifi-



cation of penalty or notification of failure to abate are not altered, defaced, or covered by other material.

**Subp. 4. Posting time.** Each uncontested citation and notification of penalty or uncontested notification of failure to abate, or an unedited copy, shall remain posted until the violation has been abated, or for 15 days, whichever is later. The filing by the employer, an employee, or an authorized employee representative of a notice of contest or letter of contest extends the employer's posting responsibility under this part until the date of the hearing or earlier final disposition of the contest.

**Subp. 5. Noncompliance.** An employer that fails to comply with subparts 3 and 4 shall be subject to citation and penalty according to Minnesota Statutes, section 182.666, subdivision 5.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

### 5210.0533 NOTICE OF CONTEST AND CERTIFICATION OF SERVICE.

A contest of a citation and notification of penalty or of a notification of failure to abate shall be filed with the commissioner on the notice of contest form provided by the commissioner. The commissioner shall accept as filed only a fully completed notice of contest form. A fully completed notice of contest form must provide the following information:

- A. the employer's name and address,
- B. the inspection number for the citation and notification of penalty or the reinspection number for the notification of failure to abate;
- C. identification of each citation and item contested and for each citation and item contested, identification of each part of the citation and item contested. Those citations and items not contested and those parts of citations and items not contested shall become a final order of the commissioner not reviewable by any court or agency.

(1) For a citation and notification of penalty, the contesting party must indicate for each citation and item contested the following part or parts it is contesting:

- (a) the finding of a violation;
- (b) the type of violation;
- (c) the abatement date; or
- (d) the penalty.

(2) For a notification of failure to abate, the contesting party must indicate for each citation and item contested the following part or parts it is contesting:

- (a) the finding of the failure to abate a violation, or
- (b) the penalty;

D. a statement of the contesting party's reasons for contesting each citation and item;

E. certification that the notice was served upon the authorized employee representatives, if any, and the employer, if it is an employee or authorized employee representative contest, and that it was posted where the citations and notifications of penalty are required by part 5210.0530, subpart 3, to be posted, and

F. a notarized sworn statement by the contesting party that the information provided is accurate and truthful to the best of the contesting party's knowledge.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

### 5210.0536 EMPLOYER CONTEST.

#### Subpart 1. Posting and service.

A. The employer shall, on or before the date a notice of contest is required to be filed with the commissioner, post a copy of the notice of contest where the citation and notification of penalty or notification of failure to abate is required to be posted. The notice of contest must remain posted until the date of the hearing or earlier final disposition of the contest.

B. If there are any affected employees who are represented by an authorized employee representative, the employer shall, on or before the date a notice of contest is required

to be filed with the commissioner, serve a copy of the notice of contest upon the representative.

C. Certification of the service and posting required by this subpart must be notarized and filed with the commissioner as provided on the notice of contest form.

**Subp. 2. Filing.** For purposes of this part, a notice of contest is filed only upon its receipt by the commissioner. The notice of contest must be filed within 20 calendar days of the date the employer receives the citation and notification of penalty or notification of failure to abate. The day the notice of contest is received shall not be included in calculating the 20 calendar days. The last day of the 20-day period shall be included, unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state holiday. A notice of contest may be filed with the commissioner by postage prepaid first class mail, personal delivery, or facsimile transmission according to part 5210.0554, subpart 2. If the notice of contest form is not posted, served, and filed within 20 days of the date the employer receives the citation and notification of penalty or notification of failure to abate, the citation and notification of penalty or notification of failure to abate become a final order of the commissioner and is not subject to review by any court or agency.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

### **5210.0539 EMPLOYEE AND AUTHORIZED EMPLOYEE REPRESENTATIVE CONTESTS.**

#### **Subpart 1. Posting and service.**

A. The employee or authorized employee representative shall, on or before the date the employee notice of contest form is filed with the commissioner, serve the fully completed employee notice of contest form upon the cited employer. Immediately upon receipt, the employer shall post a copy of the employee notice of contest form where the citation and notification of penalty or notification of failure to abate is required to be posted by part 5210.0530, subpart 3. The notice of contest must remain posted until the date of the hearing or earlier final disposition of the contest.

