

1 Department of Labor and Industry

2

3 Adopted Permanent Rules Relating to OSHA; General Revision

4

5 Rules as Adopted

6 5210.0005 DEFINITIONS.

7 Subpart 1. Scope. For the purposes of this chapter, the
8 following terms have the meanings given them.

9 Subp. 2. Act. "Act" means the Minnesota Occupational
10 Safety and Health Act of 1973, Minnesota Statutes, chapter 182.

11 Subp. 3. Administrative law judge. "Administrative law
12 judge" means a person assigned by the chief administrative law
13 judge under Minnesota Statutes, section 14.50, to hear a
14 contested case.

15 Subp. 4. Affected employee. "Affected employee" has the
16 meaning given it in Minnesota Statutes, section 182.651.

17 Subp. 5. Authorized employee representative. "Authorized
18 employee representative" has the meaning given it in Minnesota
19 Statutes, section 182.651.

20 Subp. 6. Board. "Board" means the occupational safety and
21 health review board established pursuant to Minnesota Statutes,
22 section 182.664.

23 Subp. 7. Citation and notification of penalty. "Citation
24 and notification of penalty" means the citation and notification
25 of penalty form prescribed by the commissioner and issued to the
26 employer under Minnesota Statutes, sections 182.66 and 182.661,
27 subdivision 1.

28 Subp. 8. Commissioner. "Commissioner" has the meaning
29 given it in Minnesota Statutes, section 182.651.

30 Subp. 9. Days. "Days" means calendar days unless
31 otherwise provided.

32 Subp. 10. Employee. "Employee" has the meaning given it
33 in Minnesota Statutes, section 182.651.

34 Subp. 11. Employer. "Employer" has the meaning given it
35 in Minnesota Statutes, section 182.651.

1 Subp. 12. Investigation or inspection. "Investigation" or
2 "inspection" means the actions taken by the commissioner,
3 including examination, observation, inquiry, and analysis, to
4 determine whether violations of the act or of standards, rules,
5 or orders adopted by the commissioner under the authority of the
6 act, exist at a place of employment and includes, but is not
7 limited to, the physical inspection of the place of employment.

8 Subp. 13. Investigator. "Investigator" means an
9 occupational safety and health investigator or investigators
10 authorized by the commissioner of labor and industry to conduct
11 occupational safety and health investigations under Minnesota
12 Statutes, chapter 182.

13 Subp. 14. Letter of contest. "Letter of contest" means a
14 written communication filed with the commissioner by an employee
15 or authorized employee representative contesting the citation
16 and notification of penalty or the notification of failure to
17 abate.

18 Subp. 15. Notice of contest. "Notice of contest" means
19 the notice of contest and service to affected employees form
20 prescribed by the commissioner under part 5210.0533.

21 Subp. 16. Notification of failure to abate. "Notification
22 of failure to abate" means the notification of failure to abate
23 and proposed additional penalty form prescribed by the
24 commissioner and issued to the employer under Minnesota
25 Statutes, section 182.661, subdivision 2.

26 Subp. 17. Person. "Person" has the meaning given it in
27 Minnesota Statutes, section 182.651.

28 Subp. 18. Proceeding. "Proceeding" means any proceeding
29 before the board or before an administrative law judge.

30 Subp. 19. Respondent. "Respondent" has the meaning given
31 it in Minnesota Statutes, section 182.651.

32 ADOPTION OF STANDARDS

33 5210.0020 SCOPE.

34 Parts 5210.0020 to 5210.0100 set forth procedures for
35 adopting, modifying, or revoking occupational safety and health

1 standards under Minnesota Statutes, section 182.655.

2 5210.0040 PETITION FOR ADOPTION, MODIFICATION, OR REVOCATION OF
3 A STANDARD.

4 Any interested person may file with the commissioner, a
5 written petition for the adoption, modification, or revocation
6 of a standard. The petition should include, or be accompanied
7 by, the proposed standard, a statement of the intended effect,
8 and the reasons for the standard.

9 5210.0050 INITIATION.

