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MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

(651) 284-5005
1-800-342-5354

March 30, 2016

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

Re: In The Matter of the Proposed Permanent Rules Relating to OSHA Citation
Notification Requirements, Minnesota Rules Part 5210.0530;
Revisor's ID Number RD4336

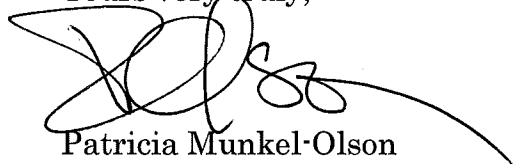
Dear Librarian:

The Minnesota Department of Labor and Industry intends to adopt amendments that permit OSHA citations to be mailed to complainants in a complaint investigation. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the April 4, 2016 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 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.

If you have questions, please contact me at (651) 284-5128.

Yours very truly,



Patricia Munkel-Olson
General Counsel for MNOSHA
Office of General Counsel
Minnesota Department of Labor and Industry

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Labor and Industry

Division of Occupational Safety and Health

STATEMENT OF NEED AND REASONABLENESS

Proposed Permanent Rules Relating to OSHA Citation Notification Requirements, Minnesota Rules Part 5210.0530; Revisor's ID Number RD4336

INTRODUCTION

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

The Commissioner of the Department of Labor and Industry proposes to amend a rule regulating the citation notification requirements imposed on MNOSHA. Specifically, the proposed amendment will permit MNOSHA to send a copy of the citation to the complainant in a complaint inspection.

This proposal is in line with Federal OSHA's policy.

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, Minnesota Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, (651) 284-5006, fax (651) 284-5725 or *dli.rules@state.mn.us*.

STATUTORY AUTHORITY

This rulemaking is an amendment of a rule for which the Legislature has not revised the statutory authority since 1973, and so Minnesota Statutes, section 14.125, does not apply.

The Department's statutory authority to adopt the rules is stated in Minnesota Statutes section 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, section 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 the agency'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 class of affected persons who will probably be affected by the rule is the complainant in a complaint investigation. The proposed rule does not include any costs to the affected persons. Instead, affected persons will benefit from the proposed rule because they will receive a copy of the citation by mail when the complaint inspection they initiated results in the issuance of a citation.

“(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 anticipates that the probable costs to the agency will be limited to the cost of mailing one additional copy of the citation by U.S. Mail.

MNOSHA does not anticipate any probable cost to any other agency.
MNOSHA does not anticipate any effect of 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 rule, as currently written, does not permit MNOSHA to mail a copy of a citation to the complainant in a complaint inspection. An amendment to the rule is the least costly and least intrusive method to achieve the purpose of notifying the complainant of the outcome of the complaint she/he filed in regard to the complaint inspection.

“(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 is limited to the cost of mailing a copy of the citation to the complainant in a complaint inspection. All of the costs will be borne by MNOSHA.

“(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”

None anticipated.

“(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”

Federal regulations do not require the delivery of Citations to the complainant in a complaint inspection; however federal policy does require a copy of the Citations to be sent to the complainant. MNOSHA believes it is reasonable for the cited employer and complainant to receive a copy of the citations.

“(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.”

Complainants currently receive a letter describing the findings of the inspection that was initiated by their complaint. Mailing a copy of the Citation to the complainant as proposed would favorably impact 5210.0539, subp 2, Employee Contests. Complainants will have a better notion of when their employer has received a citation from MNOSHA and will be less likely to miss the 20-day deadline prescribed in 5210.0539 in which to file a Letter of Contest with MNOSHA. This is particularly more meaningful for mobile worksites when the work has been completed and there is no place to formally post a copy of the Citation(s) as required by 5210.0536, or when the complainant(s) themselves have completed their work for an assigned project and are not present to view the posted Citation(s).

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 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.

This amendment will assure that MNOSHA’s procedures are in line with Federal OSHA’s policy.

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; and

2. Who is likely to object to the proposed rule.

MNOSHA determined that Complainants who would be receiving a copy of the citation would benefit. Objections to the proposal would be unlikely.

The Department will provide additional notice by sending a copy of the proposed rule SONAR and Notice of Intent to Adopt Rules Without a Public Hearing to:

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

Our Notice Plan also includes giving notice required by statute. We will mail the 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 list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

The Department will post the proposed rule, SONAR, and Notice of Intent to Adopt Rules Without a Public Hearing on the Department's website located at <http://www.dli.mn.gov/main.asp>.

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

Our Notice Plan did not include notifying the state Council on Affairs of Chicano/Latino People because the rules will not have their primary effect on Chicano/Latino people.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget (MMB). We did this by sending MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. The documents include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the draft SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

To the limited extent that MNOSHA receives a complaint against a local government that requires an inspection, and subsequently issues a citation, the proposed rule would minimize the time and cost of providing at least one additional copy of the citations to the complainant.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules 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 the proposed rule only imposes a requirement on MNOSHA.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has 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 because complying with the proposed rule only imposes a requirement on MNOSHA.

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 rule.

RULE-BY-RULE ANALYSIS

5210.0530 CITATIONS; POSTING.

Subpart 1. **Issuance.** The commissioner shall review the investigation report of the investigator. If on the basis of the report the commissioner believes that the employer has violated a requirement of Minnesota Statutes, section 182.653, or any standard, rule, or order adopted under the act, the commissioner shall issue to the employer either a citation and notification of penalty or a notification of failure to abate. A copy of the citation and notification of penalty or notification of failure to abate shall also be mailed to:

A. the authorized employee representative and, in the case of the death of an employee, to the next of kin if requested by the next of kin; and

B. the complainant in a complaint inspection.

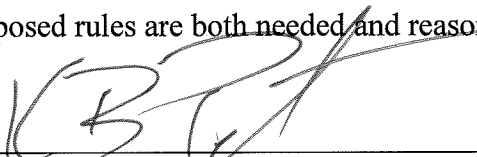
A citation and notification of penalty or notification of failure to abate shall be issued even though, after being informed of an alleged violation by the investigator, the employer immediately abates or initiates steps to abate the alleged violation. A citation and notification of penalty or notification of failure to abate shall be issued with reasonable promptness and in no event later than six months following the completion of the investigation of the alleged violation.

The amendment to the rule requires MNOSHA to mail a copy of the citations to the complainant in a complaint investigation. The amendment is need to bring MNOSHA's procedures in line with Federal OSHA's policy. The amendment is reasonable because MNOSHA will bear the cost of mailing the citations to the complainant in a complaint investigation.

CONCLUSION

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

March 16, 2016



Ken B. Peterson
Commissioner