

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1575

Docket No. 05.0009.0605

DATE RECEIVED 3-8-89

ADOPTED W/O HEARING X

REVIEW DATE 3-17-89

EMERGENCY RULE

DUE DATE 3-22-89

REVISOR APPROVED

APPROVED [signature]

REVISOR DISAPPROVED

DISAPPROVED

FILED W/SEC. OF STATE

WITHDRAWN

RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion (if applicable)~~

~~Date published in State Register~~

~~Comments~~

~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution

11/15/88 Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

182.661 sub 3+3a Statutory Authority + 182.664 sub 3

yes Small Business Statement

no Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness (if applicable)

yes Small Business Statement

N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

11/21/88 Date 30/25 days before adoption

yes Notice attached

yes Copy of rule or summary attached

✓ Publication in State Register

11/28/88 Date 30/25 days before adoption

180-day deadline from:

N/A Effective date of law requiring rule (14.12) (both rules)

12/28/88 end of comment period (§ 14.26) (rules without hearing)

~~effective date of statutory authority (§ 14.29) (emergency rules)~~

0642

✓ Resolution Adopting

2/6/89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

2/22/89 Date

✓ Written requests, submissions or comments (18)-17 Req. for hearing.

✓ Declaration of attorney

Cavina Name of SAAG representing agency

Notice of Submission to Atty. Gen. (if applicable)

Aff. of Mailing Notice to Atty. Gen. (if applicable)

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : March 22, 1989

TO : CATHERINE E. AVINA
Special Assistant Attorney General

FROM : JULIE A. LEPPINK
Special Assistant Attorney General

PHONE : 6-9422

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to the Occupational Safety and Health Review Board

The above-referenced rule has been approved as to its legality by the Attorney General on March 22, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:klk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

AG Copy

02/09/89 [REVISOR] JCF/MM AR1281

RECEIVED
FEB 13 1989
OSHA Review Board

Occupational Safety and Health Review Board

Adopted Permanent Rules Relating to the Occupational Safety and Health Review Board

Rules as Adopted

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

5215.0711 SERVICE AND NOTICE TO UNREPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest or petition for abatement date.** If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within ~~two~~ five working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

If, because of the nature of the employer's operations, it is not practicable to post the notice of contest and notice to employees at or near the worksite, the notice must be posted in a prominent place where it can be readily observable by all affected employees. ~~For example,~~ If employers are engaged in activities which are physically dispersed, these notices must be posted at the location to which employees report each day. If employees do not primarily work at or report to a single location, these notices must be posted at the location from which the employees operate to carry out their activities. If the employer's operation at the cited worksite ceases and affected employees are no longer employed by that employer, the employer must serve a copy of the notice of contest and notice to employees on all affected employees either by hand delivery or by mail to the last known address.

A notice in the following form complies with this subpart:

(Name of employer)

Approved by Revisor JCF

Your employer has been cited by the commissioner of labor and industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and may be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties in the rules of procedure established by the Occupational Safety and Health Review Board. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 443 Lafayette Road, Saint Paul, MN ~~55101~~ 55155, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Service and notice to affected employees not represented by an authorized employee representative are deemed accomplished by posting.

Certification of the posting required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the posting in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the posting requirements. If the employer fails either to show cause or to certify that the notice of contest ~~has been~~ was posted within the time prescribed by this part, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been posted timely, the employer must show cause and certify that the notice of contest ~~has been~~ was posted within the time prescribed by this part to avoid dismissal of the notice of contest.

Subp. 2. **Notice of hearing.** A copy of the notice of

Approved
by Revisor _____

hearing to be held before the administrative law judge must be served by the employer on affected employees who are not represented by an authorized employee representative. The notice of hearing must be posted within ~~two~~ five days of receipt at or near the place where the citation is required to be posted.

Certification of the posting required in this subpart must be filed with the administrative law judge and a copy served on the commissioner within five working days of receipt of the notice of hearing. If the employer fails to certify that the ~~posting in~~ notice of hearing was posted within the prescribed ~~manner~~ time, the administrative law judge may on a motion by one of the parties or on the judge's own motion render a default decision.

5215.0721 SERVICE AND NOTICE TO REPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest.** If there are any affected employees who are represented by an authorized employee representative, the employer shall within five working days of receiving the acknowledgement of the notice of contest or petition for modification of abatement date serve by first class mail or personal delivery ~~serve~~ upon the representative the notice in part 5215.0711, subpart 1, and a copy of the notice of contest.

Service and notice to employees represented by an authorized employee representative are deemed accomplished by serving the representative by first class mail or personal delivery.

Certification of the service required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the service in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the service requirements. If the employer either fails to show cause or to certify that the notice of contest ~~has been~~ was served within the time prescribed

Approved by Revisor _____

by this part, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been served timely, the employer must show cause and certify that the notice of contest has been served within the time prescribed by this part to avoid dismissal of the notice of contest.

Subp. 2. **Notice of hearing.** ~~**A copy**~~ Within five working days of receipt of the notice of hearing to be held before the administrative law judge a copy of the notice of hearing shall be served by the employer on the authorized employee representative of affected employees, if any, by mail or personal delivery, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

Certification of the service of the notice of hearing required in this subpart must be filed with the administrative law judge and a copy served on the commissioner ~~**of the board**~~ within five working days of receipt of the notice of hearing. If the employer fails to certify that the ~~**service in**~~ notice was served within the prescribed **manner** time, the administrative law judge may on a motion by one of the parties or on the judge's own motion render a default decision.

5215.0730 NOTICE OF CONTEST FILED BY EMPLOYEE OR REPRESENTATIVE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Failure to serve notice of contest.** If the parties referred to under subparts 1 to 3 fail to certify that the notice of contest has been posted or served as required within the time prescribed by this part, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the contesting party has failed to comply with the posting or service requirements. If the party fails to show cause or to certify that the notice of contest has been served, the **board** administrative law judge may dismiss the notice of contest.

a subst. chng, but I think to the letter.

Approved by Revisor _____

5215.2000 EMPLOYER CONTESTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Answer.** Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the board and serve the answer on every other party.

The answer must contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is deemed admitted.

Subp. 4. **Failure to file.** If the complaint, notice to respondent, or the answer is not filed with the executive secretary in a timely manner, the board or one of the parties may move to dismiss the contest or the complaint. The hearing on any such motion shall be conducted before the administrative law judge.

5215.2560 HEARING.

Subpart 1. **Notice of readiness for hearing.** Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing.

Subp. 2. **Notice of readiness not filed.** If a notice of readiness for hearing is not filed with the board within 45 days of receipt of the answer, the board may schedule a hearing and shall serve written notice of hearing and order on all parties.

Subp. 3. **Notice of hearing and order.** The board shall serve a written notice of hearing and order under part 1400.5600 and all further proceedings shall be conducted pursuant to Minnesota Statutes, chapter 14.

The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to parts 5215.0700 to 5215.0730.

5215.5300 SETTLEMENT.

Approved
by Revisor _____

Subpart 1. **Settlement encouraged.** Settlement is encouraged at any stage of the proceedings if the settlement is consistent with the provisions and objectives of the act, but shall not delay the scheduling of a hearing in the matter.

Subp. 2. **Service and notice.** A settlement agreement must be filed with the board or administrative law judge and served upon affected employees ~~or~~ and authorized employee representatives by the employer. Service upon affected employees shall be accomplished by posting. Service upon employee representatives shall be accomplished by personal delivery or first class mail.