10 The commissioner shall initiate adoption of a standard by
11 publishing in the State Register a notice of proposed
12 rulemaking. The notice shall include:

- 13 A. the terms of the proposed rule;
- 14 B. a reference to the act and to the appropriate
15 section of any statute applicable to the employments affected by
16 the rule;
- 17 C. notification to interested persons of their right
18 to submit, within 30 days after publication of the notice,
19 written data, comments, or objections, which shall be available
20 for public inspection and copying, except information, the
21 disclosure of which is prohibited by law;
- 22 D. notification to interested persons that they may
23 request a public hearing on their objections within 30 days
24 after publication of the notice; and
- 25 E. any other appropriate provisions with regard to
26 the proceeding.

27 5210.0060 OBJECTIONS.

28 Subpart 1. Conditions. Objections submitted pursuant to
29 part 5210.0050 must comply with the following conditions:

- 30 A. the objections must include the name and address
31 of the objecting party;
- 32 B. the objections must be postmarked on or before the
33 30th day after the publication of the notice of proposed
34 rulemaking;

1 C. the objections must specify the provision of the
2 proposed rule to which objection is made, and must state the
3 reasons for the objections; and

4 D. each objection must be separately stated and
5 numbered.

6 Subp. 2. Notice of public hearing. Within 30 days after
7 the last day for filing objections, if 25 or more persons
8 request a public hearing, the commissioner shall, and in any
9 other case may, publish in the State Register a notice of a
10 public hearing. The notice must contain:

11 [For text of items A to C, see M.R.]

12 D. a specification of the issues to be discussed at
13 the hearing;

14 E. the requirement for interested persons to file a
15 notice of intention to appear at the hearing together with a
16 statement of the position to be taken with regard to the issues
17 and of the evidence to be presented in support of the position;

18 [For text of items F and G, see M.R.]

19 Subp. 3. Participants. Any objecting party requesting a
20 hearing on a proposed standard, and any interested person who
21 files a proper intention to appear, shall be entitled to testify
22 at a hearing.

23 5210.0070 CONDUCT OF HEARING.

24 The hearing shall be legislative in type. However,
25 fairness may require an opportunity for cross-examination on
26 crucial issues. The presiding officer, who shall be an
27 administrative law judge, is empowered to permit
28 cross-examination under such circumstances. The intent of the
29 hearing is to provide an opportunity for effective oral
30 presentation by participants which can be carried out
31 expeditiously.

32 The hearing shall be reported verbatim, and a transcript
33 shall be available to any interested person on such terms as the
34 presiding officer may provide.

35 5210.0080 POWERS OF PRESIDING OFFICER.

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

4 [For text of items A to D, see M.R.]

5 E. to permit cross-examination of any witness;

6 [For text of item F, see M.R.]

7 G. to keep the record open for a reasonable stated
8 time, to receive written recommendations, and supporting
9 reasons, and additional data, views, and arguments from any
10 person who has participated in the oral proceeding.

11 5210.0090 CERTIFICATION OF HEARING RECORD.

12 Upon completion of the oral presentations, a certified
13 transcript of the hearing, together with written submissions on
14 the proposed rule, exhibits filed during the hearing, and all
15 posthearing comments, recommendations, and supporting reasons
16 shall be transmitted to the commissioner.

17 5210.0100 DECISION.

18 Subpart 1. Publication of determination. Within 60 days
19 after the expiration of the period provided for the submission
20 of written data, views, and arguments on a proposed rule on
21 which no hearing is held, or within 60 days after the
22 certification of the record of a hearing, the commissioner shall
23 publish in the State Register either an appropriate rule
24 adopting, modifying, or revoking a standard, or a determination
25 that the rule should not be issued. The action of the
26 commissioner shall be taken after consideration of all relevant
27 matter presented in written submissions and in any hearings held
28 under parts 5210.0020 to 5210.0100.

29 Subp. 2. Additional comments. A determination that a rule
30 should not be issued on the basis of existing relevant matter
31 may be accompanied by an invitation for the submission of
32 additional data, views, or arguments from interested persons on
33 the issue or issues involved. An appropriate rule or other
34 determination shall be made within 60 days following the end of
35 the period allowed for the submission of the additional comments.

1 [For text of subp 3, see M.R.]

2 Subp. 4. [See repealer.]

3 DISCRIMINATION AGAINST EMPLOYEES

4 5210.0210 PURPOSE AND SCOPE.

5 Parts 5210.0210 to 5210.0340 establish general policies for
6 enforcement of Minnesota Statutes, sections 182.654,
7 subdivisions 9 and 11, and 182.669, which prohibit the discharge
8 of or discrimination against an employee who exercises any
9 rights granted under the act on the employee's behalf or on
10 behalf of others.

