

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

LEG #1

RECEIVED
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OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES AND REGULATIONS OF THE)
DEPARTMENT OF LABOR AND INDUSTRY) ORDER FOR HEARING
GOVERNING OCCUPATIONAL SAFETY AND HEALTH)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the State Veteran's Service Building, 20 West 12th Street, 5th floor, Conference Room D, St. Paul, Minnesota on Tuesday, September 6, 1977 commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

E. I. Malone

Date: 8-3-77

E. I. "Bud" Malone, Commissioner
Minnesota Department of Labor
and Industry

L & I #2

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

RECEIVED
AUG 4 1977
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES AND REGULATIONS OF THE)
DEPARTMENT OF LABOR AND INDUSTRY) NOTICE OF HEARING
GOVERNING OCCUPATIONAL SAFETY AND HEALTH)

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the State Veteran's Service Building, 20 West 12th Street, 5th Floor, Conference Room D, St. Paul, Minnesota on Tuesday, September 6, 1977 commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, Hearing Examiners Office, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 either before the hearing or within 5 to 20 days after the close of the hearing upon order of the Hearing Examiner.

The proposed rules, if adopted, would:

(1) Amend Chapter 21 "Inspection, Citations and Proposed Penalties," Chapter 22 "Recording and Reporting Occupational Injuries and Illnesses," and Chapter 23 "Variances." These regulations were promulgated on February 20, 1974 and are now being amended to correct errors and omissions of a nonsubstantive nature.

These editorial changes will correct errors in references to statutes and general terms, clarify the intent of the Minnesota Occupational Safety and Health Act and update the Minnesota Occupational Safety and Health Regulations to be as effective as the U. S. Department of Labor Occupational Safety and Health Administration (OSHA) Regulations.

(2) Adopt Chapter 24 "Standards Promulgation" and Chapter 25 "Monitoring Toxic Materials and Harmful Physical Agents." Chapter 24 "Standards Promulgation," as mandated in Minn. Stat. Section 182.655, provides the Commissioner with policies and procedures for the purpose of adopting, modifying or revoking Occupational Safety and Health Standards. Chapter 25 "Monitoring Toxic Materials and Harmful Physical Agents" as mandated in Minn. Stat. Section 182.663, Subd. 3 requires employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are to be monitored under the Minnesota Occupational Safety and Health Act of 1973. If adopted, these proposed regulations will establish requirements for recordkeeping, employee access to records, notification of employee exposure, rights of employees to observe monitoring and periodic inspections.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Deputy Commissioner, Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rules is contained in Minn. Stat. Section 182.655 (1976). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule-making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Phone: (612) 296-5615.

Date: 7-12-77

E. I. Malone

E. I. "Bud" Malone, Commissioner
Minnesota Department of Labor
and Industry

L & I #3

RECEIVED
AUG 4 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES AND REGULATIONS OF THE)
DEPARTMENT OF LABOR AND INDUSTRY)
GOVERNING OCCUPATIONAL SAFETY AND HEALTH)

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

John Karich, being duly sworn on oath deposes and says:

1) That he is an employee of the Occupational Safety and Health Division of the State of Minnesota.

2) That on the 12th day of July, 1977 he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 12th day of July, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

John Karich

Subscribed and sworn to before me this
12th day of July, 1977.

Notary Public, Patricia Lorentz
County, Minnesota

My Commission expires 3/17/82.

PATRICIA LORENTZ
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
My Comm. Expires Mar. 17, 1982

L & I #4

RECEIVED
AUG 4 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES AND REGULATIONS OF THE)
DEPARTMENT OF LABOR AND INDUSTRY)
GOVERNING OCCUPATIONAL SAFETY AND HEALTH)

AFFIDAVIT OF MAILING

Patricia Lorentz , being first duly sworn, deposes and says: That on 19th day of July, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, Post Office , she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached certificate of the Secretary of State.

Patricia Lorentz

Subscribed and sworn to before me
this 20th day of July 1977.

Joy G Bergh

JOY G. BERGH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires May ,18 1983

S & I #5

RECEIVED
AUG 4 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES AND REGULATIONS OF THE)
DEPARTMENT OF LABOR AND INDUSTRY) STATEMENT OF NEED
GOVERNING OCCUPATIONAL SAFETY AND HEALTH)

The above captioned rules contain amendments to existing rules (three chapters) and adoption of new rules (two chapters) of the Department of Labor and Industry. Chapters 21, 22 and 23 of the above captioned rules were originally adopted on February 20, 1974. Chapters 24 and 25 of the above captioned rules are now proposed for adoption.

The need to amend Chapters 21, 22 and 23 of these rules arises because of errors and omissions in the original adoption and to update the Minnesota Occupational Safety and Health Standards with new legislation. The need to adopt Chapters 24 and 25 of the above captioned rules arises because of legislative mandate. Attached to this notice are individual, chapter by chapter, statements of need supporting each and every rule to be amended or adopted.

E. I. Malone

E. I. "Bud" Malone, Commissioner
Minnesota Department of Labor
and Industry

Date: 8-3-77

L & I #6

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

RECEIVED
AUG 4 1977
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES AND REGULATIONS OF THE)
DEPARTMENT OF LABOR AND INDUSTRY)
GOVERNING OCCUPATIONAL SAFETY AND HEALTH)

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 and in support thereof, the Department of Labor and Industry will introduce the following evidence:

A discussion on Minnesota Statutes relating to Occupational Safety and Health (OSH) Regulations and Federal OSHA Programs relating to State OSH Programs. In addition, we intend to present statistical information regarding the effects of toxic materials and harmful physical agents on employed persons.

We may call one or more of the following expert witnesses to testify:

1. Russell B. Swanson, Deputy Commissioner.
   He will explain the Minnesota OSH Program and its relationship to the Federal OSHA Program.

2. James Miley, Chairman, Governor's Occupational Safety & Health Advisory Council (GOSHAC). He will present the GOSHAC point of view regarding the need for these regulations.

3. Ivan Russell, Director, OSH Division.
   He will present the "Statement of Need" and explain the technical need for these regulations.

4. George J. Raschka, Industrial Hygienist, Minnesota Health Department.
   He will provide the technical support for the need to monitor toxic and harmful physical agents in places of employment.

We intend to introduce the following manuals, books, scientific treatises and other documentary evidence:

1. Minnesota Statutes Chapter 182
2. Minnesota Occupational Safety and Health Codes
3. 29 CFR Part 1903 Inspections, Citations and Proposed Penalties
4. 29 CFR Part 1904 Recording and Reporting Occupational Injuries and Illnesses
5. 29 CFR Part 1905 Rules of Practice for Variances, Limitations, Variations, Tolerances and Exemptions under the William-Steiger Occupational Safety and Health Act of 1970
6. Amendment to Part 1903 Inspections, Citations and Proposed Penalties as published in the Federal Register on Tuesday, February 11, 1975, page 6334 regarding Petitions for Modification of Abatement Dates
7. Workplace hazard monitoring proceeding of a topical symposium on December 8 and 9, 1975 in Cincinnati, Ohio sponsored by the American Conference of Governmental Industrial Hygienists
8. NIOSH Criteria Document 75-126 an Identification System for Occupational Hazardous Materials.
9. Toxic Substances, Ketones (Proposed Exposure Standards) as published in Volume 40, Number 90 of the Federal Register on Thursday, May 8, 1975
10. NIOSH Criteria Document 73-1101 Occupational Exposure to Noise

We will be citing the following statutes and case law:

1. Minn. Stat. Chapter 182
2. Public Law 91-596 - Occupational Safety and Health Act of 1970.

Date: 8-3-77

E. I. Malone

E. I. "Bud" Malone, Commissioner
Minnesota Department of Labor
and Industry

CHAPTER TWENTY-ONE

INSPECTION, CITATIONS AND PROPOSED PENALTIES

TABLE OF CONTENTS

RECEIVED
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OFFICE OF HEARING EXAMINERS

MOSHC

270 Purpose and Scope
271 Posting of Notice; Availability of the Act, Regulations and Applicable Standards
272 Objection to Inspection
273 Entry not a Waiver
274 Conduct of Inspections
275 Representatives of Employers and Employees
276 Trade Secrets
277 Consultation with Employers and Employees
278 [Complaints by Employees]
279 Inspection not Warranted; Informal Review
280 Citations; Notices of De Minimis Violations
281 Petitions for Modification of Abatement Date
282 Posting of Citations
283 Informal Conferences

LEGEND

1. New rules and material to be added to an existing rule are underlined.

2. Material proposed to be deleted from an existing rule is printed in [single brackets].

CHAPTER TWENTY-ONE: MOSHC 270-289

INSPECTION, CITATIONS AND PROPOSED PENALTIES

MOSHC 270 Purpose and Scope

The Minnesota Occupational Safety and Health Act of 1973 requires in part that every employer covered under the Act furnish to his 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 his 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 [Section 10] Minn. Stat. 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 [Commission] Board if contested by an employer or by an employee or authorized representative of employees and for judicial review. The purpose of this [Part B] Chapter is to prescribe rules and set forth general policies for enforcement of the inspection, citation and proposed penalty provisions of the Act.

MOSHC 271 Posting of Notice; Availability of the Act, Regulations and Applicable Standards.

Paragraph (a) No Change.

[(b) "Place of Employment" means any factory, plant, foundry, construction site, farm workplace, premises, vehicle or any other work environment where any employee is during the course of his employment.]

Existing paragraph (c) has been redesignated as paragraph (b).

[(d)] (c) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of [Section 17] Minn. Stat. Section 182.666. [of the Act.]

MOSHC 272 Objection to Inspection
No change

MOSHC 273 Entry Not a Waiver
No change

MOSHC 274 Conduct of Inspections
Paragraphs (a) through (e) remain the same.

(f) Inspections shall be conducted in accordance with the requirements of this [Part] Chapter.

MOSHC 275 Representatives of Employers and Employees
Paragraphs (a) through (c) remain the same.

(d) OSHI are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of [S 19] Minn. Stat. Section 182.668. [of the Act]

MOSHC 276 Trade Secrets

(a) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might 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 Minn. Stat. Section 182.668.

(b) 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.

MOSHC 277 Consultation with Employers and Employees

(a) OSHI may consult with employees concerning matters of occupational safety and health to the extent he 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 he has reason to believe exists in the workplace to the attention of the OSHI.

(b) A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the OSHI during the physical inspection of any workplace under Minn. Stat. Section 182.659 for the purpose of aiding such inspection.

(c) 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 eithers request.

(d) 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.

(e) No employee as a consequence of aiding such inspection, under this section, shall lose any privilege or payment that he would otherwise earn, such loss being a discriminatory act subject to sanctions.

[(MOSHC 278 Employer and Employee Contests Before the Review Commission)]

[(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under Section 12 of the Act, notify the Commissioner in writing that he intends to contest such citation or proposed penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both.]

[(b) Any employee or representative of employees of an employer to whom a citation has been issued may, under Section 12 of the Act, file a written notice with the Commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed.]

MOSHC 278 Complaints by Employees

(a) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged

violation to the Commissioner or an OSHI. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Commissioner or OSHI no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released or made available by the Department of Labor and Industry.