Subp. 3. **Contents of settlement agreements and orders.** Settlement agreements must contain:

A. an affirmative statement indicating that the notice of contest was served ~~and/or~~ and posted pursuant to parts 5215.0700 to 5215.0730;

B. a provision stating the date on which the employer has served the agreement upon affected employees in the manner prescribed by subpart 2;

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

D. an affirmative statement as to how the settlement agreement affects the status of the contested citation.

Subp. 4. and 5. [Unchanged.]

Subp. 6. [See Repealer.]

Subp. 7. to 9. [Unchanged.]

5215.6100 PENALTIES.

The board has no jurisdiction under Minnesota Statutes, section 182.667 and must conduct no proceeding under it.

RENUMBER. Minnesota Rules, part 5215.0740, is renumbered as part 5215.0700, subpart 7.

REPEALER. Minnesota Rules, parts 5215.0710; 5215.0720; 5215.0750; 5215.2530; and 5215.5300, subpart 6 are repealed.

Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR 22 1989

Joan Anderson Growe

Secretary of State

2:15PM

APPROVED AS TO FORM AND LEGALITY

3/22 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF THE

AUTHORIZING RESOLUTION OF THE

MINNESOTA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

I, Kenneth L. Sovereign, do hereby certify that I am a member and the chair of the Minnesota Occupational Safety and Health Review Board (hereinafter "Board"), a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 20th day of June, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified:

> RESOLVED, that Janice Kramer, Executive Secretary of the Board, is hereby granted the authority and directed to sign and to give the Notice of Intent to Adopt a Rule Without a Public Hearing, governing clarifying the contested case process, enhancing effective and efficient resolution of disputes before the Board and increasing the efficiency of existing rules to all persons who have registered their names with the Board for that purpose, to publish the notice and rule in the State Register, and to perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15 day of November, 1988.

K L Sovereign

KENNETH L. SOVEREIGN
Chair

Attest by one other Board Member

Occupational Safety and Health Review Board

Proposed Permanent Rules Relating to the Occupational Safety and Health Review Board

Rules as Proposed

~~DEPARTMENT OF LABOR AND INDUSTRY~~

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

5215.0711 SERVICE AND NOTICE TO UNREPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest or petition for abatement date.** If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within two working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

If, because of the nature of the employer's operations, it is not practicable to post the notice of contest and notice to employees at or near the worksite, the notice must be posted in a prominent place where it can be readily observable by all affected employees. For example, if employers are engaged in activities which are physically dispersed, these notices must be posted at the location to which employees report each day. If employees do not primarily work at or report to a single location, these notices must be posted at the location from which the employees operate to carry out their activities. If the employer's operation at the cited worksite ceases and affected employees are no longer employed by that employer, the employer must serve a copy of the notice of contest and notice to employees on all affected employees either by hand delivery or by mail to the last known address.

A notice in the following form complies with this subpart:

Approved by Revisor

(Name of employer)

Your employer has been cited by the commissioner of labor and industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and may be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties in the rules of procedure established by the Occupational Safety and Health Review Board. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 443 Lafayette Road, Saint Paul, MN 55101, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Service and notice to affected employees not represented by an authorized employee representative are deemed accomplished by posting.

Certification of the posting required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the posting in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the posting requirements. If the employer fails to show cause or to certify that the notice of contest has been posted, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been posted timely, the employer must show cause and certify that the notice of contest has been posted to avoid dismissal of the notice of contest.

Subp. 2. **Notice of hearing.** A copy of the notice of hearing to be held before the administrative law judge must be

Approved
by Revisor _____

served by the employer on affected employees who are not represented by an authorized employee representative. The notice of hearing must be posted within two days of receipt at or near the place where the citation is required to be posted.

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

5215.0721 SERVICE AND NOTICE TO REPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest.** If there are any affected employees who are represented by an authorized employee representative, the employer shall by first class mail or personal delivery serve upon the representative the notice in part 5215.0711, subpart 1, and a copy of the notice of contest.

Service and notice to employees represented by an authorized employee representative are deemed accomplished by serving the representative by first class mail or personal delivery.

Certification of the service required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the service in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the service requirements. If the employer fails to show cause or to certify that the notice of contest has been served, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been served timely, the employer must show cause and certify that the notice of contest has been served to avoid dismissal of the notice of contest.

unnecessary

Approved
by Revisor _____

Subp. 2. **Notice of hearing.** A copy of the notice of hearing to be held before the administrative law judge shall be served by the employer on the authorized employee representative of affected employees, if any, by mail or personal delivery, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

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

5215.0730 NOTICE OF CONTEST FILED BY EMPLOYEE OR REPRESENTATIVE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Failure to serve notice of contest.** If the parties referred to under subparts 1 to 3 fail to certify that the notice of contest has been posted or served as required, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the contesting party has failed to comply with the posting or service requirements. If the party fails to show cause or to certify that the notice of contest has been served, the board may dismiss the notice of contest.

5215.2000 EMPLOYER CONTESTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Answer.** Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the board.

The answer must contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is deemed admitted.

~~If an answer is not filed with the executive secretary in a~~

Approved
by Revisor _____

~~timely-manner,-the-notice-of-contest-shall-be-dismissed.~~

Subp. 4. Failure to file. If the complaint, notice to respondent, or the answer is not filed with the executive secretary in a timely manner, the board or one of the parties may move to dismiss the contest or the complaint. The hearing on any such motion shall be conducted before the administrative law judge.

5215.2560 ~~NOTICE-OF-READINESS-FOR~~ HEARING.

Subpart 1. ~~Filing-and-service~~ Notice of readiness for hearing. Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing.

Subp. 2. Notice of ~~hearing-and-order~~ readiness not filed. ~~Upon-receipt-of-the-notice-of-readiness-for-hearing,-the-board shall-schedule-a-hearing.--The-board-shall-serve-a-written notice-of-hearing-and-order-on-all-parties-at-least-30-days prior-to-the-hearing-date.--The-employer-shall-serve-a-copy-of the-notice-of-hearing-and-order-on-affected-employees-and authorized-employee-representatives-pursuant-to-parts-5215.0700 to-5215.0750.--The-notice-of-hearing-and-order-must-state-the following:~~ If a notice of readiness for hearing is not filed with the board within 45 days of receipt of the answer, the board may schedule a hearing and shall serve written notice of hearing and order on all parties.

~~A.--that-if-a-party-chooses-to-appear-at-the-hearing, a-notice-of-appearance-must-be-filed-by-that-party-with-the administrative-law-judge-within-20-days-of-the-date-of-service of-the-notice-of-hearing-and-order-pursuant-to-part-1400.5700; and~~

~~B.--that-a-failure-to-appear-at-the-hearing-may-result in-the-allegations-of-the-pleadings-being-taken-as-true.~~

Subp. 3. Notice of hearing and order. The board shall serve a written notice of hearing and order under part 1400.5600

In what instances will it do so, generally?

Approved by Revisor _____

and all further proceedings shall be conducted pursuant to Minnesota Statutes, chapter 14.

The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to parts 5215.0700 to 5215.0730.

5215.5300 SETTLEMENT.

Subpart 1. **Settlement encouraged.** Settlement is encouraged at any stage of the proceedings if the settlement is consistent with the provisions and objectives of the act, but shall not delay the scheduling of a hearing in the matter.

Subp. 2. ~~**Signed-and-dated**~~ **Service and notice.** ~~Settlement agreements must be signed and dated by each party.~~ A settlement agreement must be filed with the board or administrative law judge and served upon affected employees or authorized employee representatives by the employer. Service upon affected employees shall be accomplished by posting. Service upon employee representatives shall be accomplished by personal delivery or first class mail.