11 5210.0300 PARTICIPATION IN PROTECTED ACTIVITIES.

12 If the participation by an employee in an activity
13 protected by the act or the exercise by an employee on behalf of
14 the employee or others of any right granted under the act was a
15 substantial causative factor entering into a person's decision
16 to discharge an employee or take other adverse action against an
17 employee, the person has committed a discriminatory action in
18 violation of the act.

19 5210.0310 CLAIM PROCEDURES.

20 [For text of subpart 1, see M.R.]

21 Subp. 2. **Manner of filing.** The complaint may be filed,
22 either orally or in writing, with the commissioner. Written
23 complaints must be filed in accordance with part 5210.0554.

24 Subp. 3. [See repealer.]

25 Subp. 4. [See repealer.]

26 5210.0320 DEFERRAL OF ACTION ON DISCRIMINATION COMPLAINT.

27 The commissioner may defer action on a discrimination
28 complaint filed concurrently with the Department of Labor and
29 Industry and another agency until a determination by the other
30 agency has been made if the rights asserted in the other
31 proceeding are substantially the same as rights granted under
32 the act and the other proceeding will not violate the rights
33 guaranteed by the act.

1 5210.0330 ACCEPTING OTHER DECISIONS AS FINAL DETERMINATION.

2 The commissioner may accept the results of other
3 proceedings as a final determination of a discrimination
4 complaint if those proceedings dealt adequately with
5 substantially all of the factual and legal issues; were fair,
6 impartial, and valid; and the outcome of the proceedings is not
7 contradictory to the purpose of the act.

8 5210.0340 ENFORCEMENT PROCEEDINGS.

9 Subpart 1. [See repealer.]

10 Subp. 2. Settlement. If the commissioner determines that
11 a discriminatory act has been committed against an employee, the
12 commissioner may enter into a settlement rather than proceeding
13 with an administrative hearing.

14 [For text of subps 3 and 4, see M.R.]

15 INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

16 5210.0410 PURPOSE.

17 The purpose of parts 5210.0410 to 5210.0542 is to prescribe
18 rules and set forth general policies for enforcement of the act.

19 5210.0420 POSTING OF NOTICES.

20 Each employer shall post and keep posted the "Safety and
21 Health Protection on the Job" poster issued by the Department of
22 Labor and Industry, informing employees of the protections and
23 obligations provided for in the act. The poster must direct
24 employees to contact the employer or the Department of Labor and
25 Industry for assistance and information, including copies of the
26 act and of specific safety and health standards. The poster
27 shall be posted by the employer in each place of employment in a
28 conspicuous place or places where notices to employees are
29 customarily posted. Each employer shall take steps to ensure
30 that the posters are not altered, defaced, or covered by other
31 material.

32 5210.0450 OBJECTION TO INVESTIGATION.

33 Upon a refusal to permit an occupational safety and health
34 investigator, in the exercise of official duties, to enter

1 without delay and at reasonable times any place of employment or
2 any place therein, to inspect and investigate, to review
3 documents, or to question privately any employer, owner,
4 operator, agent, or employee, or to permit a representative of
5 employees to accompany the investigator during the physical
6 inspection of any place of employment, the investigator shall
7 terminate the investigation or confine the investigation to
8 other areas, conditions, structures, machines, apparatus,
9 devices, equipment, materials, documents, or interviews
10 concerning which no objection is raised. The investigator shall
11 endeavor to ascertain the reason for the refusal, and shall
12 immediately report the refusal and the reason for the refusal to
13 the commissioner.

14 5210.0460 WAIVER NOT IMPLIED.

15 Permission to enter, inspect and investigate, review
16 documents, or question any person, shall not imply or be
17 conditioned upon a waiver of any cause of action, citation, or
18 penalty under the act. Investigators are not authorized to
19 grant waivers.

20 5210.0470 INVESTIGATIONS.

21 Subpart 1. Opening conference; investigator's conduct.

22 The investigators shall present their credentials to the owner,
23 operator, or agent in charge at the place of employment at the
24 earliest opportunity upon entering the place of employment; and
25 conduct an opening conference during which the investigator
26 shall explain the nature and purpose of the investigation; and
27 indicate generally the scope of the physical inspection and the
28 documents which they wish to review. However, such designation
29 of documents shall not preclude review of additional documents.