(b) If upon receipt of such notification the Commissioner determines that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspection under this section shall not be limited to matters referred to in the complaint.

(c) During any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the OSHI of any violation of the Act which they have reason to believe exists in such workplace.

MOSHC 278 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 MOSHC 278, he 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 his 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 his decision and the reasons therefor.

MOSHC [276] 279 Citations; Notices of De Minimis Violations

(a) 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 [Section 4] Minn. Stat. Section 182.653, Subd. 2, 3 or 4, or any standard, rule or regulation promulgated pursuant to the Act he 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 section after the expiration of six months following the occurrence of any alleged violation.

Paragraph (b) No change.

(c) 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 [Commission] Board.

MOSHC 280 Petitions for Modification of Abatement Date

(a) An employer may file a petition for modification of abatement date when he 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 his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) 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.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(5) 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 subsection (c)(1) of this section and a certification of the date upon which such posting and service was made.

(c) 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.

(1) 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 occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(2) Affected employees or their representatives may file an objection in writing to such petition with the Commissioner. Failure to file such objection within ten (10) 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.

(3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders.

(4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) days from the date the petition was posted or served pursuant to paragraphs (c)(1) and (2) of this section by the employer.

(d) Where any petition is objected to by the Commissioner or affected employees, such petition shall be processed as follows:

(1) The petition, citation and any objections shall be forwarded to the Board within three (3) days after the expiration of the fifteen (15) day period set out in paragraph (c)(4).

(2) 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.

(3) 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.

(4) Within ten (10) 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.

MOSHC [277] 281 Posting of Citations

(a) 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 [is] are not altered, defaced, or covered

by other material. Notices of de minimis violations need not be posted.

(b) Each citation and proposed penalty, or a copy thereof, shall remain posted until the violation has been abated, or for [3 working] 15 days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect his posting responsibility under this section unless and until the Review (Commission) Board issues a final order vacating the citation and proposed penalty.

(c) 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 [Commission] 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.

(d) Any employer failing to comply with the provisions of paragraphs (a) and (b) of this section shall be subject to citation and penalty in accordance with the provisions of [Section 17] Minn. Stat. Section 182.666. (of the Act).

MOSHC [279] 282 Informal Conferences

No change.

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CHAPTER TWENTY-TWO

RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

MOSHC

290	Purpose and Scope
291	Definitions
292	Log of Occupational Injuries and Illnesses
293	Period Covered
294	Supplementary Record
295	Annual Summary
296	Retention of Records
297	Access to Records
298	Reporting of Fatality or Multiple Hospitalization Accidents
299	Falsification, or Failure to Keep Records or Reports
300	Change of Ownership
301	Petitions for Recordkeeping Exceptions (Public Employers)
302	Petitions for Recordkeeping Exceptions (Private Employers)
303	Employees not in Fixed Establishments
304	Small Employers
305	Statistical Program
306	Duties of Employers

LEGEND

1. New rules and material to be added to an existing rule are underlined.
2. Material proposed to be deleted from an existing rule is printed in [single brackets].

CHAPTER TWENTY-TWO: MOSHC 290-309

RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

MOSHC 290 Purpose and Scope

The regulations in this [part] chapter implement [Section 14] Minn. Stat. Section 182.663 of the Minnesota Occupational Safety and Health Act of 1973. These sections provide for recordkeeping 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.

MOSHC [300] 291 Definitions

Paragraph (a) remains the same.

(b) The definitions and interpretations contained in [Section 2] Minn. Stat. Section 182.651 [of the Act] shall be applicable to such terms when used in this Chapter 22.

Paragraphs (c) through (g) remain the same.

MOSHC [291] 292 Log of Occupational Injuries and Illnesses.

No Change.

MOSHC [292] 293 Period Covered

No Change.

MOSHC [293] 294 Supplementary Record

In addition to the log of occupational injuries and illnesses provided for under MOSHC [291] 292, each employer shall have available for inspection at each establishment within 6 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. [Workmen's] 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.

MOSHC [294] 295 Annual Summary

Paragraphs (a) through (c) remain the same.

(d)(1) 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 MOSHC 271(a) of [this] Chapter 21. 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 multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

(2) 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 Minn. Stat. Section 182.666, Subd. 5.

MOSHC [295] 296 Retention of Records

Records provided for in MOSHC [291] 292, MOSHC [293] 294, and MOSHC [294] 295, shall be retained in each establishment for 5 years following the end of the year to which they relate.

MOSHC [296] 297 Access to Records

Records provided for in MOSHC [291] 292, MOSHC [293] 294, and MOSHC [294] 295 shall be available for inspection and copying by authorized representatives of the Department of Labor and Industry and the Department of Health

MOSHC [297] 298 Reporting of Fatality or Multiple Hospitalization Accidents

No change.

MOSHC [298] 299 Falsification, or Failure to Keep Records or Reports

(a) [Section 18] Minn. Stat. Section 182.667 [of the Act] 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 6 months or both."

(b) 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 [Section 18] Minn. Stat. Section 182.667 [of the Act.]

MOSHC [299] 300 Change of Ownership

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he 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 [part] Chapter. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under MOSHC [295] 296.

MOSHC 301 Petitions for Recordkeeping Exceptions - Public Employment Sector

(a) Submission of Petition. Any public employer who wishes to maintain records in a manner different from that required by this [part] Chapter may submit a petition containing the information specified in paragraph (c) of this section to the Commissioner of Labor and Industry.

Paragraphs (b) through (i) remain the same.

MOSHC 302 Petitions for Recordkeeping Exceptions - Private Employment Sector

(a) Submission of Petition. Private employment sector employers who wish to maintain records in a manner different from that required by this chapter 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.

MOSHC [302] 303 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 MOSHC [291] 292, MOSHC [293] 294, and MOSHC [295] 296 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.

MOSHC [303] 304 Small Employers

(a) An employer who had no more than [seven (7)] ten (10) 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 [part] Chapter except MOSHC [297] 298 concerning fatalities or multiple hospitalization accidents (i.e., he need not prepare the log, OSHA 100; the Supplementary record, OSHA 101, nor prepare or post the summary, OSHA 102).

(b) Paragraph (a) of this section shall not apply when an employer has been notified in writing by the Bureau of Labor Statistics that he 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 100) in accordance with MOSHC [291] 292 and to make reports in accordance with MOSHC [305] 306 for the period of time which is specified in the notice.

MOSHC [304] 305 [Description of] Statistical Program

Paragraph remains the same.

MOSHC [305] 306 Duties of Employers

Paragraph remains the same.

MOSHC 307-309 Reserved for Future Use

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NOV 16 1977
OFFICE OF HEARING
EXAMINERS

CHAPTER TWENTY-THREE

VARIANCES

TABLE OF CONTENTS

MOSHC

310	Purpose and Scope
311	Effect of Variances
312	Temporary Variances
313	Permanent Variances
314	Modification, Revocation, and Renewal of Rules or Orders
315	Order Denying Variation
316	Contest Variance Denial Before Review Board
317	Multi-State Variances

LEGEND

1. New rules and material to be added to an existing rule are underlined.

2. Material proposed to be deleted from an existing rule is printed in [single brackets].

CHAPTER TWENTY-THREE: MOSHC 310-319

VARIANCES

MOSHC 310 Purpose and Scope

This chapter contains rules of practice for administrative proceedings to grant variances and other reliefs under Minn. Stat. Section 182.655.

MOSHC [310] 311 Effect of Variances

All variances granted pursuant to this part shall have only future effect. In his 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 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 [Commission] Board until the completion of such proceeding.

[MOSHC 311 Public Notice of a Granted Variance, Limitation, Variation, Tolerance, or Exemption.]

[Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be made public. Every such final action shall specify the alternative to the standard involved which the particular variance permits.]

MOSHC 312 Temporary Variances [Variances Under § 6, Subdivisions 5, 6 and 7]

(a) Application for Variance

Any employer, or class of employers, desiring a temporary variance from a standard or provision thereof, authorized by [Section 6] Minn. Stat. Section 182.655, Subdivisions 5, 6 and 7 [of the Act] may file a written application containing the information specified in paragraph (b) of this section with the Commissioner.

(b) Contents

An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the employer;

(2) The address of the place or places of employment involved;

Existing paragraphs (b), (1) through (6) are redesignated as new paragraphs (b)(3) through (8). No other changes are made.

(c) Hearing

(1) The Commissioner may at his discretion provide for a hearing on the variance.

(2) Affected employees shall be given notice of any such hearing and allowed to participate.

[c] (d) Interim Order

Existing paragraph (c), Interim Order, has been redesignated as new paragraph (d). No other changes are made.

(e) Variance Order

(1) The Commissioner shall, by rule or order, grant a temporary variance from a promulgated standard when he 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.

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

MOSHC 313 Permanent Variances [Variances under § 6 Subdivisions 8 & 9]

(a) Application for Variance. Any employer, or class of employers, desiring a permanent variance authorized by [Section 6] Minn. Stat. Section 182.655, Subdivision 8 or 9 [of the Act] may file a written application containing the information specified in paragraph (b) of this section, with the Commissioner of Labor and Industry.

(b) Contents.

An application filed pursuant to paragraph (c) of this section shall include:

(1) The name and address of the employer;

(2) The address of the place or places of employment involved;

Existing paragraphs (b) 1, 2 and 3 are redesignated as paragraphs (b) 3, 4 and 5.

(6) A description of how affected employees have been informed of their right to petition the Commissioner for a hearing.

Paragraph (c), Hearing, remains the same as the existing paragraph.

(d) Interim Order

(1) 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.

(2) Notice of denial of application. If an application filed pursuant to subparagraph (1) of this paragraph 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.

(3) 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 employer shall give notice thereof to affected employees by the same means to be used to inform.

[d] (e) Variance Order

No other changes made.

MOSHC 314 Modification, Revocation and Renewal of Rules or Orders

No change.

MOSHC 315 Order Denying Variance

(a) In the event the Commissioner denies an application for variance, he shall prepare an order setting forth:

(1) The name and address of the person or organization requesting the variance;

(2) The rule or regulation, or particular provisions thereof, from which the application requested a variance;

(3) The extent and duration of the variance requested; and

(4) A concise statement of the reasons for denial of the application for variance.

MOSHC 316 Contest of Variance Denial Before Review Board

(a) Any employer who has been denied a variance may under Minn. Stat. Section 182.664, Subd. 2, notify the Commissioner in writing that he 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 7 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.

(b) Any affected employee shall be given notice of such application and an opportunity to participate in such a hearing as required under Minn. Stat. 182.654, Subd. 5.

MOSHC 317 Multi-State Variances

(a) Where a Federal variance has been granted with multi-state 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 MOSHC 312 or MOSHC 313 of this chapter, 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.

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NOV 16 1977
OFFICE OF HEARING
EXAMINERS

CHAPTER TWENTY-THREE

VARIANCES

TABLE OF CONTENTS

MOSHC

310	Purpose and Scope
311	Effect of Variances
312	Temporary Variances
313	Permanent Variances
314	Modification, Revocation, and Renewal of Rules or Orders
315	Order Denying Variation
316	Contest Variance Denial Before Review Board
317	Multi-State Variances

LEGEND

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CHAPTER TWENTY-THREE: MOSHC 310-319

VARIANCES

MOSHC 310 Purpose and Scope

This chapter contains rules of practice for administrative proceedings to grant variances and other reliefs under Minn. Stat. Section 182.655.