Subp. 3. ~~**Date of service**~~ **Contents of settlement agreements and orders.** Settlement agreements must contain:

A. an affirmative statement indicating that the notice of contest was served and/or posted pursuant to parts 5215.0700 to 5215.0730;

B. ~~Settlement agreements must contain~~ a provision stating the date on which the employer has served the agreement upon affected employees in the manner prescribed by ~~part 5215.0750.~~ subpart 2;

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

D. an affirmative statement as to how the settlement agreement affects the status of the contested citation.

Subp. 4. and 5. [Unchanged.]

Subp. 6. [See Repealer.]

Subp. 7. to 9. [Unchanged.]

5215.6100 PENALTIES.

Approved by Revisor _____

~~All penalties assessed by the board are civil.~~

The board has no jurisdiction under Minnesota Statutes, section 182.667 and must conduct no proceeding under it.

RENUMBER. Minnesota Rules, part 5215.0740, is renumbered as part 5215.0700, subpart 7.

REPEALER. Minnesota Rules, parts 5215.0710; 5215.0720; 5215.0750; 5215.2530; and 5215.5300, subpart 6 are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to the Occupational Safety and Health Review Board

AGENCY: Occupational Safety and Health Review Board

MINNESOTA RULES: Chapter 5215

The attached rules are approved as to form

John C. Fuller
Assistant Deputy Revisor

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

In the Matter of
Permanent Rules of
Procedure Relating
to the Occupational
Safety and Health Review
Board, Minn. Rules
pts. 5215.0100 to 5215.6100

NOTICE OF INTENT TO
ADOPT A RULE WITHOUT
A PUBLIC HEARING

Notice is hereby given that the Minnesota Occupational Safety and Health Review Board (hereinafter "Board") intends to adopt a rule of procedure clarifying the contested case process, enhancing effective and efficient resolution of disputes, and increasing the efficiency of the existing rule. The Board intends to adopt the rule without a public hearing following the procedures set forth in Minn. Stat. §§ 14.22 to 14.28 (1986) of the Administrative Procedure Act. The statutory authority to adopt the rule is Minn. Stat. §§ 14.06, 182.661, subds. 3 and 3a, and 182.664, subd. 3.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Janice I. Kramer
Executive Secretary
Occupational Safety and Health Review Board
443 Lafayette Road
St. Paul, Minnesota 55101
Telephone: (612) 296-8946

The proposed rule may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Janice I. Kramer upon request.

The proposed rule will have an impact on small businesses. The Board's consideration of the factors listed at Minn. Stat. § 14.115, subd. 2, is discussed in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the adopted rule must submit the written request to Janice I. Kramer.

Date: November 10, 1988

Janice I. Kramer

JANICE I. KRAMER
Executive Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

IN THE MATTER OF PERMANENT RULES OF PROCEDURE RELATING TO THE OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD, MINNESOTA RULES, PARTS 5215.0100 TO 5215.6100.

STATEMENT OF NEED AND REASONABLENESS

The Minnesota Occupational and Health Review Board (hereinafter "OSHRB"), pursuant to Minnesota Statutes, sections 14.05 through 14.12 and 14.22 through 14.28, presents facts establishing the need and reasonableness of amendments to rules relating to the OSHRB rules of procedure, Minnesota Rules, parts 5215.0100 to 5215.6100.

In order to adopt the proposed amendments, the OSHRB must demonstrate that it has complied with all the procedural and substantive requirements of rule making. Those requirements are as follows: (1) there is statutory authority to adopt the amendments; (2) all necessary procedural steps have been taken; (3) the amendments are needed; (4) the amendments are reasonable; and (5) any additional requirements imposed by law have been satisfied. This statement demonstrates that the OSHRB has met these requirements.

TABLE OF CONTENTS

	PAGE NUMBER
Statutory Authority	3
Compliance with Procedural Rule making Requirments	4
Statement of Need	5
Statement of Reasonableness	6
Amendment-By-Amendment Justification	7
Small Business Consideration	12

1. STATUTORY AUTHORITY

The statutory authority of the OSHRB to amend rules is found in Minnesota Statutes, sections 14.06, 182.661, subdivisions 3 and 3a, and 182.664, subdivision 3.

Section 14.06 provides as follows:

> Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

Section 182.661, subdivisions 3 and 3a, provide as follows:

> Subdivision 3. If the employer notifies the commissioner that the employer intends to contest the citation or the proposed assessment of penalty or the employee or the employee representative notifies the commissioner that the employee intends to contest the time fixed for abatement in the citation issued under 182.66, the citation, the type of alleged violation, the proposed penalty, or notification issued under subdivisions 1 and 2, the board shall conduct a hearing in accordance with the applicable provisions of chapter 14, for hearings in contested cases. The rules of procedure prescribed by the board shall provide affected employees or representatives of affected employees an opportunity to participate as parties under this subdivision.
>
> Subdivision 3a. As prescribed in rules issued by the board, each notice of intent to contest the citation, proposed assessment of penalty, or period of time fixed in the citation for correstion of the violation shall be prominently posted at or near each place a violation referred to in the citation occurred or served on affected employers, employees, and employee representatives. If the contesting employer, employee, or employee representation [sic] fails to post or serve the notice of intent to contest the citation, the proposed assessment of penalty, or the period of time fixed for correction of the violation within the time prescribed in rules issued by the board, the board may render a default judgment in favor of the commissioner.

Section 182.664, Subdivision 3, provides in pertinent part as follows;

> Subdivision 3...The rules of the board shall provide affected employers, employees or their representatives an opportunity to participate as parties provided they file notice at least five days before the start of the hearing.

2. COMPLIANCE WITH PROCEDURAL RULE MAKING REQUIREMENTS

The OSHRB has determined that the amendment of the rules in parts 5215. 0100 to 5215.6100 is non-controversial and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.05 through 14.12 and 14.22 through 14.28 which provide for the adoption of non-controversial administrative changes without the holding of a public hearing.

Pursuant to Minnesota Statutes, section 14.23, the OSHRB has prepared this statement of need and reasonableness which is available to the public. The OSHRB will publish in the **State Register** a notice of intent to adopt the amendments without public hearing and will mail copies of the notice and proposed amendments to persons registered with the OSHRB pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22. The notice will include the following statements: (a) that the public have 30 days in which to submit comments on the proposed amendments; (b) that no public hearing will be held within the 30-day comment period; (c) giving information pertaining to the manner in which persons shall request a hearing or submit comment; (d) that the amendments may be modified if the modifications are supported by the data and views submitted; and (e) other information required by Minnesota Statutes, section 14.22.

If 25 or more persons submit to the OSHRB a written request for a hearing on the proposed amendments, the agency shall proceed under the provisions of Minnesota Statutes, sections 14.131 through 14.20, and notice of the hearing shall be published in the **State Register.**

If no hearing is required, the OSHRB will submit the proposed amendments and notice as published, the amendments as proposed for adoption, any written comments which have been received, and this statement of need and reasonableness to the Attorney General for approval.

These amendments shall become effective five working days after publication of a notice of adoption in the **State Register.**

3. STATEMENT OF NEED

The function of the OSHRB, as stated in Minnesota Statutes, section 182.664, subdivision 2, is to "review contested citations issued under section 182.66, contested monetary penalties assessed under section 182.666 that are not precluded from review by section 182.661 and all final orders of the Commissioner in contested cases. The board may affirm, modify, or revoke a citation, monetary penalty or any contested order of the commissioner."