B. If there are any other affected employees who are represented by another authorized employee representative, the contesting employee or authorized employee representative shall, on or before the date the employee notice of contest form is required to be filed with the commissioner, serve a copy of the notice of contest upon that authorized employee representative.

C. The certification of posting and service required by this subpart must be notarized and filed with the commissioner as provided on the employee notice of contest form.

#### **Subp. 2. Filing.**

A. An employee or authorized employee representative shall file a letter of contest with the commissioner within 20 days of the date the employer receives the citation and notification of penalty or notification of failure to abate. If an employee or authorized employee representative files a letter of contest with the commissioner within 20 days of the date the employer receives the citation and notification of penalty or the notification of failure to abate, the commissioner shall promptly send the employee or authorized employee representative a notice of contest form by certified mail.

B. Within seven days of the employee's or authorized employee representative's receipt of the employee notice of contest form, the employee or authorized employee representative shall file the fully completed form with the commissioner. For purposes of this part, an employee notice of contest is filed only upon its receipt by the commissioner. The day the notice of contest is received shall not be included in calculating the seven calendar days. The last day of the seven-day period shall be included, unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state holiday. An employee notice of contest form may be filed with the commissioner by postage prepaid first class mail, personal delivery, or facsimile transmission according to part 5210.0554, subpart 2.

C. If the letter of contest is not filed within 20 days of the date the employer receives the citation and notification of penalty or notification of failure to abate, or if the em-

ployee notice of contest form is not filed within seven days of the date the form is received, the citation and notification of penalty or notification of failure to abate becomes a final order of the commissioner and is not subject to review by any court or agency.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0540** [Repealed, 20 SR 2428]

**5210.0542 PETITIONS FOR MODIFICATION OF ABATEMENT DATE.**

Subpart 1. **Right to file.** An employer seeking to extend the date by which a violation must be abated may file a petition for modification of abatement date.

Subp. 2. **Contents.** A petition for modification of abatement date must be in writing and include the following information:

A. all action 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 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 and the notice to affected employees and authorized employee representatives informing them of their right to object to the petition as set out in subpart 5 have been posted and served upon the authorized employee representative according to subpart 4 and the date the posting and service was completed.

Subp. 3. **Time to file.** A petition for modification of abatement date must be filed with the commissioner no later than the next working day following the date on which abatement was originally required. For purposes of this part, a petition is considered filed upon its receipt by the commissioner.

Subp. 4. **Posting.** A copy of the petition and notice to employees and authorized employee representatives must be posted on or before the filing date in the location where the citation and notification of penalty is required to be posted. If employees are represented by an authorized employee representative, the representative shall be served with a copy of the petition and notice. The petition must remain posted for ten days.

Subp. 5. **Objections.** Employees or their authorized employee representatives who file an objection in writing with the commissioner must serve a copy of the objection on the employer. Failure to serve and file an objection within ten days of the date of posting of the petition or of service upon an authorized employee representative shall constitute a waiver of any further right to object to the petition. The objection must state the reasons for opposing the petition.

Subp. 6. **Approval or denial of petition.** The commissioner shall not approve a petition by the employer until the expiration of ten days from the date the petition was served upon affected employees or their authorized employee representatives. The commissioner may deny a petition at any time after its receipt. When approving or denying a petition, the commissioner shall consider the actions taken by the employer to achieve compliance during the prescribed abatement period, the additional abatement time requested by the employer, whether abatement has not been completed because of factors beyond the employer's control, what interim steps the employer has taken to safeguard employees against the cited hazard, and any other relevant information obtained by the department or provided by affected employees and authorized employee representatives regarding the employer's petition. A copy of the approval or denial shall be posted with the petition and the citation.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0548 RECORD ADDRESS.**

All pleadings filed by a person must contain the person's name, address, and telephone number. Any change in the information must be communicated promptly in writing to the

administrative law judge or the commissioner and to all other parties. A party who fails to furnish the information waives the right to service and notice under part 5210.0551.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0550** [Repealed, 20 SR 2428]

**5210.0551 SERVICE AND NOTICE.**

**Subpart 1. Parties and intervenors.** At the time of filing pleadings or other documents, a copy must be served by the filing party on every other party.