MOSHC [310] 311 Effect of Variances

All variances granted pursuant to this part shall have only future effect. In his 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 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 [Commission] Board until the completion of such proceeding.

[MOSHC 311 Public Notice of a Granted Variance, Limitation, Variation, Tolerance, or Exemption.]

[Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be made public. Every such final action shall specify the alternative to the standard involved which the particular variance permits.]

MOSHC 312 Temporary Variances [Variances Under § 6, Subdivisions 5, 6 and 7]

(a) Application for Variance

Any employer, or class of employers, desiring a temporary variance from a standard or provision thereof, authorized by [Section 6] Minn. Stat. Section 182.655, Subdivisions 5, 6 and 7 [of the Act] may file a written application containing the information specified in paragraph (b) of this section with the Commissioner.

(b) Contents

An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the employer;

(2) The address of the place or places of employment involved;

Existing paragraphs (b), (1) through (6) are redesignated as new paragraphs (b)(3) through (8). No other changes are made.

(c) Hearing

(1) The Commissioner may at his discretion provide for a hearing on the variance.

(2) Affected employees shall be given notice of any such hearing and allowed to participate.

[c] (d) Interim Order

Existing paragraph (c), Interim Order, has been redesignated as new paragraph (d). No other changes are made.

(e) Variance Order

(1) The Commissioner shall, by rule or order, grant a temporary variance from a promulgated standard when he 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.

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

MOSHC 313 Permanent Variances [Variances under § 6 Subdivisions 8 & 9]

(a) Application for Variance. Any employer, or class of employers, desiring a permanent variance authorized by [Section 6] Minn. Stat. Section 182.655, Subdivision 8 or 9 [of the Act] may file a written application containing the information specified in paragraph (b) of this section, with the Commissioner of Labor and Industry.

(b) Contents.

An application filed pursuant to paragraph (c) of this section shall include:

(1) The name and address of the employer;

(2) The address of the place or places of employment involved;

Existing paragraphs (b) 1, 2 and 3 are redesignated as paragraphs (b) 3, 4 and 5.

(6) A description of how affected employees have been informed of their right to petition the Commissioner for a hearing.

Paragraph (c), Hearing, remains the same as the existing paragraph.

(d) Interim Order

(1) 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.

(2) Notice of denial of application. If an application filed pursuant to subparagraph (1) of this paragraph 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.

(3) 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 employer shall give notice thereof to affected employees by the same means to be used to inform.

[d] (e) Variance Order

No other changes made.

MOSHC 314 Modification, Revocation and Renewal of Rules or Orders

No change.

MOSHC 315 Order Denying Variance

(a) In the event the Commissioner denies an application for variance, he shall prepare an order setting forth:

(1) The name and address of the person or organization requesting the variance;

(2) The rule or regulation, or particular provisions thereof, from which the application requested a variance;

(3) The extent and duration of the variance requested; and

(4) A concise statement of the reasons for denial of the application for variance.

MOSHC 316 Contest of Variance Denial Before Review Board

(a) Any employer who has been denied a variance may under Minn. Stat. Section 182.664, Subd. 2, notify the Commissioner in writing that he 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 7 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.

(b) Any affected employee shall be given notice of such application and an opportunity to participate in such a hearing as required under Minn. Stat. 182.654, Subd. 5.

MOSHC 317 Multi-State Variances

(a) Where a Federal variance has been granted with multi-state 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 MOSHC 312 or MOSHC 313 of this chapter, 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.

APPROVED AS TO FORM AND LEGALITY

MAR 24 1978 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 24 1978

Joan Anderson Growe
Secretary of State

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NOV 16 1977
OFFICE OF HEARING
EXAMINERS

CHAPTER TWENTY-FOUR:

STANDARDS PROMULGATION

MOSHC

320	Purpose and Scope
321	Definitions
322	Petition for the Promulgation, Modification or Revocation of a Standard
323	Initiation
324	Objections
325	Emergency Standards
326	Conduct of Hearing
327	Powers of Presiding Officer
328	Certification of the Record of a Hearing
329	Decision

LEGEND

1. New rules and material to be added to an existing rule are underlined.
2. Material proposed to be deleted from an existing rule is printed in [single brackets].

CHAPTER TWENTY-FOUR: MOSHC 320-329

STANDARDS PROMULGATION

MOSHC 320 Purpose and Scope

This Chapter sets forth procedures for promulgating, modifying or revoking occupational safety and health standards under Minn. Stat. Section 182.655. The purpose of this chapter is to provide a procedure for standards promulgation.

MOSHC 321 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 Minn. Stat. Section 182.655 establishing, modifying or revoking an occupational safety and health standard.

MOSHC 322 Petition for the 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.

MOSHC 323 Initiation

(a) The Commissioner shall initiate promulgation of a standard in the following manner:

(1) The Commissioner may request the recommendations of the Governor's Occupational Safety and Health Advisory Council appointed under Minn. Stat. Section 182.656. In such event, the Commissioner shall submit

to the Council any proposal of his own or of the State Board of Health, together with all pertinent factual information available to him, 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

(2) The Commissioner may publish in the State Register a notice of proposed rule making. The notice shall include:

(aa) The terms of the proposed rule;

(bb) A reference to the Act and to the appropriate section of any particular statute applicable to the employments affected by the rule.

(cc) 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;

(dd) Notification to interested persons that they may request a public hearing on their objections within 30 days after publication of the notice;

(ee) Any other appropriate provisions with regard to the proceeding.

(b) Initiation of standards promulgation under (a)(2) above 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.

MOSHC 324 Objections

(a) Objections submitted pursuant to MOSHC 323(a)(2)(cc)) shall comply with the following conditions:

(1) The objections must include the name and address of the objector;

(2) The objections must be postmarked on or before the 30th day after the date of publication of the notice of proposed rulemaking;

(3) The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

(4) Each objection must be separately stated and numbered;

~~(5) The objections must be accompanied by a summary of the evidence proposed to be adduced.~~

(b) Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with paragraph (a) above 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:

(1) A statement of the time, place and nature of the hearing;

(2) A reference to the authority under which the hearing is to be held;

(3) A specification of the provisions of the proposed rule which have been objected to, and on which a hearing has been requested;

(4) 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;

(5) 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;

(6) The designation of a presiding officer to conduct the hearing; and

(7) Any other appropriate provisions with regard to the proceeding.

(c) 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.

MOSHC 325 Emergency Temporary Standards

Whenever an emergency temporary standard is published pursuant to Minn. Stat. Section 182.655, Subd. 11, the Commissioner must commence a standards promulgation proceeding under Minn. Stat. Section 182.655, Subd. 2, and MOSHC 323(a)(2). The standard as published shall serve as a proposed rule. Any notice of proposed rulemaking shall also give notice of any appropriate subsidiary proposals.

MOSHC 326 Conduct of Hearing

(a) 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 rule making process.

(b) The presiding officer shall be a hearing examiner from the Office of Hearing Examiners.

(c) 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.

MOSHC 327 Powers of Presiding Officer

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

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections, and comparable matters;

(3) 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;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In his discretion, to permit cross-examination of any witness;

(6) 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

(7) In his 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.

MOSHC 328 Certification of the Record of a Hearing

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 comments, recommendations, and supporting reasons shall be certified by the presiding officer to the Commissioner.

MOSHC 329 Decision

(a) Determination on Rule

(1) 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 this chapter.

(2) 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.

(b) Any rule or standard adopted under paragraph (a) of this section 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.

(c) 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.

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STATEMENT OF NEED

CHAPTER 21: Inspection, Citations and Proposed Penalties

This chapter, originally promulgated on February 20, 1974, provides statements of policies, procedures and methods of implementing the provisions and requirements of Minn. Stat. Sections 182.659, 182.66 and 182.661 so that the Commissioner or his designated representative may enter without delay, inspect, write citations and propose penalties to assure safe and healthful working conditions for employees in Minnesota. It is necessary to amend these regulations for the following reasons:

MOSHC 270 Purpose and Scope

1. It is necessary to change the words "Section 10" to "Minn. Stat. Section 182.659" because these regulations were originally promulgated using legislative session law designations which have now been assigned Minnesota Law designations.
2. It is necessary to change the word "commission" to "board" because a legislative amendment changed "commission" designations to "boards." (Minn. Stat. Chapter 15.0575)
3. "Part B" must be changed to "Chapter" because "Part B" refers to federal regulations and "chapter" refers to Minnesota regulations.

MOSHC 271 Posting of Notice; Availability of the Act, Regulations and Applicable Standards

1. Paragraph (b) "Place of Employment" must be deleted from these regulations. This definition serves little purpose since "Place of Employment" is defined in Minn. Stat. Section 182.651 Subd. 10.

2. In paragraph (c), it is necessary to correct the legislative session law designation "Section 17" to statute designation "Minn. Stat. Section 182.666 and the addition of phrase "of this section" for smoother sentence structure.

MOSHC 272 Objection to Inspection. No change.

MOSHC 273 Entry not a Waiver. No change.

MOSHC 274 Conduct of Inspections

1. It is necessary to correct a word in paragraph (f) from a federal designation "Part" to a Minnesota regulation designation, "chapter."

MOSHC 275 Representative of Employers and Employees

1. In paragraph (d), the words "§ 19 of the Act" must be changed to "Minn. Stat. Section 182.668" because these regulations were originally promulgated using legislative session law designations which now have been assigned Minnesota Law designations.

MOSHC 276 Trade Secrets

At places of employment in Minnesota, there may be areas where the employer feels he has trade secrets which, if released to the general public, could harm his business. However, there may be unsafe or unhealthful working conditions in those areas and, therefore, a need for inspection by the Commissioner. This situation was recognized by the Legislature when they promulgated Section 182.668 which required the Commissioner to make provisions for this situation. It is necessary to provide the employer with assured protection of any information gathered at the time of the inspection. Therefore, this regulation, while allowing the Commissioner to make the inspection, requires that all information gathered must be labeled "Confidential Trade Secret" and cannot be disclosed to the public.

The importance of employee participation in the walk-around inspection in a place where there may be trade secrets is no less than in any other area. On the other hand, the employer may have need to restrict the employees who are allowed to enter a particular area where trade secrets are in existence. Therefore, it is necessary that this regulation allow the employer the right to approve the employee representative who is allowed to participate in the investigation.

MOSHC 277 Consultation with Employer and Employees

The employer representative and employee representative are most familiar with working conditions in places of employment in Minnesota. Minn. Stat. Section 182.659 made provisions for soliciting their participation in the OSHA inspection. This regulation is needed to assure that the employer and employee are allowed to participate without any discrimination against the employee on the part of the employer. In fact, the employee is encouraged to participate in the OSHA inspection by assuring that he will not be deprived of any pay or other benefits.

The regulation is needed to assure that the safety investigator consults with an adequate number of employees in a non-union shop or that an authorized employee representative is required for participation in the investigation in places of employment that are unionized.