The OSHRB has adopted rules of procedure for contested cases. The rules have provided the board and its litigants the mechanism necessary for effective dispute resolution. Amendments to the rules are now needed for the following reasons. First, a decision of the Minnesota Court of Appeals invalidated parts 5215.0710, subpart 1, 5215.0720, subpart 1, and 5215.2000, subpart 3. Keefe v. Cargill, 393 N.W.2d 425 (Minn. App. 1986)rev. den. Nov. 26, 1986. The decision in Keefe v. Bor-Son, No. C6-86-1568 (Minn. App. Feb 17, 1987),invalidated parts 5215.0710, subpart 2 and 5215.0720, subpart 2. In response to these two decisions, the 1987 Legislature amended MinnesotaStatute 182.661 by adding subdivision 3a to give the Board explicit authority to dismiss contested cases when the contesting employer, employee,or employee representative fails to post or serve the notice of intent to contest the citation, the proposed assessment of penalty, or the period of time fixed for correction of the violation within the time prescribed in rules issued by the Board. Act of April 30, 1987, Ch. 46, section 3, 1987 Minn. Laws 69.

Moreover, the Cargill decision indicated that the board should assess fines when the posting/service requirements have not been met. Cargill, 393 N.W.2d at 426. The legislature subsequently also amended section 182.666 to explicitly clarify that the Board may not impose civil, monetary sanctions, since the Board's function is in part to review monetary sanctions imposed by the Commissioner of Labor and Industry. Act of April 30, 1987, Ch. 46, sections 4 - 6, 1987 Minn. Laws 69 - 70. Therefore, the Board's proposed amendments reflect the 1987 Legislative changes which effectively overrule Cargill and Bor-Son.

Second, the experience gained through working with the rules has provided the OSHRB with the opportunity to evaluate the overall clarity and effectiveness of the rules. Changes are needed to enhance the efficiency of the procedural aspects of the OSHRB.

The proposed rule amendments are necessary to respond to Cargill, Bor-Son, and the legislative changes and to increase the efficiency of the existing rules. It is the OSHRB's intention that the changes will eliminate misunderstandings that have resulted by their use. In addition to minimizing any misunderstandings of the rules, the amendments will serve to enhance the effective and the efficient resolution of the disputes before the OSHRB.

The reasonableness of each specific amendment is addressed in the amendment-by-amendment justification.

4. STATEMENT OF REASONABLENESS

The proposed amendments to the rules of procedure of the OSHRB are intended to increase the efficiency and effectiveness of the OSHRB.

Many of the amendments may appear to be insignificant. However, the amendments provide the OSHRB litigants with more precise statements of the intended design of the original rules. In addition, the amendments serve to promote efficiency in dispute resolution by placing more emphasis on parties' timely filing of documents with the OSHRB.

For the above-listed reasons, these rule amendments are reasonable. The amendment-by-amendment justification will further provide a basis for a determination of reasonableness.

5. AMENDMENT BY AMENDMENT JUSTIFICATION

General Changes: All references to hearing examiner contained in the rules have been changed to administrative law judge in order to make the rules consistent with Minnesota Statutes, Ch. 14.

5215.0700, subpart 7. POSTING MAINTAINED

For purposes of organizational clarity, Minnesota Rules, part 5215.0740, is renumbered as part 5215.0700, subpart 7.

5215.0710, subpart 1 and 5215.0720, subpart 1. NOTICE OF CONTEST

These rules were invalidated by the Cargill decision and have therefore been deleted.

5215.0711, subpart 1 and 5215.0721, subpart 1. NOTICE OF CONTEST

This new language replaces part 5215.0710, subpart 1, and 5215.0720, subpart 1. These parts refer to service of the notice of contest by the employer on both represented and unrepresented employees.

Following the issuance of a citation, an employer has, by statute, 15 days to contest the citation, penalty or abatement dates. The employer must send a letter stating an intent to contest to the Department of Labor and Industry. The Department must forward the notice of contest to the OSHRB in 7 days. When the notice of contest is received by the OSHRB, the executive secretary issues a letter acknowledging the contest and advising the employer of the requirement to post and/or serve the notice of contest upon affected employees and/or employee representatives (a certificate of service, notice to employees and filed copy of the notice of contest are enclosed with the letter). Under the Board's procedures in former part 5215.0710, subpart 1 and 5215.0720, subpart 1, if an employer failed to meet the 5-day time frame for certifying that posting and/or service of the notice of contest, the Board issued an order dismissing the employer's notice of contest.

Under 5215.2530, the employer could file a request for reinstatement of the notice of contest. The Board would review the request along with any written submissions or testimony. The Board would grant or deny the request. If denied, the dismissed employer could appeal the Board's decision to the Minnesota Court of Appeals under Minnesota Statutes, section 14.63.

The proposed rule revision would change this procedure. First, the rule has been expanded to explain to employers how to comply with posting/service requirements when their employees work in physically disperse operations, such as construction, installation, repair or service activities, and do not report to any fixed establishment on a regular basis. It also explains the procedures necessary to comply with the posting/service requirements when the cited worksite has been closed down or the employer is no longer working at that cite and the affected employees have been reassigned to other jobs or have left the employment of the cited employer.

Second, the new language indicates that if the employer fails to certify that it has posted and/or served the notice of contest within 5 days, the Board will issue an order to show cause. The order to show cause will direct the employer either to certify that the notice of contest has been posted and/or served or to show cause why the notice of contest should not be dismissed.

In cases where the employer consistently fails to abide by these procedures the employer would be required to certify that the notice of contest has been been posted or served **and** show cause why the contest should not be dismissed.

If the employer fails to certify the posting and/or service in response to the order to show cause the matter will be referred to an administrative law judge for hearing on the order to show cause. The administrative law judge can dismiss the employer's notice of contest. This dismissal can be appealed to the Board.

Thus, the proposed rule allows for dismissal of contesting parties who fail to comply with the posting and/or service request. The hearing and the order to show cause provide notice and opportunity to be heard prior to any dismissal.

There are two public policies behind this objective. The first is to ensure that employee or employee representatives are provided an opportunity to participate in contested matters in compliance with Minnesota Statutes, Section 182.661, subdivision 3 (1986). The second policy is to bring contested matters to a speedy resolution, because while the citation is pending, the cited conditions at the workplace continue unabated and workers continue to be exposed to hazards.

5215.0710, subpart 2, and 5215.0720, subpart 2. NOTICE OF HEARING

As noted above, these rules were invalidated by the Bor-Son & Cargill decision and therefore have been deleted.

5215.0711, subpart 2, and 5215.0721, subpart 2. NOTICE OF HEARING

These parts replace 5215.0710, subpart 2, and 5215.0720 subpart 2. These subparts refer to the requirements for posting and/or service of the notice of hearing upon employees or employee representative by the employer.

Under the Board's old procedures, when one of the parties filed a note of issue indicating readiness for hearing, the Board's executive secretary would arrange for an administrative law judge to hear the case and serve a notice of hearing on all parties. The notice of hearing informed the employer of the requirement to post/serve the notice of hearing on affected employees and/or employee representatives. The employer was then required to certify that he had complied with this requirement by filing a certificate of service with the administrative law judge and sending a copy to the executive secretary.

If the employer did not certify the posting or service in 5 days, the administrative law judge was required by part 5215.0710 or 5215.0720 to dismiss the notice of contest.

The proposed rule would change this procedure in that a copy of the certificate of service verifying the posting/service of the notice of hearing must be filed with the commissioner, thereby, notifying the commissioner that the posting/service requirements have been met. If the employer does not certify the posting/service as required, the rules would allow the judge to issue a default judgement in the matter either on the judge's motion or on motion by one of the parties. The new language also allows parties an opportunity to be heard.