30 Subp. 2. Investigator's authority. The investigator shall
31 have the authority to take samples, conduct tests, and take or
32 obtain photographs and videotapes, make or obtain copies of
33 documents, and employ other investigative techniques related to
34 the purpose of the investigation.

35 Subp. 3. [See repealer.]

1 Subp. 4. [See repealer.]

2 Subp. 5. Closing conference. At the conclusion of an
3 investigation, the investigator shall confer with the employer
4 or the employer's representative and describe apparent safety or
5 health violations disclosed by the investigation. During this
6 conference, the employer shall be afforded an opportunity to
7 bring to the attention of the investigator pertinent information
8 regarding conditions in the workplace.

9 Subp. 6. [See repealer.]

10 5210.0480 REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES TO
11 ACCOMPANY INVESTIGATORS.

12 Subpart 1. Accompanying the investigator. The
13 investigator shall be in charge of all aspects of an
14 investigation. A representative of the employer and a
15 representative authorized by the employees shall be given an
16 opportunity to accompany the investigator during the physical
17 inspection of the workplace for the purpose of aiding the
18 investigation. An investigator may permit additional employer
19 representatives and additional representatives authorized by
20 employees to accompany the investigator where the investigator
21 determines that additional representatives will aid the
22 investigation. A different employer and employee representative
23 may accompany the investigator during different phases of a
24 physical inspection if the investigator determines that this
25 will not interfere with the conduct of the investigation.

26 The representative authorized by employees shall be an
27 employee of the employer.

28 Subp. 2. Denial of right to accompany. The investigator
29 is authorized to deny the right of accompaniment under this part
30 to any person whose conduct interferes with a fair and orderly
31 investigation. The right of accompaniment in areas containing
32 trade secrets shall be subject to Minnesota Statutes, section
33 182.668.

34 Subp. 3. Identification of representatives. The
35 investigator has authority to resolve all disputes as to who are

1 the representatives authorized by the employer and employees for
2 the purpose of this part. If there is no representative
3 authorized by employees, or if the investigator is unable to
4 determine with reasonable certainty who is the employee
5 representative, a reasonable number of employees shall be
6 consulted by the investigator concerning matters of safety and
7 health in the workplace.

8 5210.0490 CONSULTATION WITH EMPLOYER AND EMPLOYEES.

9 The investigator may consult with employees concerning
10 matters of occupational safety and health to the extent the
11 investigator deems necessary for the conduct of an effective and
12 thorough investigation. During the course of an investigation,
13 employees shall be afforded an opportunity to bring any
14 violation of the act which the employees have reason to believe
15 exists in the workplace to the attention of the investigator.

16 The representative authorized by employees shall be given
17 the opportunity to participate in the opening and closing
18 conferences. The investigator shall hold a private conference
19 with either the employee representative or the employer at
20 either's request.

21 5210.0500 EMPLOYEE RIGHTS DURING INVESTIGATION.

22 No employee as a consequence of aiding in an investigation
23 shall lose any privilege or payment that the employee would
24 otherwise earn, the loss being a discriminatory act subject to
25 the sanctions contained in Minnesota Statutes, section 182.669.
26 An employee taking part in the physical inspection is entitled
27 to the employee's regular pay for the time spent in the physical
28 inspection and the opening and closing conferences.

29 5210.0510 TRADE SECRETS.

30 At the commencement of a physical inspection, the employer
31 may identify areas in the place of employment which contain or
32 which might reveal a trade secret. If the investigator has no
33 reason to question such identification, information obtained in
34 these areas, including all negatives and prints of photographs,

1 and environmental samples, shall be labeled "Confidential -
2 Trade Secret" and shall not be disclosed except in accordance
3 with Minnesota Statutes, section 182.668.

4 Upon the request of an employer, a representative
5 authorized by employees in an area containing trade secrets
6 shall be an employee in that area or an employee authorized by
7 the employer to enter that area. Where there is no
8 representative authorized by employees working in that area or
9 an employee authorized by the employer to enter the area, the
10 investigator shall consult with a reasonable number of employees
11 working in that area concerning matters of safety and health.

12 5210.0520 INVESTIGATION NOT WARRANTED; INFORMAL REVIEW.