Existing MOSHC 278 Employer and Employee Contests Before the Review Commission

It is necessary to delete this entire regulation because the procedures for employer and employee contests before the Review Board are outlined within Minn. Stat. Section 182.664 and Minn. Stat. Chapter 15. To outline these procedures in regulation form is redundant.

MOSHC 278 Complaints by Employees

The Minnesota Occupational Safety and Health Law requires that employees be furnished with safe and healthful working conditions. The legislature anticipated that there may be cases where the employer would not, of his own volition, provide these conditions. Therefore, it was mandated in Minn. Stat. Section 182.654, Subdivisions 8 and 9, that the employees could file a complaint with the Department of Labor and Industry and request an inspection. This regulation makes provision for that complaint and describes actions that must be taken by the Commissioner.

It is also possible that employers may be displeased with employees who exercise their complaining rights. Therefore, it is necessary to prohibit descrimination against the employee. This prohibition is accomplished by requiring the Commissioner to maintain the anonymity of the complaining employee. These provisions are included in this regulation.

Similarly, it is necessary that provisions be made to allow employees to file complaints with the investigator at the time of the investigation. These provisions are also provided in this regulation. The need for such provisions is similar to those described above since the employee is most closely related to the day-to-day activities in the worksite.

MOSHC 279 Inspection not Warranted; Informal Review

The provisions for this paragraph are mandated in Minn. Stat. Section 182.659, Subd. 4. In responding to an employee complaint, should the Commissioner determine that an inspection is not warranted, this paragraph describes a procedure for the complaining employee to submit, in writing, a request for an informal review with the Commissioner. Once an informal review is arranged, the complaining party may present his views and obtain a full disclosure of why the Commissioner determined that an inspection was not warranted.

MOSHC 280 Citations; Notices of De Minimis Violations

1. It is necessary to change "Section 4" which is a legislative session law reference to Minnesota Law Reference, "Minn. Stat. Section 182.653" in paragraph (a).

2. Minn. Stat. Section 182.661, Subd. 1, was changed in 1975 to require that the citation and proposed assessment of penalty must be furnished to the authorized representative of affected employees. The change also required that the next of kin receive copies of the citation and penalty assessment in the case of the death of an employee. That change is added in paragraph (a).

3. In paragraph (c), the word "Commission" must be changed to "Board" because of a legislative amendment requiring this type of change.

MOSHC 281 Petitions for the Modification of Abatement Date

Many times an employer will find that he is not able to abate citations within the "agreed to" abatement period. This may be caused by circumstances beyond the employer's control such as availability of material, delays in shipping, etc. Therefore, provisions are made for allowing a modification in abatement date.

This regulation outlines all the information that is needed to allow the Commissioner to make a decision and further makes provision for assuring that the employee representative has been notified of the request for modification. This notification to the employee representative is necessary to allow him the right to contest the change. The regulation provides time limits for the Commissioner's response to the petition to assure expeditious handling of the petition.

The regulation must provide a course of action for the employer if the Commissioner denies the petition. In this regulation, the petition is forwarded to the Occupational Safety and Health Review Board if the Commissioner does not approve the petition. The Review Board action must be taken expeditiously since the petition for modification of abatement date will typically not be submitted until the abatement date is past.

MOSHC 282 Posting of Citations

1. It is necessary to incorporate a 1975 legislative amendment to the Minnesota OSH Law that requires the proposed penalty be posted, unedited, at the location where employees report each day. The same legislative amendment requires that the citation and proposed penalty remain posted for "15 days."

2. This same paragraph is corrected by changing the reference from a "Section 17" legislative session law, to a Minnesota Law Reference, Minn. Stat. Section 182.666.

MOSHC 283 Informal Conferences. No change.

STATEMENT OF NEED

CHAPTER 22: Recording and Reporting Occupational Injuries and Illnesses

This chapter, originally promulgated on February 20, 1974, provides policies, procedures and methods of implementing the provisions mandated in Minn. Stat. Section 182.663; that the Commissioner develop and maintain an effective program to collect, compile and analyze occupational safety and health statistics. The requirements of this chapter cover all places of employment both private and public. The changes are mostly minor changes to correct errors or omissions that have existed since the first promulgation.

MOSHC 290 Purpose and Scope

It is necessary to change the word "Part" to Chapter" because "Part" refers to federal regulations and "Chapter" refers to Minnesota regulations. It is also necessary to change the words "Section 14" to "Minn. Stat. Section 182.663" because these regulations were originally promulgated using legislative session law designations which have now been assigned Minnesota Law designations.

MOSHC 291 Definitions

1. It is necessary to redesignate existing MOSHC 300 to MOSHC 291 for recodification reasons.
2. The wording "Section 2" must be changed to "Minn. Stat. Section 182.651," because these regulations were originally promulgated using legislative session law designations which have now been assigned Minnesota Law designations.

MOSHC 292 Log of Occupational Injuries and Illnesses

This regulation recodifies existing MOSHC 291 to MOSHC 292 to maintain numerical order of regulations.

MOSHC 293 Period Covered

This regulation recodifies existing MOSHC 292 to MOSHC 293.

MOSHC 294 Supplementary Record

This regulation recodifies existing MOSHC 293 to MOSHC 294 and recodifies within text existing MOSHC 291 to MOSHC 292. It is also necessary to change the word "workmen's" to "worker's" because of a legislative name change to Worker's Compensation.

MOSHC 295 Annual Summary

1. Paragraph (d)(1) must be corrected by removing the word "this" and inserting "21" after the word "Chapter" because the reference, MOSHC 271(a), refers to Chapter 21, "Inspection, Citations and Proposed Penalties."

2. Paragraph (d)(2) must be adopted because this "failure to post" regulation is a necessary notice to employers to be informed of the penalty provisions.

MOSHC 296 Retention of Records

It is necessary to change the text references to their proper designations such as existing MOSHC 291 to MOSHC 292 and MOSHC 293 to MOSHC 294.

MOSHC 297 Access to Records

This regulation changes the text references to their proper designations such as existing MOSHC 291 to MOSHC 292, MOSHC 293 to MOSHC 294 and MOSHC 294 to MOSHC 295.

MOSHC 299 Falsification or Failure to Keep Records or Reports

This regulation corrects paragraphs (a) and (b) respectively with changes from a legislative session law reference to present Minnesota Statute reference.

MOSHC 300 Change of Ownership

The word "Part" must be changed to "Chapter" because the word "Part" erroneously refers to a federal regulation and "Chapter" refers to Minnesota regulations and the text reference of existing MOSHC 295 must be changed to MOSHC 296.

MOSHC 301 Petitions for Recordkeeping Exceptions-Public Employment Sector

1. It is necessary to add the words, "Public Employment Sector" to the title of this regulation since these are the only employers who can petition for a recordkeeping exception from the Commissioner of the Department of Labor and Industry. (See MOSHC 302 for private employers.)

2. The word "part" must be changed to "chapter" to correct a designation from a federal regulation to a Minnesota regulation reference.

MOSHC 302 Petitions for Recordkeeping Exceptions-Private Employment Sector

This regulation allows employers in the private employment sector to seek a variance in order to maintain records in a manner that is different than those required by this chapter. According to Federal Regulation 29 CFR 1952.4 "Recordkeeping and Reporting Requirements," and in order to preserve the uniformity of statistics, it is necessary for private employers, in states under an approved state plan, to seek variances or exceptions from the Bureau of Labor Statistics of the U. S. Department of Labor. A state may not grant a variance to recordkeeping and reporting requirements under their own procedures except within the public employment sector.

MOSHC 303 Employees Not in Fixed Establishments

It is necessary to recodify the numerical designations of MOSHC 291 to MOSHC 292, MOSHC 293 to MOSHC 294 and MOSHC 295 to MOSHC 296.

MOSHC 304 Small Employers

1. This regulation changes the recordkeeping and reporting requirements from employers of "seven (7)" to no more than "ten (10)." This change is necessary because Public Law 94-206, dated January 28, 1976 stated: "None of the funds appropriated in this Act shall be used to require recordkeeping and reporting under the Occupational Safety and Health Act of 1970 from employers of ten or fewer employees and such exclusion shall be governed by the current rules and regulations in CFR, Title 29 Chapter XVII Part 1904.15."

2. Numerical references to MOSHC designations must be corrected.

MOSHC 305 Statistical Program

The words "Description of" are removed from the title of this regulation since they incorrectly describe the content of the code.

STATEMENT OF NEED

CHAPTER 23: Variances

This chapter, originally promulgated on February 20, 1974, implements the provisions and requirements of Minn. Stat. Section 182.655 Subd. 5, 6, 7, 8 and 9. There are instances when an employer's practices are different than those required by a standard, but the employer can provide protection for his employees that is equal to or better than the protection furnished if the standard is strictly followed. To meet these circumstances, the provisions of this chapter allow the Commissioner to grant a variance from a standard.

MOSHC 310 Purpose and Scope

This paragraph informs employers of their statutory right to apply for either a temporary or a permanent variance from an occupational safety and health standard.

MOSHC 311 Effect of Variances

During the original promulgation of this paragraph, a clerical error was made so that a 13 word phrase was erroneously duplicated. This paragraph corrects this error and recodifies existing MOSHC 310 to MOSHC 311 because of the addition of new MOSHC 310 to this regulation.

Existing MOSHC 311 Public Notice of a Granted Variance, Limitation, Variation, Tolerance or Exemption.

Since all Minnesota public documents are statutorily open to public review, this paragraph serves no useful purpose and should be deleted. Employers and employees are informed of a variance grant at the specific place of employment involved. Others who wish to review the provisions of a variance are free to inspect these documents in the Minnesota Department of Labor and Industry files.

MOSHC 312 Temporary Variances

1. The title of the existing paragraph, "Variances under § 6, Subdivisions 5, 6 and 7" was changed to "Temporary Variances" so employers and employees will more easily recognize the regulations. The existing paragraph title is difficult to understand unless an applicant for a variance is thoroughly familiar with specific subsections of the Act.
2. This paragraph was further amended with the addition of the requirements that employers furnish their name, address and precise location of the place of employment to which the variance shall apply. These provisions must be included in a variance application so a variance grant does not provide general amnesty to other places of employment.
3. Because of the addition of two new sentences in this paragraph, it was necessary to recodify the existing paragraphs (b)(1) through (6) as new paragraphs (b)(3) through (8). No changes were made in the contents of these provisions.
4. Paragraph (c), "Hearing" was added to this regulation to assure that after a variance has been granted or denied, affected employers and employees have an opportunity to present their views and arguments on the application of the variance.
5. Existing paragraph (c), "Interim Order" is recodified because of its new designation as paragraph (d).
6. Paragraph (e), "Variance Order" is adopted to provide a means for the Commissioner to formally notify the employer and employees of a variance grant. The employer must abide by the terms of the variance or he is subject to a citation and cancellation of the variance grant. This notification is necessary so both the employer and the employees can fully understand the variance conditions and can appeal those conditions if they so desire.

MOSHC-313 Permanent Variances

1. The title of the existing paragraph, "Variances under § 6, Subdivisions 8 and 9" was changed to "Permanent Variances" so the paragraph is more easily identified by employers and employees. The existing paragraph title is difficult to identify unless the applicant is thoroughly familiar with specific subsections of the Act.