There are two public policies behind this objective. The first is to ensure that employees or employee representatives are provided an opportunity to participate in contested matters in compliance with Minnesota Statutes, section 182.661, subdivision 3 (1986). The second policy is to bring contested matters to a speedy resolution, because while the contested citation is pending, the cited conditions at the workplace continue unabated and workers are exposed to hazards.

5215.0740. Posting Maintained.

This part, for organizational purposes, becomes subpart 7 under part 5215.0700

5215.0750. Service and Notice of Settlement Proposals.

The OSHRB proposes that the entire part be deleted here and incorporated as amended into part 5215.5300, subpart 2.

5215.2000, subpart 4. Failure to File.

In response to the Cargill decision, the language indicating that the Board could dismissed the action for untimely pleading is replaced by the language in subpart 4.

5215.2530. Reinstatement.

Requests for reinstatements will no longer be needed. As discussed above, parts 5215.0711 and 5215.0721 provide that notice and opportunity to be heard will be given through motions and orders. All orders will be made through motions and; therefore, there will be no need for a reinstatement hearing. The rationale is the same as discussed above with reference to parts 5215.0711, subpart 1, and 5215.0721, subpart 1.

5215.2560. Hearing.

Subpart 1. Notice of Readiness for Hearing

The words "Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing", incorporates into this subpart the current procedures for requesting that a contested case be scheduled for hearing.

Subpart 2. Notice of Readiness Not Filed.

The OSHRB's concern for expedient dispute resolution has led them to adopt the proposed changes in the time frame for parties who have not filed a notice of readiness. Instead of requiring that a notice of readiness be filed prior to scheduling a hearing, the new proposed amendment simply allows the board to schedule a hearing within 45 days of receipt of the respondent's answer.

Subpart 3. Notice of Hearing and Order.

The proposed amendment clarifies that jurisdiction over contested case hearings is found in Minnesota Statutes, Chapter 14, as well as advising the employer of the posting/service requirements located in 5215.0711, subpart 2, and 5215.0721, subpart 2.

5215.5300. Settlement.

The OSHRB maintains its firm stance in encouragement of settlements. However, it does not desire for settlement negotiations to delay the dispute resolution process before it.

Subpart 2. Service and Notice.

This proposed amendment seeks to ensure that all parties having an interest in the settlement agreement either sign or have service upon them. The existing rule only indicates that settlement agreements must be signed and dated by each party. Thus, the proposed amendment provides more detail with regard to how service and notice should be effectuated.

Subpart 3. Content of Settlements Agreements and Orders.

The OSHRB has established this rule requiring that any settlement contain an affirmative statement that the Notice of Contest was posted/served as required under parts 5215.0711 & .0721 to reinforce the importance of the posting/service requirements. This subpart also informs parties that any settlement agreement must include provision stating that the agreement has been posted/served, the notice of contest is being withdrawn and how the settlement affects the contested citation.

Subpart 6. Withdrawal of Notice of Contest.

This amendment is required in order for the language of this subpart to be consistent with the language under subpart 2 of 5215.5300.

5215.6100. Penalties.

The Board has no jurisdiction under Minnesota Statutes to impose civil penalties. The decision in Cargill stated that the Board has the authority to impose fines. However, the Cargill decision was overruled by the legislative amendment section 182.166, subdivision 6. Therefore, the new language clarifies and affirms the legislative intent that the Board only reviews the fines imposed by the Commissioner.

6. Small Business Considerations

These proposed amendments will affect small businesses as defined by this section. The OSHRB has considered each of the following methods for reducing the impact of the rule changes on small business:

(a) The establishment of less stringent compliance or reporting requirements for small businesses;

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) The consolidation or simplification of compliance or reporting requirements for small businesses;

(d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) The exemption of small businesses from any or all requirements of the rule.

The OSHRB is unable to incorporate any of these methods because doing so would be contrary to the statutory objectives that are the basis of the proposed rule-making.

Dated: Oct 11, 1988

State of Minnesota
Occupational Safety and Health
Review Board

Ken Sovereign
Chair

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

In the Matter of
Permanent Rules of
Procedure Relating
to the Occupational
Safety and Health Review
Board, Minn. Rules
pts. 5215.0100 to 5215.6100

AFFIDAVIT OF MAILING THE NOTICE
OF INTENT TO ADOPT RULE
AMENDMENTS WITHOUT A
PUBLIC HEARING AND
CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Janice Kramer, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. la, and 14.22 or 14.30, that their names be placed on the Occupational Safety and Health Review Board rulemaking mailing list is accurate, complete, and current as of this 21st day of November, 1988.

That on the 21st day of November, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Janice Kramer
JANICE I. KRAMER
EXECUTIVE SECRETARY

Subscribed and sworn to before me this
21 day of November, 1988.

Jeanne Gehrman

JEANNE A. GEHRMAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES SEPTEMBER 18, 1991

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

In the Matter of
Permanent Rules of
Procedure Relating
to the Occupational
Safety and Health Review
Board, Minn. Rules
pts. 5215.0100 to 5215.6100

NOTICE OF INTENT TO
ADOPT A RULE WITHOUT
A PUBLIC HEARING

Notice is hereby given that the Minnesota Occupational Safety and Health Review Board (hereinafter "Board") intends to adopt a rule of procedure clarifying the contested case process, enhancing effective and efficient resolution of disputes, and increasing the efficiency of the existing rule. The Board intends to adopt the rule without a public hearing following the procedures set forth in Minn. Stat. §§ 14.22 to 14.28 (1986) of the Administrative Procedure Act. The statutory authority to adopt the rule is Minn. Stat. §§ 14.06, 182.661, subds. 3 and 3a, and 182.664, subd. 3.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Janice I. Kramer
Executive Secretary
Occupational Safety and Health Review Board
443 Lafayette Road
St. Paul, Minnesota 55101
Telephone: (612) 296-8946

The proposed rule may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Janice I. Kramer upon request.

The proposed rule will have an impact on small businesses. The Board's consideration of the factors listed at Minn. Stat. § 14.115, subd. 2, is discussed in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the adopted rule must submit the written request to Janice I. Kramer.

Date: November 10, 1988

Janice I. Kramer
JANICE I. KRAMER
Executive Secretary

Occupational Safety and Health Review Board

Proposed Permanent Rules Relating to the Occupational Safety and Health Review Board

Rules as Proposed

~~DEPARTMENT OF LABOR AND INDUSTRY~~

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

5215.0711 SERVICE AND NOTICE TO UNREPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest or petition for abatement date.** If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within two working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

If, because of the nature of the employer's operations, it is not practicable to post the notice of contest and notice to employees at or near the worksite, the notice must be posted in a prominent place where it can be readily observable by all affected employees. For example, if employers are engaged in activities which are physically dispersed, these notices must be posted at the location to which employees report each day. If employees do not primarily work at or report to a single location, these notices must be posted at the location from which the employees operate to carry out their activities. If the employer's operation at the cited worksite ceases and affected employees are no longer employed by that employer, the employer must serve a copy of the notice of contest and notice to employees on all affected employees either by hand delivery or by mail to the last known address.

A notice in the following form complies with this subpart:

Approved by Revisor JCF

(Name of employer)

Your employer has been cited by the commissioner of labor and industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and may be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties in the rules of procedure established by the Occupational Safety and Health Review Board. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 443 Lafayette Road, Saint Paul, MN 55101, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Service and notice to affected employees not represented by an authorized employee representative are deemed accomplished by posting.

Certification of the posting required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the posting in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the posting requirements. If the employer fails to show cause or to certify that the notice of contest has been posted, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been posted timely, the employer must show cause and certify that the notice of contest has been posted to avoid dismissal of the notice of contest.