**Subp. 2. Representatives.** Service on a party who has appeared through a representative need only be made on the representative.

**Subp. 3. Methods of service.** Unless otherwise ordered, service may be made by postage prepaid first class mail or personal delivery. Service is made at the time of mailing or personal delivery.

**Subp. 4. Proof of service; filing.** Service must be certified by a written statement that states the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0554 FILING; FACSIMILE.**

**Subpart 1. Filing by mail and personal delivery.** All pleadings and other documents must be filed with the commissioner before a case is assigned to an administrative law judge. After the case has been assigned to an administrative law judge, all pleadings or other documents must be filed with the administrative law judge at the address given in the notice informing the parties of the assignment. All pleadings and documents may be filed by postage prepaid first class mail or personal delivery. Except for the notice of contest, letter of contest, and petition for modification of abatement date, filing of pleadings and documents is effective on the postmark date or date of personal delivery.

**Subp. 2. Filing by facsimile.** Any pleading or document, including a notice of contest, letter of contest, or petition for modification of abatement date may be filed with the commissioner by facsimile transmission. Filing is completed at the time that the facsimile transmission is received by the commissioner, and the filed facsimile has the same force and effect as the original. The commissioner is not responsible for unsuccessful facsimile transmissions. Documents received by facsimile after 4:30 p m. Central Standard Time (CST) are deemed filed on the next day.

Within five days after the commissioner has received the transmission, the party filing the document must file with the commissioner the original signed document.

**Subp. 3. Time computation.** In computing any period of time prescribed or allowed by parts 5210.0410 to 5210.0595 or Minnesota Statutes, chapter 182, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0557 FORM OF PLEADINGS.**

Except as provided in parts 5210.0533 to 5210.0542 and 5210.0557 to 5210.0570, pleadings and other documents must comply with parts 1400.5100 to 1400.8401. The pleadings and other documents must include the commissioner's and the administrative law judge's docket number.

Pleadings and other documents, other than exhibits, must be typewritten or otherwise be legible on 8-1/2 by 11 inch paper.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0560** [Repealed, 20 SR 2428]

**5210.0561 SIGNATURE ON PLEADINGS.**

Pleadings must be signed by the party filing or by the party's representative. Signing constitutes a representation by the signer that the signer has read the document or pleading, that to the best of the signer's knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0564 REFUSAL OF PLEADING.**

The commissioner or administrative law judge may refuse to accept for filing any pleading or document that does not comply with the requirements of parts 1400.5100 to 1400.8401, 5210.0557, and 5210.0567.

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0567 CAPTION; CASE TITLE.**

Subpart 1 **Notice of contest.** Pleadings after receipt of a notice of contest must be titled:

Commissioner of the Minnesota  
Department of Labor and Industry,

Complainant

v.

(Name of contestant),

Respondent

Subp. 2. **Third party interests.** Cases in which a third party interest has been exercised must be titled:

Commissioner of the Minnesota  
Department of Labor and Industry,

Complainant

v

(Name of employer),

Respondent

(Name of employee or authorized  
employee representative),

Employee or  
authorized  
employee  
representative

Subp. 3. **Placement of titles.** The titles listed in subparts 1 and 2 must appear at the left upper portion of the first page of any pleading or document filed, other than an exhibit.

