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July 20, 1994

Maryanne V. Hruby, Executive Director  
Legislative Commission to Review  
Administrative Rules  
Room 55 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155-1201

Dear Ms. Hruby:

As required by Minnesota Statute § 14.131, we are forwarding a copy of the Statement of Need and Reasonableness for an amendment to existing Minnesota Rule 5210.0680, "Reporting Fatality and Multiple Hospitalization Incidents." The Notice of Intent to Adopt a Rule Without a Public Hearing is scheduled for publication in the *State Register* on July 25, 1994. Notices are also being mailed today to all parties on the OSHA Division's list of individuals and organizations (approximately 700 locations) that have requested notice of OSHA rulemaking. The rule is being proposed under the non-controversial rulemaking provisions of the Administrative Procedures Act.

Should you have any questions concerning this rulemaking, please call me at 297-3254.

Sincerely,

A handwritten signature in cursive script that reads 'Patricia Lorentz'.

Patricia Lorentz, Management Analyst  
Occupational Safety and Health Division

PL/pal  
Enclosures

# STATE OF MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Amendment  
to Minnesota Rule 5210.0680 Governing  
Reporting of Fatality or Multiple  
Hospitalization Incidents.

## STATEMENT OF NEED AND REASONABLENESS

### I. INTRODUCTION.

This Statement of Need and Reasonableness (SONAR) discusses a proposed amendment to an existing Minnesota Occupational Safety and Health Rule governing the reporting of fatality or multiple hospitalization incidents (Minnesota Rule 5210.0680) which was adopted by the Department of Labor and Industry, Occupational Safety and Health Division (hereinafter: Minnesota OSHA) on May 30, 1978, and amended on January 18, 1982. This rule is identical to Federal Occupational Safety and Health Administration (hereinafter: Federal OSHA) standard, 29 CFR 1904.8, "Reporting of fatality or multiple hospitalization incidents." On April 1, 1994, Federal OSHA published several significant changes to their rule; State Plan states, such as Minnesota, are required to adopt similar or "at least as effective as" amendments to their rules. By this action, Minnesota OSHA is proposing to adopt amendments identical to the 1994 Federal OSHA amendments.

### II. STATEMENT OF COMMISSIONER'S STATUTORY AUTHORITY.

Minnesota Statute § 182.657 authorizes the Commissioner of Labor and Industry "...to promulgate, in accordance with chapter 14, such rules as may be deemed necessary to carry out the responsibilities of this chapter..."

### III. STATEMENT OF NEED.

Minnesota Statutes, Chapter 14 (1992) requires the Commissioner of Labor and Industry to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Commissioner must set forth reasons for the proposal which are not arbitrary and capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention, and reasonableness means that the solution proposed by the Commissioner is appropriate. The need for the proposed rules is discussed below.

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**Amendments to Minnesota Rule 5210.0680**

When Congress passed the Williams-Steiger Occupational Safety and Health Act of 1970 it included guidelines for states to assume responsibility for the development and enforcement of Occupational Safety and Health Standards under an approved State Plan. One criteria that must be met is the development and enforcement of safety and health standards which are at least as effective in providing safe and healthful employment and places of employment as the standards promulgated by Federal OSHA.

Minnesota submitted a plan for the development and enforcement of state occupational safety and health standards to Federal OSHA on November 9, 1972. That plan included provisions for making changes in Minnesota's occupational safety and health program to bring it into full conformity with the requirements of Section 18 of the Occupational Safety and Health Act of 1970. The plan includes a provision that the commissioner continue to adopt Federal OSHA standards by reference or adopt state standards that are "at least as effective as" the federal standard.

Minnesota Rule 5210.0680, "Reporting of Fatality or Multiple Hospitalization Accidents," was originally adopted by Minnesota OSHA on May 30, 1978, and amended on January 18, 1982. The original rule was identical to Federal OSHA's requirements and read as follows:

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

The purpose of this rule was to provide the Agency with timely information to allow investigation of the causes of employment fatalities, injuries and illnesses, for the purpose of identifying and requiring corrective action to prevent the occurrence of similar incidents in the future. In addition, the information gathered during these investigations is a useful source of support for new or revised safety and health standards and in determining whether current standards adequately cover the hazards which led to the incident. These investigations must be prompt and thorough if they are to provide valid, useful information and achieve their intended purposes.

The proposed changes include a reduction in the reporting time period from 48 hours to eight hours; a reduction in the number of hospitalized employees that qualify an incident as

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reportable (from five down to three); establishment of an OSHA toll-free phone number to be used in reporting incidents which occur evenings and on weekends; and a requirement for employers to report fatalities which occur within 30 days of an employment accident.

The proposed changes to Minnesota Rule 5210.0680 are identical to those made by Federal OSHA. It is necessary that the proposed amendments be adopted in order for Minnesota OSHA to retain its "at least as effective as" status with the Federal OSHA program.