Subp. 2. **Notice of hearing.** A copy of the notice of hearing to be held before the administrative law judge must be

proved
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served by the employer on affected employees who are not represented by an authorized employee representative. The notice of hearing must be posted within two days of receipt at or near the place where the citation is required to be posted.

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

5215.0721 SERVICE AND NOTICE TO REPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest.** If there are any affected employees who are represented by authorized employee representative, the employer shall by first class mail or personal delivery serve upon the representative notice in part 5215.0711, subpart 1, and a copy of the notice of contest.

Service and notice to employees represented by an authorized employee representative are deemed accomplished by serving the representative by first class mail or personal delivery.

Certification of the service required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the service in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the service requirements. If the employer fails to show cause or to certify that the notice of contest has been served, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been served timely, the employer must show cause and certify that the notice of contest has been served to avoid dismissal of the notice of contest.

Approved
by Revisor _____

Subp. 2. **Notice of hearing.** A copy of the notice of hearing to be held before the administrative law judge shall be served by the employer on the authorized employee representative of affected employees, if any, by mail or personal delivery, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

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

5215.0730 NOTICE OF CONTEST FILED BY EMPLOYEE OR REPRESENTATIVE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Failure to serve notice of contest.** If the parties referred to under subparts 1 to 3 fail to certify that the notice of contest has been posted or served as required, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the contesting party has failed to comply with the posting or service requirements. If the party fails to show cause or to certify that the notice of contest has been served, the board may dismiss the notice of contest.

5215.2000 EMPLOYER CONTESTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Answer.** Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the ard.

The answer must contain a short and plain statem t denying those allegations in the com nich the party i to contest. Any allegation not s dmitte

~~If an answer is not filed with the exe ve secretary in a~~

Approved by Revisor _____

~~timely-manner,-the-notice-of-contest-shall-be-dismissed.~~

Subp. 4. Failure to file. If the complaint, notice to respondent, or the answer is not filed with the executive secretary in a timely manner, the board or one of the parties may move to dismiss the contest or the complaint. The hearing on any such motion shall be conducted before the administrative law judge.

5215.2560 ~~NOTICE-OF-READINESS-FOR~~ HEARING.

Subpart 1. ~~Filing-and-service~~ Notice of readiness for hearing. Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing.

Subp. 2. Notice of ~~hearing-and-order~~ readiness not filed. ~~Upon-receipt-of-the-notice-of-readiness-for-hearing,-the-board shall-schedule-a-hearing.--The-board-shall-serve-a-written notice-of-hearing-and-order-on-all-parties-at-least-30-days prior-to-the-hearing-date.--The-employer-shall-serve-a-copy-of the-notice-of-hearing-and-order-on-affected-employees-and authorized-employee-representatives-pursuant-to-parts-5215.0700 to-5215.0750.--The-notice-of-hearing-and-order-must-state-the following:~~ If a notice of readiness for hearing is not filed with the board within 45 days of receipt of the answer, the board may schedule a hearing and shall serve written notice of hearing and order on all parties.

~~A.--that-if-a-party-chooses-to-appear-at-the-hearing, a-notice-of-appearance-must-be-filed-by-that-party-with-the administrative-law-judge-within-20-days-of-the-date-of-service of-the-notice-of-hearing-and-order-pursuant-to-part-1400.5700; and~~

~~B.--that-a-failure-to-appear-at-the-hearing-may-result in-the-allegations-of-the-pleadings-being-taken-as-true~~

Subp. 3. Notice of hearing and ord[illegible] he board s[illegible]l serve a written notice of hearing and ord[illegible]nder part 1400.5600

Approved by Revisor _____

and all further proceedings shall be conducted pursuant to Minnesota Statutes, chapter 14.

The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to parts 5215.0700 to 5215.0730.

5215.5300 SETTLEMENT.

Subpart 1. **Settlement encouraged.** Settlement is encouraged at any stage of the proceedings if the settlement is consistent with the provisions and objectives of the act, but shall not delay the scheduling of a hearing in the matter.

Subp. 2. ~~**Signed and dated**~~ **Service and notice.** ~~Settlement agreements must be signed and dated by each party.~~ A settlement agreement must be filed with the board or administrative law judge and served upon affected employees or authorized employee representatives by the employer. Service upon affected employees shall be accomplished by posting. Service upon employee representatives shall be accomplished by personal delivery or first class mail.

Subp. 3. ~~**Date of service**~~ **Contents of settlement agreements and orders.** Settlement agreements must contain:

A. an affirmative statement indicating that the notice of contest was served and/or posted pursuant to parts 5215.0700 to 5215.0730;

B. ~~Settlement agreements must contain~~ a provision stating the date on which the employer has served the agreement upon affected employees in the manner prescribed by ~~part 5215.0750,~~ subpart 2;

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

D. an affirmative statement as to how the settlement agreement affects the status of the contested citation.

Subp. 4. and 5. [Unchanged.]

Subp. 6. [See Repealer.]

Subp. 7. to 9. [Unchanged.]

5215.6100 PENALTIES.

Approved by Revisor _____

~~All penalties assessed by the board are civil.~~

The board has no jurisdiction under Minnesota Statutes, section 182.667 and must conduct no proceeding under it.

RENUMBER. Minnesota Rules, part 5215.0740, is renumbered as part 5215.0700, subpart 7.

REPEALER. Minnesota Rules, parts 5215.0710; 5215.0720; 5215.0750; 5215.2530; and 5215.5300, subpart 6 are repealed.

Approved
by Revisor _____

Curt Moe
Executive Vice President
A & M Business Interior Services
2800 - 2nd Street North
Minneapolis, MN 55411

William S. Fancher, Jr.
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Subp. 5. **Revolving loan assets.** Assets for the purposes of revolving loans is the sum of the following, after deducting any outstanding indebtedness:

A. cash on hand or in checking or savings accounts;

B. securities or United States Savings Bonds;

C. market value of all interests in real estate, exclusive of the structure to be improved and a parcel of real property of not more than two contiguous platted lots or 160 contiguous acres on which such structure is located;

D. cash value of life insurance policies; and

E. all other property, exclusive of household furnishings, clothing, one automobile, and real estate, equipment, supplies, and inventory used in a business.

Subp. 6. **Previous revolving loans.** No applicant may receive a revolving loan to improve a property if the combined original principal amounts of revolving loans received by the applicant to improve the property will exceed $15,000, or if the outstanding balance of revolving loans will exceed the maximum loan amount in part 4900.0640, subpart 2.

Subp. 7. **Other assistance.** Applicants for receipt of revolving loans cannot be eligible for assistance provided under parts 4900.0510 to 4900.0520 and 4900.0590 to 4900.0605; or for local or federal government housing rehabilitation financing programs which may be available in the area in which the property is located.

4900.0640 AMOUNT OF GRANT OR LOAN.

Subpart 1. [Unchanged.]

Subp. 2. **Amount of loan.** The amount of the rehabilitation loan shall not exceed the lesser of ~~$7,500~~ the amount in *Minnesota Statutes*, section 462A.05, subdivision 14a, the actual cost of the work performed, or that portion of the cost of rehabilitation that the agency determines cannot otherwise be paid by the person or family without spending an unreasonable portion of the income of the person or family thereon.

Subp. 3. [See Repealer.]

4900.0660 ELIGIBLE PROPERTIES.

Grant and loan funds shall be used only to improve properties which meet the following criteria:

A. to C. [Unchanged.]

D. No property shall be eligible for a home improvement grant or deferred loan if it has been improved by such a grant or loan within the five-year period immediately preceding the date on which application for such grant or loan is made~~, except~~. No property is eligible for a revolving loan if it has been improved by a revolving loan within the two-year period immediately preceding the date on which application for the loan is made. These limitations do not apply in extraordinary circumstances relating to damage to the property as a result of events beyond the control of the applicant or to failure of plumbing, heating, or electrical systems, or defects in the roof or foundation systems, as determined by the agency in its sole discretion.