2. This paragraph was further amended with the addition of the requirements that employers furnish their name, address and the precise location of the place of employment to which the variance shall apply. These provisions must be included in a variance application so a variance grant clearly specifies the application of the variance provisions to a particular place of employment so it cannot be construed as a general amnesty from standards.

3. Paragraph (b)(6) "A description of how affected employees have been informed of their right to petition for a hearing" will assure the Commissioner that the employer has taken positive steps to inform his employees that an application for a variance from a standard has been made that may or may not affect the health or safety of the employees. This provides the employees with an opportunity to request a hearing on the variance if they should object to the variance.

4. Paragraph (d) "Interim Order". When an employer applies for a permanent variance, there may be a delay of two months before the variance application can be processed. This provision allows the Commissioner to grant an interim order to allow the employer to continue his production operation until a decision can be rendered on the variance application.

5. Existing paragraph (d) was changed to (e) and the word "order" was added to the title. The recodification is necessary because of the adoption of paragraph "Interim Order". The addition of the word "order" to the title clarifies the meaning of this paragraph.

MOSHC 314 Modification, Revocation and Renewal of Rules or Orders. No change.

MOSHC 315 Order Denying Variance

There are times when an employer files an application for a variance without fulfilling the basic requirements or showing that the conditions, practices, means, methods or operations will be as safe as the minimum requirements of a particular occupational safety and health standard. In these instances, the Commissioner will deny the variance request. This paragraph requires the Commissioner to notify the employer that his variance application is denied and alerts the employer to make corrections or to appeal the Commissioners decision. This notice also informs the affected employees of the variance denial and of their right to object or to support the variance denial.

MOSHC 316 Contest of Variance Denial before Review Board

When an employer is denied a variance, he has a statutory right to appeal the Commissioners decision to the Occupational Safety and Health Review Board. This paragraph outlines the provisions of this right and sets the necessary time limitations for such appeals. The employees also have a right to participate in any resulting review board hearings and to know when such hearings will be held.

MOSHC 317 Multi-State Variances

The Minnesota Department of Labor and Industry has adopted many federal OSHA standards. At times, federal OSHA grants variances with multi-state coverage from some of these standards that apply to Minnesota employers. This paragraph allows Minnesota to acknowledge and accept the conditions of that federal variance if the Commissioner has no objections of substance. It also simplifies

a multi-state variance granting process by eliminating the need of duplicate filing for the employer and the need to process the same variance by the Department of Labor and Industry.

STATEMENT OF NEED

CHAPTER 24: Standards Promulgation

An effective Occupational Safety and Health enforcement program is contingent upon the quality of the standards being enforced. Therefore, the legislature determined that the Commissioner must have the authority to promulgate standards as needed. The legislature further suggested that the Commissioner consult with and be advised by employers, employees and the Govornor's Occupational Safety and Health Advisory Council. This chapter outlines provisions for the Commissioner to follow to carry out his statutory obligation of promulgating Occupational Safety and Health Standards that will assure a safe place of employment for employees.

MOSHC 320 Purpose and Scope

This paragraph is included to describe the statutory reference and the purpose of the regulation on standards promulgation.

MOSHC 321 Definitions

Definitions are necessary to assure an understanding of the regulation.

MOSHC 322 Petition for the Promulgation, Modification or Revocation of a Standard

This paragraph implements the provisions of Minn. Stat. Sections 182.653 Subd. 5 and 182.654 Subd. 3 and serves as a notice to employers and employees, in regulation form, that they are allowed to participate in the development, revision or revocation of an Occupational Safety and Health Standard. It also furnishes guidelines for the type of submission that is desired by the Commissioner.

MOSHC 323 Initiation

Upon receipt of any petition describing the need for standards revision (as described in MOSHC 322) or as a result of personal knowledge of the need for standards promulgation, the Commissioner is obligated to take some action. Occupational Safety and Health Standards promulgation can be initiated in several ways. The Commissioner may proceed on the advice of the Govornor's Occupational Safety and Health Advisory Council (GOSHAC). This 12-member board, consisting of representatives from: labor, management, safety specialists and the general public was created to advise the Commissioner on standards promulgation. However, if the Commissioner determines that a standard is necessary, he may proceed to promulgate that standard without delay. Therefore, these regulations describe procedures for standard promulgation with or without GOSHAC advice or assistance.

Under any conditions, the standard recommended by the Commissioner must be published in the State Register; the official document for public notification. The contents of the notification must be adequate so the proposed standard can be understood and all interested parties are properly notified of actions they may take to suggest modifications in the standard. The necessary contents of that notification are described in this section of the regulations.

MOSHC 324 Objections

While the provisions of Minn. Stat. Section 182.655 Subd. 2 allow interested persons to file objections to a proposed standard, paragraph (a) describes an orderly procedure for interested persons to submit their objections to a proposed standard in writing. Other interested persons may prefer to present their objections in a public hearing. If this is the case, paragraph (b) requires the Commissioner to arrange for such a hearing so objections can be presented and describes the procedures that must be followed by the Commissioner to schedule the hearing.

MOSHC.325 Emergency Temporary Standards

The Commissioner is empowered, under Minn. Stat. Section 182.655 Subd. 11 to adopt Emergency Temporary Standards (ETS) if he determines that employees are exposed to grave dangers from toxic substances or agents, or to protect against a new hazard. In such instances, the ETS becomes effective immediately upon publication in the State Register. The purpose of ETS is to provide immediate protection. Without the prior proceedings required in the usual manner of standards adoption, employers and employees may find some serious objections to the published ETS. Employers may claim that the ETS is too costly or the technology to implement the standard is not available. Employees may have determined that the ETS is inadequate in providing safety and health protection. For these reasons, once the ETS has become effective, the Commissioner must follow the same course he is obliged to follow when he proposes a new standard in the ordinary course. Employers and employees must be given a chance to express their views, file objections and participate in hearings.

MOSHC 326 Conduct of Hearing

The Commissioner is interested in obtaining all the facts and hearing all points of view during the promulgation of standards. A public hearing provides the type of forum to gather these facts. Interested persons are entitled to; present their case, documentary evidence, submit rebuttal evidence or to cross examine to obtain full disclosure of facts. While this type of proceeding is underway, it is necessary to establish some order or rules of conduct. These rules in MOSHC 326 designate a Hearing Examiner to conduct and maintain order in these standards promulgation hearings.

MOSHC 327 Powers of Presiding Officer

Since the promulgation of occupational safety and health standards is excluded from the provisions of Minn. Stat. Chapter 15, there is a need to establish procedures so the presiding officer from the Hearing Examiners office has the necessary powers to conduct a fair and full hearing in an orderly manner.

MOSHC 328 Certification of the Record of a Hearing

After the hearing, it is necessary that the Commissioner has a full and complete record of that hearing. For this reason, it is necessary at the time when the presiding officer presents the hearing record to the Commissioner, that the presiding officer certify that the hearing record is complete.

MOSHC 329 Decision

The most important step in standards promulgation is the Commissioners decision after the public hearing. He must face the issues regarding the standard and decide what portion, if any, of the proposed standard should be promulgated. Once the Commissioner publishes the standard, it becomes an effective law to control hazards in the workplace. This paragraph also outlines the Commissioner's statutory responsibilities to support his reasons with concise statements so interested persons are fully informed of his action.

STATEMENT OF NEED

CHAPTER 25: MONITORING TOXIC MATERIALS AND HARMFUL PHYSICAL AGENTS

The effects on employees of toxic materials and harmful physical agents are becoming better known every day. Statistical information is being generated that will show higher mortality rates and greater frequency of illness among people exposed to certain industrial conditions. Generally, the effects on health because of exposure to toxic materials or harmful physical agents do not occur soon but are more on the order of ten or more years. The Congress recognized the need for monitoring employee exposure and included the need in Section 20, Subd. 5, of the federal Occupational Safety and Health Act. The Minnesota Legislature also recognized the need and included the mandate for regulations in Minn. Stat. Section 182.663, Subd. 3. This chapter responds to the Minn. Stat. mandate and fulfills the need for regulations requiring the monitoring of toxic material and harmful physical agent exposure.

MOSHC 330 Purpose and Scope

This paragraph describes the coverage and the statutory source for this regulation.

MOSHC 331 Definitions.

Toxic materials and harmful physical agents are defined in this paragraph to describe the extent of coverage included in this regulation.

MOSHC 332 Periodic Inspections

Generally, the effects of toxic materials or harmful physical agents on a person's health are directly proportional to the level of exposure. The level of exposure can be created from long-time

exposure to small amounts or short-time exposure to large amounts of the contaminant. The only way to determine the amount of contaminant is to make accurate surveys under the actual work conditions. This section requires an initial sampling survey to determine the amount of contaminant which will indicate to the employer and the employee the action that is needed to provide safe and healthful working conditions. This section also requires repeated surveys to assure that progress is being mad (or that conditions are not degrading). The maximum interval is specified as 6 months since longer periods would likely allow excessive changes in conditions or work procedures.

MOSHC 333 Rights of Employees to Observe Monitoring or Measuring

The employees must have the right to observe the testing, sampling, monitoring or measuring of the toxic material or harmful physical agent. This is necessary so they can be assured that the employer is taking all measures to comply with the applicable standards of maintaining the concentration at levels that are safe and that the employer is complying with these regulations.

MOSHC 334 Notification of Employee of Exposure

The information obtained by monitoring will help the employer and employee to decide whether additional controls need to be installed or to ascertain if there is a need for respirators to be worn. Employees must have the information to decide if they want to continue to work under these conditions. Therefore, this section requires that monitoring results be furnished to the employees.

MOSHC 335 Recordkeeping

Documentation of the monitoring activity serves several useful purposes:

1. The employer has a record of conditions versus time to show improvements, degradations and legal support for business purposes.

2. The employee can verify his past exposure and can determine if work conditions are safe and healthful.

3. The Commissioner or Secretary of the State Board of Health can use the records to guide inspections.

MOSHC 336 Employee Access to Records

Employees must have access to the exposure records so they are informed of the occupational risks involved and of the materials that may impair their health.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

RECEIVED
NOV 16 1977
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES AND REGULATIONS
OF THE DEPARTMENT OF LABOR AND
INDUSTRY GOVERNING OCCUPATIONAL
SAFETY AND HEALTH.

FINDINGS AND ORDER

A public hearing in the above-entitled matter having been held in the State Veterans Service Building, 20 West 12th Street, fifth floor, Conference Room D, St. Paul, Minnesota on Tuesday, September 6, 1977 commencing at 9:00 a.m. and having continued until all persons did have an opportunity to be heard; and the record having been kept open for a period of time to allow all interested persons and the Department of Labor and Industry to file additional written statements;

NOW THEREFORE E. I. Malone, Commissioner, Minnesota Department of Labor and Industry, does make the following findings and order with respect to the above-entitled matter:

FINDINGS

The Report of the Hearing Examiner dated October 11, 1977 is hereby adopted in its entirety and said Report is incorporated by reference and is made a part of the Findings and Order of the Commissioner.