The first page of any pleading or document, other than an exhibit, must show, at the upper right of the page, opposite the title, the docket numbers assigned by the commissioner and the Office of Administrative Hearings, if any

**Statutory Authority:** *MS s 182.657*

**History:** 20 SR 2428

**5210.0570 COMPLAINT; NOTICE; ANSWER.**

Subpart 1. **Complaint.** The commissioner shall serve the contesting party and every other party with a complaint no later than 90 days after receiving the notice of contest.

The complaint must set forth alleged violations and proposed penalties that are contested, by stating or referring to the contested citation and notification of penalty or notification of failure to abate.

A. the basis for jurisdiction;

B. the date, location, place, and circumstances of alleged violations; and

C. the abatement date and the proposed penalty for the alleged violation.

The commissioner may amend the complaint at any time before the close of the hearing without filing a motion with the administrative law judge, provided that, should the amended complaint raise new issues or allegations, if requested by a party, a reasonable time to prepare to respond to the new issues or allegations must be provided.

Subp. 2. **Withdrawal of contest.** A person who filed a notice of contest may withdraw the notice at any time in the proceedings.

Subp. 3. **Summons and notice to respondent.** The commissioner shall serve on all parties a notice with the complaint that states the following:

A. that the respondent has 20 days within which to file an answer;

B. that the parties have a right to be represented by legal counsel in all proceedings,

C. that the rules of the commissioner and the rules of the Office of Administrative Hearings apply to the proceedings and where a copy of those rules may be obtained; and

D. the name of the agency official or member of the attorney general's staff to be contacted to discuss informal disposition under part 1400.5900 or discovery under part 1400.6700, subparts 2 and 3.

Subp. 4. **Answer.** Within 20 days after service of the complaint, the party or parties against whom the complaint was issued shall file with the commissioner an answer and serve the answer on every other party.

The answer must contain a short and plain statement denying those allegations in the complaint that the party intends to contest and assert any and all affirmative defenses. Any allegation not denied is deemed admitted and any affirmative defense not asserted is deemed waived.

Subp. 5. **Failure to serve or file.** If the complaint is not served or the answer is not filed and served within the time prescribed by this part, the administrative law judge, upon a motion by a party, may enter an order affirming or vacating the contested citation and notification of penalty or notification of failure to abate.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0573 PARTY STATUS.**

Subpart 1. **Affected employees and authorized representatives.** If a notice of contest is timely filed by an employer, affected employees or authorized employee representatives may participate as parties in the contested case proceeding by filing a notice of intent to participate as a party at least 45 days before the starting date of the hearing. The notice of intent to participate as a party must contain the name, address, and representative, if any, of the affected employee or authorized employee representative requesting party status and a statement that the person identified is an affected employee or authorized employee representative of affected employees of the cited employer. The notice shall be filed with the commissioner or the administrative law judge if one has been assigned to the proceeding and served upon all parties at the time of filing.

Subp. 2. **Employers.** If a notice of contest is timely filed by an employee or by an authorized employee representative, the cited employer may participate as a party in the contested case proceeding by filing a notice of intent to participate as a party at least 45 days before the starting date of the hearing. The notice of intent to participate as a party must contain the employer's name, address, and representative, if any. The notice must be filed with the commissioner or the administrative law judge, if one has been assigned to the proceeding, and served upon all parties at the time of filing.

**Subp. 3. Objection to notice of intent to participate as party.** A party to the contested case proceeding may file a written objection to a notice of intent to participate as a party on the grounds that the person requesting party status is not an affected employee, an authorized employee representative of affected employees, or the cited employer, or that the notice does not comply with the requirements of this subpart. The objecting party shall file the written objection with the commissioner or with the administrative law judge, if one has been assigned to the proceeding, and serve the written objection upon all other parties and upon the person requesting party status. The written objection must be filed and served within ten days after the date the notice of intent to participate as a party was filed and served upon the parties. If no written objection to the notice of intent to participate as a party is filed and served within ten days after the date the notice was filed and served upon the parties, the person requesting party status shall become a party to the proceeding. If a written objection is filed by a party with the commissioner, the commissioner shall immediately request that an administrative law judge be assigned to the proceeding and refer the notice and the objection to the assigned administrative law judge for a determination of party status.