E. [Unchanged.]

REPEALER. *Minnesota Rules*, part 4900.0640, subpart 3, is repealed.

Occupational Safety and Health Review Board

Proposed Permanent Rules Relating to the Occupational Safety and Health Review Board

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Occupational Safety and Health Review Board (hereinafter "Board") intends to adopt a rule of procedure clarifying the contested case process, enhancing effective and efficient resolution of disputes, and increasing the efficiency of the existing rule. The Board intends to adopt the rule without a public hearing following the procedures set forth in *Minnesota Statutes* §§ 14.22 to 14.28 (1986) of the Administrative Procedure Act. The statutory authority to adopt the rule is *Minnesota Statutes* §§ 14.06, 182.661, subds. 3 and 3a, and 182.664, subd. 3.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Janice I. Kramer
Executive Secretary
Occupational Safety and Health Review Board
443 Lafayette Road
St. Paul, Minnesota 55101
Telephone: (612) 296-8946

The proposed rule may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Janice I. Kramer upon request.

The proposed rule will have an impact on small businesses. The Board's consideration of the factors listed at *Minnesota Statutes* § 14.115, subd. 2, is discussed in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the adopted rule must submit the written request to Janice I. Kramer.

Dated 10 November 1988

Janice I. Kramer
Executive Secretary

Rules as Proposed

~~DEPARTMENT OF LABOR AND INDUSTRY~~

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

5215.0711 SERVICE AND NOTICE TO UNREPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest or petition for abatement date.** If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within two working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

If, because of the nature of the employer's operations, it is not practicable to post the notice of contest and notice to employees at or near the worksite, the notice must be posted in a prominent place where it can be readily observable by all affected employees. For example, if employers are engaged in activities which are physically dispersed, these notices must be posted at the location to which employees report each day. If employees do not primarily work at or report to a single location, these notices must be posted at the location from which the employees operate to carry out their activities. If the employer's operation at the cited worksite ceases and affected employees are no longer employed by that employer, the employer must serve a copy of the notice of contest and notice to employees on all affected employees either by hand delivery or by mail to the last known address.

A notice in the following form complies with this subpart:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(Name of employer)

Your employer has been cited by the commissioner of labor and industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and may be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties in the rules of procedure established by the Occupational Safety and Health Review Board. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 443 Lafayette Road, Saint Paul, MN 55101, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Service and notice to affected employees not represented by an authorized employee representative are deemed accomplished by posting.

Certification of the posting required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the posting in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the posting requirements. If the employer fails to show cause or to certify that the notice of contest has been posted, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been posted timely, the employer must show cause and certify that the notice of contest has been posted to avoid dismissal of the notice of contest.

Subp. 2. **Notice of hearing.** A copy of the notice of hearing to be held before the administrative law judge must be served by the employer on affected employees who are not represented by an authorized employee representative. The notice of hearing must be posted within two days of receipt at or near the place where the citation is required to be posted.

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

5215.0721 SERVICE AND NOTICE TO REPRESENTED EMPLOYEES.

Subpart 1. **Notice of contest.** If there are any affected employees who are represented by an authorized employee representative, the employer shall by first class mail or personal delivery serve upon the representative the notice in part 5215.0711, subpart 1, and a copy of the notice of contest.

Service and notice to employees represented by an authorized employee representative are deemed accomplished by serving the representative by first class mail or personal delivery.

Certification of the service required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the service in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the service requirements. If the employer fails to show cause or to certify that the notice of contest has been served, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been served timely, the employer must show cause and certify that the notice of contest has been served to avoid dismissal of the notice of contest.

Subp. 2. **Notice of hearing.** A copy of the notice of hearing to be held before the administrative law judge shall be served by the employer on the authorized employee representative of affected employees, if any, by mail or personal delivery, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

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

5215.0730 NOTICE OF CONTEST FILED BY EMPLOYEE OR REPRESENTATIVE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Failure to serve notice of contest.** If the parties referred to under subparts 1 to 3 fail to certify that the notice of contest has been posted or served as required, the board may issue an order to show cause why the contest should not be dismissed on

the grounds that the contesting party has failed to comply with the posting or service requirements. If the party fails to show cause or to certify that the notice of contest has been served, the board may dismiss the notice of contest.

5215.2000 EMPLOYER CONTESTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Answer.** Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the board.

The answer must contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is deemed admitted.

~~If an answer is not filed with the executive secretary in a timely manner, the notice of contest shall be dismissed.~~

Subp. 4. **Failure to file.** If the complaint, notice to respondent, or the answer is not filed with the executive secretary in a timely manner, the board or one of the parties may move to dismiss the contest or the complaint. The hearing on any such motion shall be conducted before the administrative law judge.

5215.2560 ~~NOTICE OF READINESS FOR~~ HEARING.

Subpart 1. **~~Filing and service~~ Notice of readiness for hearing.** Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing.

Subp. 2. **Notice of ~~hearing and order~~ readiness not filed.** ~~Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing. The board shall serve a written notice of hearing and order on all parties at least 30 days prior to the hearing date. The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to parts 5215.0700 to 5215.0750. The notice of hearing and order must state the following:~~ If a notice of readiness for hearing is not filed with the board within 45 days of receipt of the answer, the board may schedule a hearing and shall serve written notice of hearing and order on all parties.

~~A. that if a party chooses to appear at the hearing, a notice of appearance must be filed by that party with the administrative law judge within 20 days of the date of service of the notice of hearing and order pursuant to part 1400.5700; and~~

~~B. that a failure to appear at the hearing may result in the allegations of the pleadings being taken as true.~~

Subp. 3. **Notice of hearing and order.** The board shall serve a written notice of hearing and order under part 1400.5600 and all further proceedings shall be conducted pursuant to *Minnesota Statutes*, chapter 14.

The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to parts 5215.0700 to 5215.0730.

5215.5300 SETTLEMENT.

Subpart 1. **Settlement encouraged.** Settlement is encouraged at any stage of the proceedings if the settlement is consistent with the provisions and objectives of the act, but shall not delay the scheduling of a hearing in the matter.

Subp. 2. **~~Signed and dated~~ Service and notice.** ~~Settlement agreements must be signed and dated by each party.~~ A settlement agreement must be filed with the board or administrative law judge and served upon affected employees or authorized employee representatives by the employer. Service upon affected employees shall be accomplished by posting. Service upon employee representatives shall be accomplished by personal delivery or first class mail.

Subp. 3. **~~Date of service~~ Contents of settlement agreements and orders.** Settlement agreements must contain:

A. an affirmative statement indicating that the notice of contest was served and/or posted pursuant to parts 5215.0700 to 5215.0730;

B. ~~Settlement agreements must contain~~ a provision stating the date on which the employer has served the agreement upon affected employees in the manner prescribed by ~~part 5215.0750.~~ subpart 2;

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

D. an affirmative statement as to how the settlement agreement affects the status of the contested citation.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 4. and 5. [Unchanged.]

Subp. 6. [See Repealer.]

Subp. 7. to 9. [Unchanged.]

5215.6100 PENALTIES.

~~All penalties assessed by the board are civil.~~

The board has no jurisdiction under *Minnesota Statutes,* section 182.667 and must conduct no proceeding under it.

RENUMBER. *Minnesota Rules*, part 5215.0740, is renumbered as part 5215.0700, subpart 7.