ORDER

IT IS HEREBY ORDERED that the rules as originally proposed and as published in the State Register on Monday, August 1, 1977 be adopted with the following amendments made thereto:

A. MOSHC 277(c) is amended to conform to the Findings adopted herein by adding a sentence which reads:

"The investigator will, however, hold a private conference with either the employee representative or the employer at eithers request."

This amendment to the proposed rule is based upon the suggestion of the Hearing Examiner found in his Report at page 18, para. 4 and further said addition reflects the usual method of operation already pursued by the Department's field investigators.

B. MOSHC 324(a)(5) is deleted from the proposed rules. The suggestion of the Examiner noted at page 18, para. 7 of his Report is well taken. Information sought to be gained by the requirement set forth in (a)(5) is possibly redundant since the requirements for objections stated in MOSHC 324(a)(3) provides that "the grounds" for an objection must be set out in writing.

C. Chapter 25, monitoring toxic materials and harmful physical agents is withdrawn for additional study.

Dated this 10 day of November, 1977.

E. I. Malone

E. I. MALONE, Commissioner
Minnesota Department of
Labor and Industry

IN THE MATTER OF PROPOSED
ADOPTION OF RULES AND
REGULATIONS OF THE
DEPARTMENT OF LABOR AND
INDUSTRY GOVERNING
OCCUPATIONAL SAFETY AND
HEALTH. LI-77-007-PE

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Steven M. Gunn, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: Nov. 29, 1977

STEVEN M. GUNN
Special Assistant
Attorney General

444 Lafayette Road
St. Paul, Minnesota 55101
Telephone: (612) 296-6590

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OSH DIVISION

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 12th day of October 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner LI-77-007-PE

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

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OFFICE OF HEARING EXAMINERS

Subscribed and sworn to before me
this 12th day of October, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Mr. Steven M. Gunn
Special Assistant Attorney General
Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota - 55101

LI-77-007-RE

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OSH DIVISION

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Proposed Adoption of Rules and Regulations of the Department of Labor and Industry Governing Occupational Safety and Health.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Tuesday, September 6, 1977 in the Veteran's Service Building, St. Paul, Minnesota.

Steven M. Gunn, Special Assistant Attorney General, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota - 55101, appeared as counsel on behalf of the Department of Labor and Industry. James Miley, Chairman of the Governor's Occupational Safety and Health Advisory Council, Russell Swanson, Deputy Commissioner, and Ivan Russell, Director of the OSH Division, testified on behalf of the Department in support of the proposed rules. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

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OFFICE OF HEARING EXAMINERS

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department of Labor and Industry on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On June 24, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On Monday, August 1, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 149.

3. On July 19, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On August 4, 1977, the Department filed the following:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through September 21, 1977, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 182.655, 182.657 and 182.663.

7. The proposed amendments to Chapter 21, Inspections, Citations and Proposed Penalties, are necessary for the following reasons:

MOSHC 270 - PURPOSE AND SCOPE

a. It is necessary to change the words "Section 10" to "Minn. Stat. § 182.659" because these regulations were originally promulgated using legislative session law designations which have now been coded in Minnesota statutes.

b. It is necessary to change the word "commission" to "board" because a legislative amendment changed "commission" designations to "boards." (Minn. Stat. Ch. 15.0575)

c. "Part B" must be changed to "Chapter" because "Part B" refers to federal regulations, and "chapter" refers to Minnesota regulations.

MOSHC 271 - POSTING OF NOTICE; AVAILABILITY OF THE ACT, REGULATIONS AND APPLICABLE STANDARDS.

a. Paragraph (b) "Place of Employment" must be deleted from these regulations. This definition serves little purpose since "Place of Employment" is defined in Minn. Stat. § 182.651, subd. 10.

b. In paragraph (c), it is necessary to correct the legislative session law designation "Section 17" to statute designation "Minn. Stat. § 182.666," and the addition of the phrase "of this section" for smoother sentence structure.

MOSHC 274 CONDUCT OF INSPECTIONS

a. It is necessary to correct a word in paragraph (f) from a federal designation "Part" to a Minnesota regulation designation, "chapter."

MOSHC 275 - REPRESENTATIVE OF EMPLOYERS AND EMPLOYEES

a. In paragraph (d), the words "S 19 of the Act" must be changed to "Minn. Stat. § 182.668" because these regulations were originally promulgated using legislative session law designations which now have been coded in Minnesota statutes.

MOSHC 276 - TRADE SECRETS

At places of employment in Minnesota, there may be areas where the employer feels he has trade secrets which, if released to the general public, could harm his business. However, there may be unsafe or unhealthful working conditions in those areas, and therefore, a need for inspection by the Commissioner. This situation was recognized by the Legislature when it promulgated § 182.668 which required the Commissioner to make provisions for this situation. It is necessary to provide the employer with assured protection of any information gathered at the time of the inspection. Therefore, this regulation, while allowing the Com-

missioner to make the inspection, requires that all information gathered must be labeled "Confidential Trade Secret" and cannot be disclosed to the public.

The importance of employee participation in the walk-around inspection in a place where there may be trade secrets is no less than in any other area. On the other hand, the employer may have need to restrict the employees who are allowed to enter a particular area where trade secrets are in existence. Therefore, it is necessary that this regulation allow the employer the right to approve the employee representative who is allowed to participate in the investigation.

MOSHC 277 - CONSULTATION WITH EMPLOYER AND EMPLOYEES

The employer representative and employee representative are most familiar with working conditions in places of employment in Minnesota. Minn. Stat. § 182.659, made provisions for soliciting their participation in the OSHA inspection. This regulation is needed to assure that the employer and employee are allowed to participate without any discrimination against the employee on the part of the employer. In fact, the employee is encouraged to participate in the OSHA inspection by assuring that he will not be deprived of any pay or other benefits.

The regulation is needed to assure that the safety investigator consults with an adequate number of employees in a non-union shop or that an authorized employee representative is required for participation in the investigation in places of employment that are unionized.

Existing MOSHC 278 - EMPLOYER AND EMPLOYEE CONTESTS BEFORE THE REVIEW COMMISSION

It is necessary to delete this entire regulation because the procedures for employer and employee contests before the Review Board are outlined within Minn. Stat. § 182.664, and Minn. Stat. Ch. 15. To outline these procedures in regulation form is redundant.

MOSHC 278 - COMPLAINTS BY EMPLOYEES

The Minnesota Occupational Safety and Health Law requires that employees be furnished with safe and healthful working conditions. The Legislature anticipated that there may be cases

where the employer would not, of his own volition, provide these conditions. Therefore, it was mandated in Minn. Stat. § 182.654, subds. 8 and 9, that the employees could file a complaint with the Department of Labor and Industry and request an inspection. This regulation makes provision for that complaint and describes actions that must be taken by the Commissioner.

It is also possible that employers may be displeased with employees who exercise their complaining rights. Therefore, it is necessary to prohibit discrimination against the employee. This prohibition is accomplished by requiring the Commissioner to maintain the anonymity of the complaining employee. These provisions are included in this regulation.

Similarly, it is necessary that provisions be made to allow employees to file complaints with the investigator at the time of the investigation. These provisions are also provided in this regulation. The need for such provisions is similar to those described above since the employee is most closely related to the day-to-day activities in the worksite.

MOSHC 279 - INSPECTION NOT WARRANTED; INFORMAL REVIEW

The provisions for this paragraph are mandated in Minn.Stat. § 182.659, subd. 4. In responding to an employee complaint, should the Commissioner determine that an inspection is not warranted, this paragraph describes a procedure for the complaining employee to submit, in writing, a request for an informal review with the Commissioner. Once an informal review is arranged, the complaining party may present his views and obtain a full disclosure of why the Commissioner determined that an inspection was not warranted.

MOSHC 280 - CITATIONS; NOTICES OF DE MINIMIS VIOLATIONS

a. It is necessary to change "Section 4" which is a legislative session law reference to statute codification, "Minn. Stat. § 182.653" in paragraph (a).

b. Minn. Stat. § 182.661, subdivision 1, was changed in 1975 to require that the citation and proposed assessment of penalty must be furnished to the authorized representative of affected employees. The change also required that the next of kin

receive copies of the citation and penalty assessment in the case of the death of an employee. That change is added in paragraph (a).

c. In paragraph (c), the word "Commission" must be changed to "Board" because of a legislative amendment requiring this type of change.

MOSHC 281 - PETITIONS FOR THE MODIFICATION OF ABATEMENT DATE

Many times an employer will find that he is not able to abate citations within the "agreed to" abatement period. This may be caused by circumstances beyond the employer's control such as availability of material, delays in shipping, etc. Therefore, provisions are made for allowing a modification in abatement date.

This regulation outlines all the information that is needed to allow the Commissioner to make a decision and further makes provision for assuring that the employee representative has been notified of the request for modification. This notification to the employee representative is necessary to allow him the right to contest the change. The regulation provides time limits for the Commissioner's response to the petition to assure expeditious handling of the petition.

The regulation must provide a course of action for the employer if the Commissioner denies the petition. In this regulation, the petition is forwarded to the Occupational Safety and Health Review Board if the Commissioner does not approve the petition. The Review Board action must be taken expeditiously since the petition for modification of abatement date will typically not be submitted until the abatement date is past.

MOSHC 282 - POSTING OF CITATIONS

a. It is necessary to incorporate a 1975 legislative amendment to the Minnesota OSH law that requires the proposed penalty be posted, unedited, at the location where employees report each day. The same legislative amendment requires that the citation and proposed penalty remain posted for "15 days."

b. This same paragraph is corrected by changing the reference from a "Section 17" legislative session law to a statute

codification, Minn. Stat. § 182.666.

8. The Minnesota Motor Transport Association suggests that in MOSHC 277(a), at the end of the first sentence, after the words "thorough inspection" and before the period, the following language be added: provided said consultation with employees does not result in an undue delay or disruption of normal work operations. The Association contends:

> . . . The addition of this phrase will clarify the OSHI latitude in employee consultations during work site inspections without detracting from their ability to conduct an effective inspection. We believe this clarification is consistent with the intent of the Minnesota Occupational Safety and Health Act. Furthermore, it is our opinion that the addition of the proposed language will enhance employer cooperation by resolving an area of potential conflict.

9. The Motor Transport Association also suggests that MOSHC 277(c) be further amended to clearly indicate that the employer, at his request, is entitled to a conference with OSHI separate from any conferences where the employee representative is present. The Association contends:

> . . . Our recommendation is consistent with what we understand is current practice of the Department of Labor and Industry's OSH Division. Inclusion of same will serve to eliminate any potential misunderstanding on the part of either employers or employees. It is important that access to employer-OSHI conference be preserved as a procedure to facilitate the resolution of discrepancies cited by OSHI.

10. The Transport Association further suggests that in MOSHC 277(d), after the word "workplace" and before the period, insert the words provided said consultations do not result in undue delay or disruption of normal work operations. The Association contends:

> . . . The word "reasonable" as used in this provision tends to create a sense of uncertainty. The suggested addition will correct this problem.

11. The North Star Steel Company argues that the words "any employee" in MOSHC 277(a) is unreasonable as it might result in the entire work force leaving work stations to converse with the inspector.