In addition, Minnesota OSHA believes that reducing the reporting period and increasing the number of serious incidents reported is critical for the Agency to respond quickly and inspect for hazardous conditions that may pose a risk to other workers at the worksite. Prompt inspections will enable Minnesota OSHA to determine whether its current standards adequately cover the hazards involved in the incident. Better information will also be gathered on the causes of incidents which can be used to identify serious hazards, prevent incidents in the future, and form the basis for revised standards.

Subpart 1 of Minnesota Rule 5210.0680, requires employers to report, within 8 hours after their occurrence, incidents which result in a worker fatality or multiple hospitalizations. The previous requirement allowed 48 hours to elapse before the fatality/catastrophe had to be reported. Reducing the reporting period from 48 hours to eight hours will enable Minnesota OSHA to inspect the site of the incident and interview personnel while their recollections are more immediate, fresh, and untainted by other events, thus providing more timely and accurate information pertaining to possible causes. The shorter reporting time also makes it more likely that the incident site will be undisturbed, affording the investigation team a better view of the worksite as it appeared at the time of the incident. These factors will increase Minnesota OSHA's effectiveness in investigating the causes of reported workplace incidents, and in identifying and controlling the hazards which caused the fatalities or serious injuries or illnesses. Prompt investigation of incidents is a key element in Minnesota OSHA's ability to enforce existing standards and to evaluate the need for new standards.

Subpart 1 also amends the criteria for reportable incidents. Under the proposal, those incidents which result in the hospitalization of three or more employees are to be reported. Formerly, incidents involving the hospitalization of five or more employees were to be reported. Lowering the reportable number of hospitalizations from five to three will provide the Agency with additional information on the causes of workplace incidents by increasing the number and broadening the range of incidents which will be investigated.

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For purposes of reporting an incident, an employee is considered to be "hospitalized" if that employee is admitted to the hospital on an "in-patient" basis. Emergency room and all other forms of out-patient care are excluded from the reporting requirement. This clarification is necessary to insure that only the more serious incidents are reported and eliminates the need to report incidents where employees are treated and released. Once three or more employees are admitted to the hospital as a result of an incident, for whatever reason, the incident is reportable.

Subpart 1 further requires the employer to make the report orally, by telephone or in person, to the nearest Minnesota OSHA office. In those cases where an incident occurs after regular business hours or on a weekend or state holiday, the employer may meet the eight-hour reporting requirement by calling the Federal OSHA national toll-free telephone number. This national "hotline" will transmit the report to the appropriate state contact. It is necessary to require the report to be made by phone or in person to assure that the information is given directly to a Minnesota OSHA representative who can initiate immediate action. Reports by facsimile or to a telephone answering machine will not, in all situations, meet the objective of timely reporting since a Minnesota OSHA representative may not be available to receive the information within the required eight hour time-frame, especially if the report is received after regular business hours or over a weekend or holiday. For this reason, reporting obligations can only be met through direct verbal contact with a Minnesota OSHA office or by utilizing the Federal OSHA toll-free number.

Subpart 2 is necessary to assure that all serious incidents are reported. An employment incident which is not immediately reportable (e.g., no fatality occurred and less than three employees were hospitalized) may later on result in the death of an employee or the in-patient hospitalization of three or more employees. If the death and/or hospitalization occurs within 30 days after the incident occurred, the employer is required to report the incident within eight hours after learning of it. This clarifies the previous rule which set no explicit time frame for reporting fatalities and/or multiple hospitalizations which did not occur immediately.

Subpart 3 is necessary to provide guidance to employers in those instances when an employer may not learn of a reportable incident at the time it occurs. The rule recognizes that there will be occasions when an employer will not immediately know about a reportable incident and allows the reporting time to begin as soon as the employer does obtain the information. The previous rule did not contain specific language to address this type of situation which can occur, for example, when an employee is traveling on company business and is not in contact with the employer.

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Subpart 4 is necessary to define the minimum information that must be provided as part of an incident report. This listing of required information, although brief, will assure that Minnesota OSHA is provided with enough information to initiate appropriate investigation activities.

**IV. STATEMENT OF REASONABLENESS.**

Subpart 1 of Minnesota Rule 5210.0680 reduces the reporting requirement from 48 hours to eight hours. The current reporting time of 48 hours materially handicaps the capability of Minnesota OSHA to conduct an investigation of an incident and to accurately establish what transpired. Because prompt investigation is critical, an immediate report would be preferable. However, because this is not practical, a reasonable compromise was determined to be eight hours. This is reasonable because the eight-hour reporting criteria coincides with a "standard work shift" for most employers and thus provides a logical cut-off point for fulfilling the reporting requirement. The eight-hour time period is reasonable in that it allows adequate time for a preliminary report to be prepared by an employer and provided to Minnesota OSHA. In addition, during the initial eight-hour period following an accident, the accident scene is unlikely to change substantially. This will increase Minnesota OSHA's effectiveness in investigating the causes of reported workplace incidents and at identifying and controlling the hazards which caused the fatality or serious injuries.