REPEALER. *Minnesota Rules*, parts 5215.0710; 5215.0720; 5215.0750; 5215.2530; and 5215.5300, subpart 6 are repealed.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Health

Adopted Emergency Rules Relating to Procedures for Exceptions to Moratoriums

The rules proposed and published at *State Register*, Volume 13, Number 3, pages 130-138, July 18, 1988 (13 S.R. 130) and Volume 13, Number 5, pages 260-268, August 1, 1988 (13 S.R. 260) are adopted with the following modifications:

Rules as Adopted

PROCEDURES FOR EXCEPTIONS TO NURSING HOME BED MORATORIUM

4655.1070 [EMERGENCY] DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4655.1070 to ~~4655.1100~~ 4655.1098 [Emergency], the following terms have the meanings given them in this part.

~~Subp. 5. Alternative care grant use. "Alternative care grant use" means the information determined under part 4655.1084 [Emergency], subpart 9.~~

Subp. ~~6.~~ 5. **Annual statistical report.** "Annual statistical report" means the report incorporated by reference under part 4655.1072 [Emergency].

Subp. ~~7.~~ 6. **Appraised value.** "Appraised value" means the value of the nursing home buildings, attached fixtures, and land improvements used for resident care as determined under part 9549.0060.

Subp. ~~8.~~ 7. **Attached fixture.** "Attached fixture" has the meaning given in part 9549.0020, subpart 6.

Subp. ~~9.~~ 8. **Attached hospital.** "Attached hospital" means a hospital that is under common ownership and operation with a nursing home and shares with that nursing home the cost of common service areas such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

Subp. ~~10.~~ 9. **Buildings.** "Buildings" has the meaning given in part 9549.0020, subpart 7.

Subp. ~~11.~~ 10. **Certified boarding care home.** "Certified boarding care home" means a facility licensed under parts 4655.0090 to 4655.1060 and 4655.1200 to 4655.9900, and certified to participate in medical assistance under *United States Code,* title 42, sections 1396 to 1396p as amended through July 18, 1984.

CERTIFICATE OF THE RESOLUTION
OF THE MINNESOTA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD ADOPTING THE RULE

I, Kenneth L. Sovereign, do hereby certify that I am a member and the Chair of the Minnesota Occupational Safety and Health Review Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board, duly and properly called and held on the 6th day of February, 1989, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to the Occupational Safety and Health Review Board is approved and adopted as modified pursuant to authority vested in the Board by Minnesota Statutes sections 14.06, 182.661, subdivision 3 and 3a, and 182.664, subdivision 3. Janice E. Kramer, the Executive Secretary of the Board, is authorized to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of February, 1989.

K. L. Sovereign

KENNETH L. SOVEREIGN
Chair

Attest

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

In the Matter of
Permanent Rules of
Procedure Relating
to the Occupational
Safety and Health Review
Board, Minn. Rules
pts. 5215.0100 to 5215.6100

FINDINGS OF FACT,
CONCLUSIONS AND
ORDER ADOPTING A RULE
WITHOUT A PUBLIC HEARING

Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on Monday, November 28, 1988, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes sections 14.14, subdivision 1a and 14.22 on November 21, 1988. Additional notice was provided by publishing the notice in the November 1988 issue of Small Business Notes. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The agency received 17 requests for a public hearing. Therefore, the agency did not receive request for a public hearing from 25 or more persons. No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, the Board finds the following:

1. Part 5215.0711, subparts 1 and 2, and part 5215.0721, subparts 1 and 2, when read together as proposed were unclear as to the limitation for posting or serving certain documents and the limitation for certification of posting or service. Parts 5215.0711 and 5215.0721 have been modified to clarify that the documents

referenced therein must be posted or served and that the posting or service must be certified all within the same five day period.

2. Part 5215.0711, subpart 1, has been modified to remove the phrase "for example," since the employer's posting obligations under the circumstances delineated therein are in fact the requirements imposed by the rule.

3. Parts 5215.0711, subparts 1 and 2, 5215.0721, subparts 1 and 2, and 5215.0730, subpart 4, have been modified to clarify the Board's intent that in order to avoid a dismissal for failure to serve or post the documents referenced therein, the contesting party may either show cause why the contest should not be dismissed or certify that the documents were posted or served within the time prescribed by these rules.

4. Part 5215.0730, subpart 4, as proposed has been modified to provide for dismissal by an administrative law judge so that the procedures addressed by part 5215.0730 conform to those established for any dismissal for failure to comply with these parts.

5. Part 5215.5300, subpart 2, has been modified to clarify that a settlement agreement must be served on both unrepresented employees and employee representatives when both unrepresented and represented employees work at the affected site.

6. Part 5215.5300, subpart 3, item A, has been modified so that the phrase "served or posted" conforms to the language used throughout the rest of the rule.

7. The above modifications are not substantial changes because they do not affect classes of persons who could not reasonably have been expected to comment on the proposed rule as originally noticed, they do not introduce new subject matter, and they make no change the possibility of which was not raised by the proposed rule as originally noticed in such a way as to invite reaction.

8. The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Permanent Rules Relating to the Occupational Safety and Health Review Board are adopted as modified pursuant to authority vested in the Board by Minnesota Statutes sections 14.06, 182.661, subdivisions 3 and 3a and 182.664, subdivision 3.

Dated: 2/22, 1989

KENNETH L. SOVEREIGN
Chair


MAR 1989
RECEIVED
ATTORNEY
GENERAL
HEALTH

STATE OF MINNESOTA

COUNTY OF RAMSEY

HEALTH REVIEW BOARD

BEFORE THE MINNESOTA

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

In the Matter of Permanent Rules of Procedure Relating to the Occupational Safety and Health Review Board, Minn. Rules pts. 5215.0100 to 5215.6000

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Catherine E. Avina, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. The Attorney General Docket Number is 50.0X20.0605.

Catherine E. Avina 3/7/89

CATHERINE E. AVINA
Special Assistant
Attorney General

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL - Health

DATE : March 3, 1989

TO : Christie Eller
Assistant Attorney General

FROM : Catherine E. Avina
Special Assistant
Attorney General

PHONE : 341-7272

RECEIVED
MAR 03 89
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

SUBJECT : In the Matter of Permanent Rules of Procedure Relating to the Occupational Safety and Health Review Board, Minn. Rules pts. 5215.0100 to 5215.6000

Enclosed for your review, pursuant to Minn. Stat. § 14.26 (1986) and Minn. Rules pt. 2010.0300 (1987), are the following documents to support the above-referenced rule:

1. Certificate of Board's Authorizing Resolution;

2. Rule as proposed with a certificate of approval as to form by the Revisor of Statutes attached;

3. Notice of Intent to Adopt a Rule Without a Public Hearing;

4. Statement of Need and Reasonableness;

5. Affidavit of Mailing the Notice of Intent to Adopt a Rule Without a Public Hearing and Certificate of Mailing list;

6. Notice of Intent to Adopt a Rule Without a Public Hearing (as published in the State Register);

7. Supplemental Notice for small business concerns;

8. Public Comment and requests for hearing (less than 25);

9. Rule as adopted (original and three copies);

10. Certificate of Board's Resolution Adopting Rule;

11. Findings of Fact, Conclusions, and Order Adopting Rule Without a Public Hearing;

12. Declaration of Counsel;

CEA:lb
Enclosures
cc: Board office

Comments

18 comments
17 requested a hearing.

Rule

For comments see Adopted
as well as Proposed Rule

Authority

182.661 Sat 3 + 3a
182.664 sub 3.

180 day deadline
I dont believe applicable
please review.