12. Mr. Knowlton J. Caplan, P.E., representing the Industrial Health Engineering Associate, Inc. comments on MOSHC 279 as follows:

The process of the complaining employee obtaining a review obviously results in him revealing his identity to his employer. In spite of the legal safeguards intended to prevent any discriminatory action against the complaining employee by the employer, in many situations the legal safeguards are inadequate in a practical sense, with no apparent practical way of strengthening such safeguards or of proving discrimination. Therefore, the rule as proposed will have an inhibitory effect on the employee seeking the review. If the employee has difficulty expressing himself clearly in writing and has no help available in this regard, an inequity could result.

It is proposed that the complaining employee who desires a review of his rejected complaint be granted the opportunity of a personal interview with appropriate OSH personnel in order to be able to explain and express himself verbally. Any such interview could be provided with safeguards for OSH personnel by means of a tape recording, secretarial recording of conversations, or the like.

If after such an interview the decision is still that an inspection is unwarranted, then the proposed language of MOSHC 279 regarding written submission of statements would go into effect.

Since the above matter is essentially purely procedural and legal, I will refrain from suggesting proposed wording, making only the substance of the comment and recommendation.

13. The proposed amendments to Chapter 22, Recording and Reporting Occupational Injuries and Illnesses, are necessary for the following reasons:

MOSHC 290 - PURPOSE AND SCOPE

It is necessary to change the word "Part" to "Chapter" because "Part" refers to federal regulations, and "Chapter" refers to Minnesota regulations. It is also necessary to change the words "Section 14" to "Minn. Stat. § 182.663" because these regulations were originally promulgated using legislative session law designations which have now been coded in Minnesota Statutes.

MOSHC 291 - DEFINITIONS

a. It is necessary to redesignate existing MOSHC 300 to MOSHC 291 for recodification reasons.

b. The wording "Section 2" must be changed to "Minn. Stat. § 182.651," because these regulations were originally promulgated using legislative session law designations which have now been coded in Minnesota Statutes.

MOSHC 292 - LOG OF OCCUPATIONAL INJURIES AND ILLNESSES

This regulation recodifies existing MOSHC 291 to MOSHC 292 to maintain numerical order of regulations.

MOSHC 293 - PERIOD COVERED

This regulation recodifies existing MOSHC 292 to MOSHC 293.

MOSHC 294 - SUPPLEMENTARY RECORD

This regulation recodifies existing MOSHC 293 to MOSHC 294 and recodifies within text existing MOSHC 291 to MOSCH 292. It is also necessary to change the word "workmen's" to "worker's" because of a legislative name change to Worker's Compensation.

MOSHC 295 - ANNUAL SUMMARY

a. Paragraph (d)(1) must be corrected by removing the word "this" and inserting "21" after the word "Chapter" because the reference, MOSHC 271(a), refers to Chapter 21, "Inspection, Citations and Proposed Penalties."

b. Paragraph (d)(2) must be adopted because this "failure to post" regulation is a necessary notice to employers to be informed of the penalty provisions.

MOSHC 296 - RETENTION OF RECORDS

It is necessary to change the text references to their proper designations such as existing MOSHC 291 to MOSHC 292 and MOSHC 293 to MOSHC 294.

MOSHC 297 - ACCESS TO RECORDS

This regulation changes the text references to their proper designations such as existing MOSHC 291 to MOSHC 292, MOSHC 293 to MOSHC 294 and MOSHC 294 to MOSHC 295.

MOSHC 299 - FALSIFICATION OR FAILURE TO KEEP RECORDS OR REPORTS

This regulation corrects paragraphs (a) and (b), respectively, with changes from a legislative session law reference to present Minnesota Statutes reference.

MOSCH 300 - CHANGE OF OWNERSHIP

The word "Part" must be changed to "Chapter" because the word "Part" erroneously refers to a federal regulation and "Chapter" refers to Minnesota regulations and the text reference of existing MOSHC 295 must be changed to MOSHC 296.

MOSHC 301 - PETITIONS FOR RECORD-KEEPING EXCEPTIONS - PUBLIC EMPLOYMENT SECTOR

a. It is necessary to add the words. "Public Employment Sector" to the title of this regulation since these are the

only employers who can petition for a record-keeping exception from the Commissioner of the Department of Labor and Industry. (See MOSHC 302 for private employers.)

b. The word "part" must be changed to "chapter" to correct a designation from a federal regulation to a Minnesota regulation reference.

MOSHC 302 - PETITIONS FOR RECORD-KEEPING EXCEPTIONS - PRIVATE EMPLOYMENT SECTOR

This regulation allows employers in the private employment sector to seek a variance in order to maintain records in a manner that is different than those required by this chapter. According to Federal Regulation 29 CFR 1952.4 "Record-keeping and Reporting Requirements," and in order to preserve the uniformity of statistics, it is necessary for private employers, in states under an approved state plan, to seek variances or exceptions from the Bureau of Labor Statistics of the U. S. Department of Labor. A state may not grant a variance to record-keeping and reporting requirements under their own procedures except within the public employment sector.

MOSHC 303 - EMPLOYEES NOT IN FIXED ESTABLISHMENTS

It is necessary to recodify the numerical designations of MOSHC 291 to MOSHC 292, MOSHC 293 to MOSHC 294 and MOSHC 295 to MOSHC 296.

MOSHC 304 - SMALL EMPLOYERS

a. This regulation changes the record-keeping and reporting requirements from employers of "seven (7)" to no more than "ten (10)." This change is necessary because Public Law 94-206, dated January 28, 1976 stated:

> "None of the funds appropriated in this Act shall be used to require record-keeping and reporting under the Occupational Safety and Health Act of 1970 from employers of ten or fewer employees and such exclusion shall be governed by the current rules and regulations in CFR, Title 29, Chapter XVII, Part 1904.15."

b. Numerical references to MOSHC designations must be corrected.

MOSHC 305 - STATISTICAL PROGRAM

The words "Description of" are removed from the title of

this regulation since they incorrectly describe the content of the code.

14. The proposed amendments to Chapter 23, Variances, are necessary for the following reasons:

MOSHC 310 - PURPOSE AND SCOPE

This paragraph informs employers of their statutory right to apply for either a temporary or a permanent variance from an occupational safety and health standard.

MOSHC 311 - EFFECT OF VARIANCES

During the original promulgation of this paragraph, a clerical error was made so that a 13-word phrase was erroneously duplicated. This paragraph corrects this error and recodifies existing MOSHC 310 to MOSCH 311 because of the addition of new MOSHC 310 to this regulation.

Existing MOSHC 311 - PUBLIC NOTICE OF A GRANTED VARIANCE, LIMITATION, VARIATION, TOLERANCE OR EXEMPTION

Since all Minnesota public documents are statutorily open to public review, this paragraph serves no useful purpose and should be deleted. Employers and employees are informed of a variance grant at the specific place of employment involved. Others who wish to review the provisions of a variance are free to inspect these documents in the Minnesota Department of Labor and Industry files.

MOSHC 312 - TEMPORARY VARIANCES

a. The title of the existing paragraph, "Variances under S 6, subdivisions 5, 6 and 7" was changed to "Temporary Variances" so employers and employees will more easily recognize the regulations. The existing paragraph title is difficult to understand unless an applicant for a variance is thoroughly familiar with specific subsections of the Act.

b. This paragraph was further amended with the addition of the requirements that employers furnish their name, address and precise location of the place of employment to which the variance shall apply. These provisions must be included in a variance application so a variance grant does not provide general amnesty to other places of employment.

c. Because of the addition of two new sentences in this paragraph, it was necessary to recodify the existing paragraphs (b)(1) through (6) as new paragraphs (b)(3) through (8). No changes were made in the contents of these provisions.

d. Paragraph (c), "Hearing" was added to this regulation to assure that after a variance has been granted or denied, affected employers and employees have an opportunity to present their views and arguments on the application of the variance.

e. Existing paragraph (c), "Interim Order" is recodified because of its new designation as paragraph (d).

f. Paragraph (e), "Variance Order" is adopted to provide a means for the Commissioner to formally notify the employer and employees of a variance grant. The employer must abide by the terms of the variance or he is subject to a citation and cancellation of the variance grant. This notification is necessary so both the employer and the employees can fully understand the variance conditions and can appeal those conditions if they so desire.

MOSHC 313 - PERMANENT VARIANCES

a. The title of the existing paragraph, "Variances under S 6, subdivisions 8 and 9" was changed to "Permanent Variances" so the paragraph is more easily identified by employers and employees. The existing paragraph title is difficult to identify unless the applicant is thoroughly familiar with specific subsections of the Act.

b. This paragraph was further amended with the addition of the requirements that employers furnish their name, address and the precise location of the place of employment to which the variance shall apply. These provisions must be included in a variance application so a variance grant clearly specifies the application of the variance provisions to a particular place of employment so it cannot be construed as a general amnesty from standards.

c. Paragraph (b)(6) "A description of how affected employees have been informed of their right to petition for a hearing" will assure the Commissioner that the employer has taken

a variance from a standard has been made that may or may not affect the health or safety of the employees. This provides the employees with an opportunity to request a hearing on the variance if they should object to the variance.

d. Paragraph (d) "Interim Order". When an employer applies for a permanent variance, there may be a delay of two months before the variance application can be processed. This provision allows the Commissioner to grant an interim order to allow the employer to continue his production operation until a decision can be rendered on the variance application.

e. Existing paragraph (d) was changed to (e), and the word "order" was added to the title. The recodification is necessary because of the adoption of paragraph "Interim Order". The addition of the word "order" to the title clarifies the meaning of this paragraph.

MOSHC 315 - ORDER DENYING VARIANCE

There are times when an employer files an application for a variance without fulfilling the basic requirements or showing that the conditions, practices, means, methods or operations will be as safe as the minimum requirements of a particular occupational safety and health standard. In these instances, the Commissioner will deny the variance request. This paragraph requires the Commissioner to notify the employer that his variance application is denied and alerts the employer to make corrections or appeal the Commissioner's decision. This notice also informs the affected employees of the variance denial and of their right to object or to support the variance denial.

MOSHC 316 - CONTEST OF VARIANCE DENIAL BEFORE REVIEW BOARD

When an employer is denied a variance, he has a statutory right to appeal the Commissioner's decision to the Occupational Safety and Health Review Board. This paragraph outlines the provisions of this right and sets the necessary time limitations for such appeals. The employees also have a right to participate in any resulting review board hearings and to know when such hearings will be held.

MOSHC 317 - MULTI-STATE VARIANCES

The Minnesota Department of Labor and Industry has adopted many federal OSHA standards. At times, federal OSHA grants variances with multi-state coverage from some of these standards that apply to Minnesota employers. This paragraph allows Minnesota to acknowledge and accept the conditions of that federal variance if the Commissioner has no objections of substance. It also simplifies a multi-state variance granting process by eliminating the need of duplicate filing for the employer and the need to process the same variance by the Department of Labor and Industry.

15. Proposed new Chapter 24, Standards Promulgation, is necessary for the following reasons:

MOSHC 320 - PURPOSE AND SCOPE

This paragraph is included to describe the statutory reference and the purpose of the regulation on standards promulgation.

MOSHC 321 - DEFINITIONS

Definitions are necessary to assure an understanding of the regulation.