Subpart 1 also amends the criteria for reportable incidents by reducing the number of hospitalized employees from five to three, thereby requiring employers to report any incident which results in the hospitalization of three or more employees. This amendment is reasonable because it will increase the number of reported incidents allowing Minnesota OSHA to determine the cause of more workplace accidents. Incidents which result in the hospitalization of three or more employees are significant enough to warrant investigation. Defining hospitalization to include only "in-patient" hospitalizations relieves the employer of the responsibility of reporting minor incidents where an employee may be examined in the emergency room or other health care facility and released. In addition, no additional burden is placed on the employer to track the type of treatment that was provided while the employee was in the hospital. Additional burdens imposed by this amendment will be minimal. During the public hearings held by Federal OSHA it was estimated that, for the nation as a whole, approximately 200 additional reports requiring approximately 15 minutes per report will be generated by this amendment.

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Subpart 1 requires the report to be made orally by phone or in person to a Minnesota OSHA office or by phone to the Federal OSHA national hotline. This requirement is reasonable because a report that is filed by fax or on an answering machine may not reach a Minnesota OSHA representative for some time, negating the intent of the prompt report. In addition, allowing employers to use the Federal OSHA national hotline number makes it quite easy to report an incident within the eight-hour time limit. Although this hotline number is primarily intended to facilitate prompt reporting after regular business hours and on weekends when Minnesota OSHA offices are closed, the rule does not prohibit an employer from reporting an incident to the hotline during regular business hours. The toll-free number enhances the reporting abilities of all industries.

Subpart 2 is reasonable because an incident may not result in the immediate death or multiple hospitalization of employees but may ultimately come to that result. These incidents need to be reported so that appropriate investigative action can be initiated. Limiting the reportable incidents to those that result in a death or multiple hospitalizations within 30 days of the incident is reasonable because investigations conducted after longer delays would reveal little useful information and work relationship would be difficult to determine. Federal OSHA had originally proposed a time limit of six months; however, comments received during the federal hearing process revealed that such a long time-frame was inappropriate. The National Highway Transportation Safety Association studies found that 98% of traffic fatalities occurred within 30 days of the accident. Other commenters felt that after one month, the equipment, other physical circumstances and witnesses' memories would have changed to such a degree that subsequent investigation by OSHA would be of limited usefulness. In addition, a 30-day time frame places no additional burden on employers to track deaths, injuries, or illnesses that occur subsequent to a workplace accident beyond the 30 days--information that should be readily available to them through OSHA recordkeeping logs, Workers' Compensation reports, etc.

Subpart 3 is reasonable because it clarifies that an employer will not be held responsible for failing to report, within eight hours, an incident that he/she was not immediately aware of. The eight-hour reporting requirement begins with the employer's first knowledge of an incident. If, for example, an employee is conducting business out-of-town and is injured in an accident and the employer is not notified until the next day, the employer would not be held responsible for reporting the accident within eight hours of its occurrence but would be required to report it within eight hours of learning of the accident.

Subpart 4 is reasonable in that it defines minimum, basic information that must be provided as part of the incident report. The required information is all readily available to the employer at the time of an accident. The rule is reasonable because it does not require the

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employer to make any detailed written report, provide any analysis, nor conduct any lengthy investigation. The rule requires the employer to report simple, basic information which Minnesota OSHA can then use to determine what action is required.

**V. SMALL BUSINESS CONSIDERATIONS.**

Minnesota Statutes, section 14.115 (1992) requires state agencies proposing rules that affect small businesses to consider the following methods for reducing the impact of the rules on small businesses:

- (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.

Minnesota Statutes, section 14.115, subdivision 3 (1992) requires agencies to incorporate into proposed rules any of the methods listed in subdivision 2 "that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis for the proposed rulemaking."

Minnesota Rule 5210.0680 affects all employers. However, the reporting requirements are as simple and basic as possible. If an accident occurs, the employer need only pick up a phone and call--either the nearest Minnesota OSHA Office or the Federal OSHA national hotline. There is no question about the information they need to provide; the basic required information outlined in the rule is the information that is generally readily available to an employer following any incident.