13 If the commissioner determines that a citation will not be
14 issued or that an investigation is not warranted because there
15 are no reasonable grounds to believe that a violation or danger
16 exists with respect to a complaint filed under Minnesota
17 Statutes, section 182.659, subdivisions 4 and 5, the
18 commissioner shall notify the complaining party in writing of
19 that determination. The complaining party may request an
20 informal review of the determination by submitting a written
21 statement of position to the commissioner and, at the same time,
22 providing the employer with a copy of the statement by certified
23 mail unless the complaining party has requested anonymity when
24 filing the complaint. If the complaining party has requested
25 anonymity when filing the complaint, the commissioner shall
26 summarize the complaining party's written statement leaving out
27 the complaining party's identity and provide the employer with a
28 copy of the summary by certified mail. The employer may submit
29 an opposing written statement of position to the commissioner
30 and, at the same time, provide the complaining party with a copy
31 of the statement by certified mail unless the employer has
32 received a summary of the complaining party's written statement
33 of position. If the employer has received the summary, the
34 commissioner shall provide the complaining party with a copy of
35 the employer's opposing statement by certified mail. Upon the

1 request of the employee or the employer, the commissioner may
2 hold an informal conference or conferences in which the
3 complaining party and the employer may orally present their
4 views together or separately. After considering all written and
5 oral views presented, the commissioner shall affirm, modify, or
6 reverse the determination and furnish the complaining party and
7 the employer a written notification of the decision and the
8 reasons for the decision.

9 5210.0530 CITATIONS; POSTING.

10 Subpart 1. Issuance. The commissioner shall review the
11 investigation report of the investigator. If on the basis of
12 the report the commissioner believes that the employer has
13 violated a requirement of Minnesota Statutes, section 182.653,
14 or any standard, rule, or order adopted under the act, the
15 commissioner shall issue to the employer either a citation and
16 notification of penalty or a notification of failure to abate.
17 A copy of the citation and notification of penalty or
18 notification of failure to abate shall also be mailed to the
19 authorized employee representative and, in the case of the death
20 of an employee, to the next of kin if requested by the next of
21 kin. A citation and notification of penalty or notification of
22 failure to abate shall be issued even though, after being
23 informed of an alleged violation by the investigator, the
24 employer immediately abates or initiates steps to abate the
25 alleged violation. A citation and notification of penalty or
26 notification of failure to abate shall be issued with reasonable
27 promptness and in no event later than six months following the
28 completion of the investigation of the alleged violation.

29 Subp. 2. Contents.

30 A. A citation and notification of penalty shall
31 describe with particularity the nature of the alleged violation,
32 including a reference to the provisions of the act, standard,
33 rule, or order alleged to have been violated. A citation and
34 notification of penalty shall also fix a reasonable time or
35 times for the abatement of the alleged violation.

1 B. A notification of failure to abate shall reference
2 the original citation and standard which the employer has
3 allegedly failed to abate, the date by which the original
4 citation was to have been abated, and the amount of the
5 additional penalty issued by the commissioner under Minnesota
6 Statutes, section 182.661, subdivision 2.

7 Subp. 3. Employer's duty to post. Upon receipt of a
8 citation and notification of penalty or notification of failure
9 to abate, the employer shall immediately post the citation and
10 notification of penalty or notification of failure to abate, or
11 an unedited copy, at or near each place an alleged violation
12 referred to in the citation occurred, except as provided in this
13 subpart. If, because of the nature of the employer's
14 operations, it is not practicable to post the citation and
15 notification of penalty or notification of failure to abate at
16 or near each place of alleged violation, the unedited citation
17 and notification of penalty or notification of failure to abate
18 shall be posted in a prominent place where it will be readily
19 observable by all affected employees. If the employer is
20 engaged in activities that are physically dispersed, the
21 citation and notification of penalty or notification of failure
22 to abate shall be posted at the location to which affected
23 employees report each day. Where affected employees do not
24 primarily work at or report to a single location, the citation
25 and notification of penalty or notification of failure to abate
26 shall be posted at the locations from which the affected
27 employees operate to carry out their activities. The employer
28 shall take steps to ensure that the citation and notification of
29 penalty or notification of failure to abate are not altered,
30 defaced, or covered by other material.

31 Subp. 4. Posting time. Each uncontested citation and
32 notification of penalty or uncontested notification of failure
33 to abate, or an unedited copy, shall remain posted until the
34 violation has been abated, or for 15 days, whichever is later.
35 The filing by the employer, an employee, or an authorized
36 employee representative of a notice of contest or letter of

1 contest extends the employer's posting responsibility under this
 2 part until the date of the hearing or earlier final disposition
 3 of the contest.