MOSHC 322 - PETITION FOR THE PROMULGATION, MODIFICATION OR REVOCATION OF A STANDARD

This paragraph implements the provisons of Minn. Stat. §§ 182.653, subd. 5, and 182.654, subd. 3, and serves as a notice to employers and employees, in regulation form, that they are allowed to participate in the development, revision or revocation of an Occupational Safety and Health Standard. It also furnishes guidelines for the type of submission that is desired by the Commissioner.

MOSHC 323 - INITIATION

Upon receipt of any petition describing the need for standards revision (as described in MOSHC 322) or as a result of personal knowledge of the need for standards promulgation, the Commissioner is obligated to take some action. Occupational Safety and Health Standards promulgation can be initiated in several ways. The Commissioner may proceed on the advice of the Governor's Occupational Safety and Health Advisory Council (GOSHAC). This 12-member board, consisting of representatives from: labor,

management, safety specialists and the general public was created to advise the Commissioner on standards promulgation. However, if the Commissioner determines that a standard is necessary, he may proceed to promulgate that standard without delay. Therefore, these regulations describe procedures for standard promulgation with or without GOSHAC advice or assistance.

Under any conditions, the standard recommended by the Commissioner must be published in the State Register, the official document for public notification. The contents of the notification must be adequate so the proposed standard can be understood and all interested parties are properly notified of actions they may take to suggest modifications in the standard. The necessary contents of that notification are described in this section of the regulations.

MOSHC 324 - OBJECTIONS

While the provisions of Minn. Stat. § 182.655, subd. 2, allow interested persons to file objections to a proposed standard, paragraph (a) describes an orderly procedure for interested persons to submit their objections to a proposed standard in writing. Other interested persons may prefer to present their objections in a public hearing. If this is the case, paragraph (b) requires the Commissioner to arrange for such a hearing so objections can be presented and describes the procedures that must be followed by the Commissioner to schedule the hearing.

MOSHC 325 - EMERGENCY TEMPORARY STANDARDS

The Commissioner is empowered, under Minn. Stat. § 182.655, subd. 11, to adopt Emergency Temporary Standards (ETS) if he determines that employees are exposed to grave dangers from toxic substances or agents, or to protect against a new hazard. In such instances, the ETS becomes effective immediately upon publication in the State Register. The purpose of ETS is to provide immediate protection. Without the prior proceedings required in the usual manner of standards adoption, employers and employees may find some serious objections to the published ETS. Employers may claim that the ETS is too costly or the technology to implement the standard is not available. Employees may have determined

that the ETS is inadequate in providing safety and health protection. For these reasons, once the ETS has become effective, the Commissioner must follow the same course he is obliged to follow when he proposes a new standard in the ordinary course. Employers and employees must be given a chance to express their views, file objections and participate in hearings.

MOSHC 326 - CONDUCT OF HEARING

The Commissioner is interested in obtaining all the facts and hearing all points of view during the promulgation of standards. A public hearing provides the type of forum to gather these facts. Interested persons are entitled to: present their case, including documentary evidence, submit rebuttal evidence, or to cross-examine to obtain full disclosure of facts. While this type of proceeding is underway, it is necessary to establish some order or rules of conduct. These rules in MOSHC 326 designate a Hearing Examiner to conduct and maintain order in these standards promulgation hearings.

MOSHC 327 - POWERS OF PRESIDING OFFICER

Since the promulgation of occupational safety and health standards is excluded from the provisions of Minn. Stat. Ch. 15, there is a need to establish procedures so the presiding officer from the Hearing Examiners' office has the necessary powers to conduct a fair and full hearing in an orderly manner.

MOSHC 328 - CERTIFICATION OF THE RECORD OF A HEARING

After the hearing, it is necessary that the Commissioner has a full and complete record of that hearing. For this reason, it is necessary at the time when the presiding officer presents the hearing record to the Commissioner that the presiding officer certify that the hearing record is complete.

MOSHC 329 - DECISION

The most important step in standards promulgation is the Commissioner's decision after the public hearing. He must face the issues regarding the standard and decide what portion, if any, of the proposed standard should be promulgated. Once the Commissioner publishes the standard, it becomes an effective law to control hazards in the workplace. This paragraph also outlines the

Commissioner's statutory responsibilities to support his reasons with concise statements so interested persons are fully informed of his action.

16. The FMC Corporation commented on proposed MOSHC 324 as follows:

> Proposed MOSHC 324 provides a list of conditions which must be followed in submitting objections to new standards promulgated by the Commissioner of the Department of Labor and Industry. This proposed section requires that objections not only be specified with particularity and the grounds for the objections provided, which seems to be reasonable, but also that the objections be accompanied "by a summary of the evidence proposed to be adduced". In our opinion, this requirement is redundant and unreasonable. Although "evidence" is not defined, the implication of the rule is that objections to new standards will be subject to some undefined burden of proof at the hearing, thus creating a court room atmosphere rather than the appropriately less formal atmosphere of a public hearing. The compilation of "evidence" would be a time-consuming task and, in our opinion, would inhibit the free exchange of information necessary to the rule-making process. We recommend that paragraph A.5. of MOSHC 324 be deleted in its entirety.

17. Proposed new Chapter 25, Monitoring Toxic Materials and Harmful Physical Agents, was strongly opposed by many individuals and groups. After a review of the hearing record and written comments, the Department has decided to "withdraw Chapter 25 until we have an opportunity for additional study and definition." Because the Department representatives were the only persons to testify in support of the new Chapter, the Examiner will not repeat that evidence in this report. All of the oral statements and written comments opposing Chapter 25 will be part of the record transmitted to the Department for further study.

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Labor and Industry. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . . (4) make a report on

Commissioner's statutory responsibilities to support his reasons with concise statements so interested persons are fully informed of his action.

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17. Proposed new Chapter 25, Monitoring Toxic Materials and Harmful Physical Agents, was strongly opposed by many individuals and groups. After a review of the hearing record and written comments, the Department has decided to "withdraw Chapter 25 until we have an opportunity for additional study and definition." Because the Department representatives were the only persons to testify in support of the new Chapter, the Examiner will not repeat that evidence in this report. All of the oral statements and written comments opposing Chapter 25 will be part of the record transmitted to the Department for further study.

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Labor and Industry. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . . (4) make a report on

each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that the addition of language suggested by the Motor Transport Association in Findings 8 and 10 will only serve to inhibit the necessary discretion and ability of an inspector to conduct an "effective and thorough inspection".

4. The Association's comment in Finding 9 is well taken. The Examiner suggests that the following sentence might be added to MOSHC 277(c): The Inspector will, however, hold a private conference with either the employee representative or the employer at either's request.

5. The Examiner concludes that it is important to allow "any employee" the opportunity to bring a violation of the Act to the attention of the inspector. See Finding 11.

6. Proposed MOSHC 279 does allow the complaining employee to request an interview concerning the validity of the complaint. It does not, however, provide for an ex parte conference. See Finding 12. The Examiner concludes that the proposed rule, as written, is reasonable; however, the suggestion made in Finding 12, i.e., an oral ex parte review conference, is also reasonable should the Department choose to amend the rule accordingly.

7. MOSHC 324(a)(3) states that "the grounds" for an objection must be set out in the written objection. The Examiner concludes that the added requirement that, "The objections must be accompanied by a summary of the evidence proposed to be adduced," may place an unreasonable burden on the objector prior to hearing and inhibit the objection process itself. See Finding 16. Proposed MOSHC 324(a)(5) should be deleted.

8. The Examiner concludes that proposed Chapter 25 be deleted in its entirety.

9. The Examiner concludes that the Department has documented its statutory authority to promulgate the proposed rules and

the need for and reasonableness of the proposed rules have been demonstrated by an affirmative presentation of facts with the exception of proposed MOSHC 324(a)(5) and Chapter 25.

5. The Examiner concludes that the amendments he is suggesting to the proposed rules make the rules more reasonable and none constitute a substantial change.

Based upon the foregoing Conclusions, the Examiner makes the following:

RECOMMENDATION

That the Department of Labor and Industry adopt the proposed rules as recommended to be amended in this Report. See Conclusions 4, 6, 7 and 8.

Dated this 11 day of October, 1977.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

LI-77-007-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF PROPOSED ADOPTION OF RULES AND REGULATIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY GOVERNING OCCUPATIONAL SAFETY AND HEALTH.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on September 6, 1977, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Labor and Industry on October 11, 1977; and

WHEREAS, the Department of Labor and Industry has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Labor and Industry has submitted said rules to the Chief Hearing Examiner for review pursuand to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Labor and Industry has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Labor and Industry has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 21st day
of November, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

L & I #7

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF PROPOSED ADOPTION	)	
OF RULES AND REGULATIONS OF THE	)	REVISED STATEMENT OF EVIDENCE
DEPARTMENT OF LABOR AND INDUSTRY	)	
GOVERNING OCCUPATIONAL SAFETY AND HEALTH	)	

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearings Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 and in support thereof, the Department of Labor and Industry will introduce the following evidence:

A discussion on Minnesota Statutes relating to Occupational Safety and Health (OSH) Regulations and Federal OSHA Programs relating to State OSH Programs. In addition, we intend to present technical information supporting the need for monitoring toxic materials and harmful physical agents.

We may call one or more of the following expert witnesses to testify:

1. Russell B. Swanson, Deputy Commissioner
   He will explain the Minnesota OSH Program and its relationship to the Federal OSHA Program.

2. Ivan W. Russell, Director, OSH Division
   He will present the "Statement of Need" and explain the technical need for these regulations.

3. Darrel Anderson, Industrial Hygienist, Minnesota Health Department. He will provide the technical support for the need to monitor toxic and harmful physical agents in places of employment.

We intend to introduce the following manuals, books, scientific treatises and other documentary evidence:

1. Minnesota Statutes Chapter 182
2. Minnesota Occupational Safety and Health Codes
3. 29 CFR Part 1903 — Inspections, Citations and Proposed Penalties
4. 29 CFR Part 1904 — Recording and Reporting Occupational Injuries and Illnesses
5. 29 CFR Part 1905 — Rules of Practice for Variances, Limitations, Variations, Tolerances, and Exemptions under the William-Steiger Occupational Safety and Health Act of 1970
6. Amendment to Part 1903 — Inspections, Citations and Proposed Penalties as published in the Federal Register on Tuesday, February 11, 1975, page 6334 regarding Petitions for Modification of Abatement Dates
7. Workplace hazard monitoring proceeding of a topical symposium on December 8 and 9, 1975 in Cincinnati, Ohio sponsored by the American Conference of Governmental Industrial Hygienists.
8. NIOSH Criteria Document 75-126 an Identification System for Occupational Hazardous Materials.
9. Toxic Substances, Ketones (Proposed Exposure Standards) as published in Volume 40, Number 90 of the Federal Register on Thursday, May 8, 1975.
10. NIOSH Criteria Document 73-1101 Occupational Exposure to Noise.

We will be citing the following statutes and case law:

1. Minn. Stat. Chapter 182
2. Public Law 91-596 - Occupational Safety and Health Act of 1970.

E. I. Malone

E. I. "Bud" Malone, Commissioner
Minnesota Department of Labor and Industry

Date: August 3, 1977
Revised: September 2, 1977