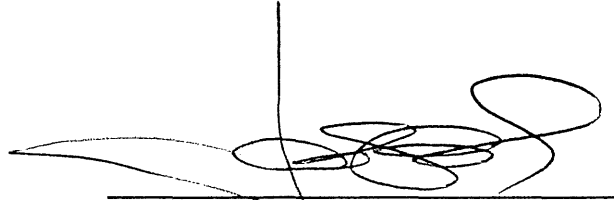


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Because the Minnesota Occupational Safety and Health Act of 1973 is intended to assure safe and healthful working conditions for all employees in the state, it is inappropriate to eliminate employees from coverage because they are employed by a small employer. Accidents occur in all types of businesses and, in order to provide equal protection for all employees and eliminate safety and health hazards wherever they may be, it is necessary that all employers be required to report workplace accidents. Therefore, there is no exemption for small businesses from the reporting requirements of Minnesota Rule 5210.0680.

In this case, the impact of the proposed amendment on small businesses will be minimal since it requires nothing of an employer unless an accident occurs, in which case they must make a phone call to report the accident within eight hours of its occurrence.

In conclusion, an exemption, simplification, or less stringent standard for small businesses pursuant to Minnesota Statutes § 14.115, subdivision 2 (a) through (e) has been determined to be inappropriate and unwarranted.



John B. Lennes, Jr.  
Commissioner

Date: 7/15/94

STATE OF MINNESOTA  
DEPARTMENT OF LABOR AND INDUSTRY

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

**NOTICE OF INTENT  
TO ADOPT A RULE  
WITHOUT A PUBLIC HEARING**

The Department of Labor and Industry intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rule.

**Agency Contact Person.** Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to:

Patricia Lorentz  
Department of Labor and Industry  
OSHA Division  
443 Lafayette Road  
St. Paul, Minnesota 55155  
(612) 297-3254    FAX: (612) 297-2527

**Subject of Rules and Statutory Authority.** The proposed rule is an amendment to Occupational Safety and Health Minnesota Rule 5210.0680, "Reporting of Fatality or Multiple Hospitalization Accidents." The statutory authority to adopt this rule is *Minnesota Statutes*, section 182.657. A copy of the proposed rule is attached as part of this notice. A copy of the proposed rule is also published in the *State Register*.

**Comments.** You have until 4:30 p.m., August 24, 1994, to submit written comments in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comments must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on August 24, 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their

requests in writing. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

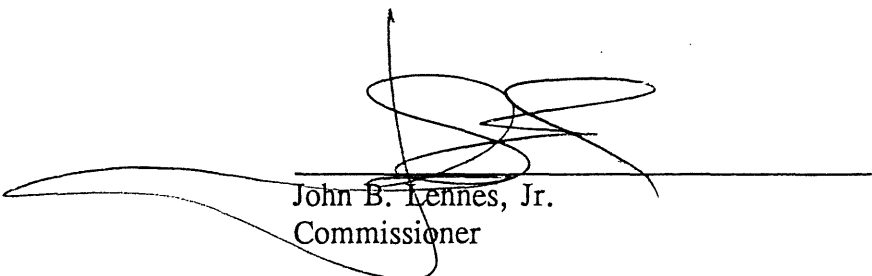
**Modifications.** The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule as printed in the *State Register*. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement 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.

**Small Business Considerations.** The proposed rule will have only minimal impact on small businesses. Primarily the rule implements changes in the reporting requirements identical to the changes adopted by Federal OSHA and applicable to all employers throughout the United States. The major change involves a reduction in the amount of time allowed for an employer to report a fatality or multiple hospitalization incident. However, a toll free hotline number has been established to make this reporting requirement as easy to comply with as possible.

**Expenditure of Public Money by Local Public Bodies.** No additional financial burdens are placed on local public bodies as the proposed changes will not affect the expenditure of public monies by local bodies.

**Adoption and Review of Rules.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.



John B. Kennes, Jr.  
Commissioner

Date: \_\_\_\_\_

7/15/94

1 Department of Labor and Industry

2

3 Proposed Permanent Rules Relating to Occupational Safety and  
4 Health; Reporting

5

6 Rules as Proposed

7 5210.0680 REPORTING OF FATALITY OR MULTIPLE HOSPITALIZATION

8 ACCIDENTS INCIDENTS.

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

20 Subpart 1. When and where to report. Within eight hours  
21 after the death of any employee from a work-related incident or  
22 the inpatient hospitalization of three or more employees as a  
23 result of a work-related incident, the employer of any employees  
24 so affected shall orally report the fatality or multiple  
25 hospitalization by telephone or in person to the Minnesota  
26 Department of Labor and Industry, Occupational Safety and Health  
27 Division (Minnesota OSHA) office that is nearest to the site of  
28 the incident. After normal business hours and on Saturdays,  
29 Sundays, and state holidays, the report shall be made within the  
30 eight-hour time period by using the federal Occupational Safety  
31 and Health Administration (federal OSHA), United States  
32 Department of Labor, toll-free central telephone number.

33 Subp. 2. Application. The reporting requirement specified  
34 in subpart 1 also applies to an employment incident which is not  
35 immediately reportable but within 30 days of the occurrence of