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MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

(651) 284-5005
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November 4, 2013

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: Amendment to Rules Regulating the Filing and Service of Various Notices and Documents, Minnesota Rules, parts 5210.0007, 5210.0536 and 5210.0539; Revisor's ID Number RD4190

Dear Librarian:

The Minnesota Department of Labor and Industry, Division of Occupational Safety and Health, intends to adopt rules relating to the filing and service of various notices and documents with the Department. We plan to publish a Notice of Intent to Adopt Rules Without a Public Hearing in the November 12, 2013 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, §§ 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules Without a Public Hearing.

If you have any questions, please contact me at (651) 284-5128 or patricia.munkel-olson@state.mn.us.

Yours very truly,

A handwritten signature in black ink, appearing to read "Patricia Munkel-Olson", is written over the typed name.

Patricia Munkel-Olson
General Counsel
Office of General Counsel
MN Department of Labor and Industry

Enclosure: As referenced

Minnesota Department of Labor & Industry

Division of Occupational Safety and Health

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Regulating the Filing and Service of Various Notices and Documents, Minnesota Rules, 5210.0007, 5210.0536, and 5210.0539; Revisor ID Number RD4190

INTRODUCTION

The Minnesota Department of Labor & Industry, Division of Occupational Safety and Health (MNOSHA) is committed to helping Minnesotans improve workplace safety and health. These services include outreach, consultation, and enforcement.

The Commissioner of the Department of Labor and Industry proposes to adopt rules regulating the filing and service of various notices and documents with MNOSHA. Specifically, the proposed amendments pertain to notices of contest and letters of contest filed under rule parts 5210.0536 and 5210.0539, and progress reports and other abatement documentation filed under rule part 5210.0532, subpart 2, item C.

In addition to filing by postage prepaid first-class mail, personal delivery, or facsimile, the proposed amendments, if adopted, will permit employers and other persons to file these documents by email or other reliable means of electronic transmission.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Patricia Munkel-Olson at the Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN, 55155, (651) 284-5006, dli.rules@state.mn.us. TTY users may call the Department of Labor and Industry at (651) 297-4198.

STATUTORY AUTHORITY

All sources of statutory authority were adopted and effective before January 1, 1996 and have not been revised by the Legislature since 1985, and so Minnesota Statutes §14.125, does not apply.

The Department's statutory authority to adopt the rules is stated in Minnesota Statutes §182.657, which provides: The commissioner shall promulgate, in accordance with chapter 14, such rules as may be deemed necessary to carry out the responsibilities of this chapter, except for those responsibilities contained in section 182.655, including rules dealing with the inspection of places of employment.

Under this statute, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Minnesota Statutes § 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give Department's

response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The classes of persons who will probably be affected by the proposed rules include employers and employees or their authorized representatives. The proposed rule does not include any costs that are not already borne by affected persons. Instead, affected persons will benefit from the proposed rule because they will have an additional method to choose from when filing certain documents with MNOSHA.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

MNOSHA does not anticipate any probable costs to the Department or any other agency related to receiving email or other reliable electronic transmissions because these technologies are already available to the Department and other State Agencies.

MNOSHA does not anticipate any effect on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The rules, as currently written, do not permit the filing of documents electronically. An amendment to the rules is the least costly and least intrusive method to achieve the purpose of adding options for affected parties to file certain documents with MNOSHA.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

No other methods were considered for achieving the purpose of the proposed rule.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The probable costs of complying with the proposed rule are negligible in that affected parties may choose whichever filing method they prefer. In practice, the probable costs of compliance are likely to be reduced because there are more filing methods from which to choose and affected parties that file documents by facsimile would not be required to then file the original signed document with the Department within five days.

As an affected party, MNOSHA’s cost are likely to be reduced in that there will be less wear-and-tear on equipment and a reduction in staff time related to its applicable business

processes, such as routing, review and imaging.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

MNOSHA has not identified any probable cost of not adopting the proposed rule. The rules, as written, provide that certain documents may be filed by mail, personal delivery, or facsimile. Should the proposed rules not be adopted, these filing methods will remain intact.

The consequence of not adopting the proposed rule, however, is that affected parties filing by facsimile will continue to be required to file the original signed documents within five days. Additionally, filings by email or other reliable electronic transmission provides paperless choices for affected parties. If adopted, the proposed rules will provide a convenient and possibly paperless method for affected parties to file certain documents with MNOSHA.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

MNOSHA is unaware of any differences between the proposed rule and existing federal regulations.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

This rulemaking is intended to provide employers and employees or their authorized representatives with an additional method to file certain time sensitive documents with MNOSHA. Currently, these documents must be filed by prepaid first class mail, facsimile, or personal delivery. The proposed rule will add the options of email and other reliable electronic transmission.

The cumulative effect of the proposed rule is a benefit to affected parties in that they will have a variety of delivery methods with which they may timely file these documents with MNOSHA, which are likely to reduce the cost of filing for affected parties.