**Subp. 4. Intervention by other persons.** Intervention by other persons may be granted by the administrative law judge according to part 1400.6200.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0576 REPRESENTATIVES OF PARTIES AND INTERVENORS.**

Parties and intervenors may be represented by an attorney, by themselves, or by a person of their choice throughout the proceedings in a contested case if not otherwise prohibited as the unauthorized practice of law.

If the authorized employee representative is a party, affected employees who are represented by an authorized employee representative may appear only through the authorized employee representative.

The withdrawal of appearance of a representative may be accomplished by filing a written notice of withdrawal and by serving a copy of the notice on all parties and intervenors.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0579 MOTIONS.**

All motions must be made according to part 1400.6600.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0583 CONSOLIDATION AND SEVERANCE OF CASES.**

Consolidation and severance of cases must be done according to part 1400.6350.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0589 PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.**

On application by a person in a proceeding where trade secrets or other matters may be divulged, the administrative law judge shall issue orders as appropriate to protect the confidentiality of these matters.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0595 HEARING.**

**Subpart 1. Notice of hearing and order.** When the matter is scheduled for hearing before an administrative law judge, the commissioner shall serve on all parties, and the employer if the employer is not a party, a written notice and order of hearing under part 1400.5600, and all further proceedings must be conducted under chapter 1400 and Minnesota Statutes, chapter 14.

**Subp. 2. Notice of hearing.**

A. A copy of the notice of hearing to be held before an administrative law judge must be posted by the employer within five days of receipt in the same place where the citation and notification of penalty is required to be posted. The notice of hearing must remain posted until the date of the hearing or earlier final disposition of the contest.

B. If there are any affected employees who are represented by an authorized employee representative, the employer shall, within five days of receipt, serve a copy of the notice of hearing on the representative.

C. Certification of the service and posting required by this subpart must be filed with the commissioner and served on the administrative law judge within five days of receipt of the notice of hearing. If the employer fails to certify service and posting, the administrative law judge may, on a motion by one of the parties or on the judge's own motion, render a default judgment in favor of the commissioner.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0596 SETTLEMENT; MISCELLANEOUS PROVISIONS.**

**Subpart 1. Service and notice.** A settlement agreement must be posted where the citation and notification of penalty or notification of failure to abate is required to be posted and must be served on authorized employee representatives by the employer.

**Subp. 2. Contents of settlement agreements.** Settlement agreements must contain:

A a provision that states the date the employer posted and served the agreement under subpart 1;

B. an affirmative statement that the contesting party withdraws the notice of contest; and

C. a statement that describes how the settlement agreement affects the status of the contested citation, type of violation, abatement date, and proposed penalty.

**Subp. 3. Objection to settlement agreement.** If there is no timely objection to the agreement by affected employees or authorized employee representatives, a settlement agreement becomes a final order ten days after it has been posted and served upon the authorized employee representatives.

An affected employee or authorized employee representative may file an objection to a proposed settlement with the commissioner within ten days after posting and service of the settlement agreement on the authorized employee representative. On receipt of a timely objection, the commissioner may renegotiate the settlement, refer the agreement and objection to an administrative law judge for approval despite the objection, or withdraw the settlement agreement and continue proceedings on the contested citation.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0597 EXPEDITED PROCEEDING.**

On the application of a party, or on the commissioner's own motion, the commissioner may order an expedited proceeding. When an expedited proceeding is ordered, the commissioner shall notify all parties. The administrative law judge assigned in an expedited proceeding shall make necessary rulings concerning the time for filing pleadings and all other matters, without reference to the times in parts 5210.0410 to 5210.0595. The administrative law judge shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

**5210.0650 ANNUAL SUMMARY.**

*[For text of subps 1 to 3, see M.R.]*

**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 part



5210.0420. 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.