PERFORMANCE-BASED RULES

Minnesota Statutes §§14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

MNOSHA’s regulatory objectives include, in part, communication with employers and employees about safety and health conditions in the workplace. The proposed rules provide flexibility for the affected parties and the agency by increasing the options regulated parties can use to file

documents with the Departments.

ADDITIONAL NOTICE

In developing its additional notice plan, MNOSHA considered:

1. The identification of the persons or classes of persons that would be significantly affected by the proposed rule;
2. Who is likely to object to the proposed rule; and
3. The possibility that affected parties may become confused and believe they can file documents pursuant to the proposed rule before the rules are adopted and effective.

MNOSHA determined that: it is not possible to predict where a safety and health condition in the workplace might occur in the future; objection is unlikely since providing more methods for filing gives affected parties more options; and mass notification to possibly affected parties may inadvertently result in an affected party's failure to file a time sensitive document on time.

The Department will provide additional notice by sending a copy of the proposed rules, the Statement of Need and Reasonableness, and the Notice of Intent to Adopt Rules Without a Public Hearing to:

1. The Minnesota Chamber of Commerce; and
2. The Occupational Safety and Health Review Board.

The Department will also post the proposed rules, the Statement of Need and Reasonableness, and the Notice of Intent to Adopt Rules Without a Public Hearing on the Department's website located at: http://www.dli.mn.gov/PDF/docket/5210_docket.pdf.

Our Notice Plan also includes giving notice required by statute. We will mail the proposed rules and Notice of Intent to Adopt Rules Without a Public Hearing to everyone who has registered to be on the Department's rulemaking mailing lists under Minnesota Statutes § 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes § 14.116.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes § 14.111.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes § 14.131, the Department consulted with Minnesota Management and Budget (MMB). We did this by sending MMB copies of the documents that we sent to the Governor's Office for review and approval on the same day we sent them to the Governor's office. The documents sent to MMB included: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the almost final SONAR.

The Department did not receive a response from MMB before this document was finalized and prepared for distribution.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes § 14.128, subdivision 1, the Department considered whether these proposed rules, if adopted, will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. MNOSHA has determined that they do not because they do not amend or add to existing requirements. The proposed rules provide another option for filing certain documents, which affected parties are already required to file.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes § 14.127, the Department considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Department made this determination based on the probable costs of complying with the proposed rules, as described in the Regulatory Analysis section of this SONAR.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having MNOSHA staff testify in support of the need for and reasonableness of the rules.

RULE-BY-RULE ANALYSIS

The proposed rules are needed and reasonable in that they permit affected parties to file certain documents with MNOSHA using electronic methods. Currently, the rules permit filing by postage prepaid first class mail, facsimile, or personal delivery. It is reasonable to permit affected parties to self-select the method of filing that is most suitable for them. Further, it is reasonable to permit affected parties to file documents electronically because the Department is capable of receiving them.

5210.0007 FILING; FACSIMILE.

The proposed rule changes the headnote from “Filing;Facsimile” to “Filing.” Although the headnote is not a part of the law, changing the headnote to accurately reflect the contents of the rule part will help people looking at the rules to located MNOSHA’s filing requirements. Currently, when a document is filed by facsimile the original must be sent to the Department within five days. Because the proposed rule provides that an electronically transmitted document has the same force and effect as the original, the requirement that the original of a faxed document must be sent to the Department is proposed for deletion.

The proposed rule also deletes the words “Central Standard Time” as redundant because the standard of time is provided under Minn. Stat. § 645.071.

The proposed rule also adds Subpart 2a, which permits the filing of notices of contest, letters of

contest, and progress reports and other abatement documentation by email or other reliable method of electronic transmission. The proposed rule also clearly states:

1. Filing is complete at the time the transmission is received;
2. Transmission is received when all pages are successfully transmitted;
3. The electronically transmitted document has the same force and effect as the original,; and
4. Documents received electronically after 4:30 PM are deemed filed on the next business day.

5210.0536 EMPLOYER CONTEST.

and

5210.0539 EMPLOYEE AND AUTHORIZED EMPLOYEE REPRESENTATIVE CONTESTS.

These rule parts regulate how notices of contest and letters of contest are filed by employers and employees, or their authorized representatives. The proposed rules:

1. Add the words “or electronic” so that employers and employees, or their authorized representatives, may choose to file documents by postage prepaid first class mail, personal delivery, facsimile, or electronic transmission; and
2. Add the word “form” so that appropriate references to “notice of contest” are changed to “notice of contest form.”

EFFECTIVE DATE

The proposed rule includes an effective date that is five working days after publication of the notice of adoption in the State Register or January 1, 2014, whichever is later. This will allow the Department to revise its forms as necessary to inform and instruct affected parties of the option to file certain documents with MNOSHA electronically.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

October 29, 2013

/s/Cynthia Valentine
Cynthia Valentine, Director
Workplace Safety
Occupational Safety and Health Division
Minnesota Department of Labor and Industry