*[For text of subp 5, see M.R.]*

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0800 PURPOSE AND SCOPE.**

Parts 5210.0800 to 5210.0870 establish general policies to implement the provisions of Minnesota Statutes, section 182.655, subdivisions 5 to 9, governing variances.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0810 EFFECT OF VARIANCES.**

All variances granted pursuant to Minnesota Statutes, section 182.655, subdivisions 5 to 9, shall have only future effect. The commissioner may decline to entertain an application for a variance on a subject or issue concerning a citation that has been issued to the employer seeking the variance if the citation has been contested.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0820 TEMPORARY VARIANCES.**

Subpart 1. **Application.** An employer desiring a temporary variance from a standard must file with the commissioner a written application containing the information specified in Minnesota Statutes, section 182.655, subdivisions 5 and 7.

Subp. 2. [Repealed, 20 SR 2428]

Subp. 3. [Repealed, 20 SR 2428]

Subp. 4. **Hearing.** The commissioner may hold a hearing on the variance application. Affected employees and authorized employee representatives of the affected employees shall be given notice of the hearing and allowed to participate.

Subp. 5. [Repealed, 20 SR 2428]

Subp. 6. [Repealed, 20 SR 2428]

Subp. 7. **Temporary variance order.** The commissioner may grant a temporary variance from an adopted standard in accordance with Minnesota Statutes, section 182.655, subdivision 6.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0830 PERMANENT VARIANCES.**

Subpart 1. **Application.** An employer desiring a permanent variance from a standard must file a written application with the commissioner containing the information specified in Minnesota Statutes, section 182.655, subdivision 8.

Subp. 2. [Repealed, 20 SR 2428]

Subp. 3. **Hearing.** The commissioner may hold a hearing on the variance application. Affected employees and authorized employee representatives of the affected employees shall be given notice of the hearing and allowed to participate.

Subp. 4. [Repealed, 20 SR 2428]

Subp. 5. [Repealed, 20 SR 2428]

Subp. 6. **Permanent variance order.** The commissioner may grant a permanent variance from an adopted standard in accordance with Minnesota Statutes, section 182.655, subdivision 8.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0835 INTERIM ORDERS.**

An employer may request an interim order to be effective until a decision is made on the application for variance. Affected employees and authorized employee representatives of affected employees shall be notified of the interim order request by the same means used to notify them of the application for variance. No interim order may remain in effect for longer than 180 days. If the commissioner denies the request for an interim order, the applicant shall be given a written notice of the denial including an explanation of the reasons for denying the request.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0840 [Repealed, 20 SR 2428]**

#### **5210.0850 ORDER DENYING VARIANCE.**

If the commissioner denies an application for a temporary or a permanent variance, the order denying the variance must include:

- A. the name and address of the person or organization requesting the variance;
- B. the rule, or provisions of the rule, 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 denying the variance request.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0860 OBJECTION TO VARIANCE DENIAL.**

An employer who has been denied a variance under Minnesota Statutes, section 182.655, subdivisions 5 to 9, may notify the commissioner in writing that the employer intends to object to the variance denial. The objection shall be postmarked within 15 days of receipt by the employer of the variance denial. The commissioner shall, within seven days of receipt of the objection, transmit the objection to an administrative law judge together with copies of all relevant documents.

Affected employees shall be given notice of the application according to Minnesota Statutes, section 182.655, subdivision 7, paragraph (e), and an opportunity to participate in the hearing as required under Minnesota Statutes, section 182.654, subdivision 5.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*

#### **5210.0870 MULTISTATE VARIANCES.**

If a federal variance is granted with multistate applicability and the employer has not filed a separate application in accordance with part 5210.0820 or 5210.0830 with the commissioner, the granted variance shall be considered to be applicable in Minnesota under the following conditions:

- A. the multistate application included Minnesota;
- B. the standard from which the variance is granted is identical to a Minnesota occupational safety and health standard; and
- C. no objections are received.

**Statutory Authority:** *MS s 182.657*

**History:** *20 SR 2428*