4 Subp. 5. **Noncompliance.** An employer that fails to comply
 5 with subparts 3 and 4 shall be subject to citation and penalty
 6 according to Minnesota Statutes, section 182.666, subdivision 5.

7 5210.0533 NOTICE OF CONTEST AND CERTIFICATION OF SERVICE.

8 A contest of a citation and notification of penalty or of a
 9 notification of failure to abate shall be filed with the
 10 commissioner on the notice of contest form provided by the
 11 commissioner. The commissioner shall accept as filed only a
 12 fully completed notice of contest form. A fully completed
 13 notice of contest form must provide the following information:

14 A. the employer's name and address;

15 B. the inspection number for the citation and
 16 notification of penalty or the reinspection number for the
 17 notification of failure to abate;

18 C. identification of each citation and item contested
 19 and for each citation and item contested, identification of each
 20 part of the citation and item contested. Those citations and
 21 items not contested and those parts of citations and items not
 22 contested shall become a final order of the commissioner not
 23 reviewable by any court or agency.

24 (1) For a citation and notification of penalty,
 25 the contesting party must indicate for each citation and item
 26 contested the following part or parts it is contesting:

27 (a) the finding of a violation;

28 (b) the type of violation;

29 (c) the abatement date; or

30 (d) the penalty.

31 (2) For a notification of failure to abate, the
 32 contesting party must indicate for each citation and item
 33 contested the following part or parts it is contesting:

34 (a) the finding of the failure to abate a
 35 violation; or

1 (b) the penalty;

2 D. a statement of the contesting party's reasons for
3 contesting each citation and item;

4 E. certification that the notice was served upon the
5 authorized employee representatives, if any, and the employer,
6 if it is an employee or authorized employee representative
7 contest, and that it was posted where the citations and
8 notifications of penalty are required by part 5210.0530, subpart
9 3, to be posted; and

10 F. a notarized sworn statement by the contesting
11 party that the information provided is accurate and truthful to
12 the best of the contesting party's knowledge.

13 5210.0536 EMPLOYER CONTEST.

14 Subpart 1. Posting and service.

15 A. The employer shall, on or before the date a notice
16 of contest is required to be filed with the commissioner, post a
17 copy of the notice of contest where the citation and
18 notification of penalty or notification of failure to abate is
19 required to be posted. The notice of contest must remain posted
20 until the date of the hearing or earlier final disposition of
21 the contest.

22 B. If there are any affected employees who are
23 represented by an authorized employee representative, the
24 employer shall, on or before the date a notice of contest is
25 required to be filed with the commissioner, serve a copy of the
26 notice of contest upon the representative.

27 C. Certification of the service and posting required
28 by this subpart must be notarized and filed with the
29 commissioner as provided on the notice of contest form.

30 Subp. 2. Filing. For purposes of this part, a notice of
31 contest is filed only upon its receipt by the commissioner. The
32 notice of contest must be filed within 20 calendar days of the
33 date the employer receives the citation and notification of
34 penalty or notification of failure to abate. The day the notice
35 of contest is received shall not be included in calculating the

1 20 calendar days. The last day of the 20-day period shall be
2 included, unless it is a Saturday, Sunday, or state holiday, in
3 which event the period runs until the next day which is not a
4 Saturday, Sunday, or state holiday. A notice of contest may be
5 filed with the commissioner by postage prepaid first class mail,
6 personal delivery, or facsimile transmission according to part
7 5210.0554, subpart 2. If the notice of contest form is not
8 posted, served, and filed within 20 days of the date the
9 employer receives the citation and notification of penalty or
10 notification of failure to abate, the citation and notification
11 of penalty or notification of failure to abate become a final
12 order of the commissioner and is not subject to review by any
13 court or agency.

14 5210.0539 EMPLOYEE AND AUTHORIZED EMPLOYEE REPRESENTATIVE
15 CONTESTS.

16 Subpart 1. Posting and service.

17 A. The employee or authorized employee representative
18 shall, on or before the date the employee notice of contest form
19 is filed with the commissioner, serve the fully completed
20 employee notice of contest form upon the cited employer.
21 Immediately upon receipt, the employer shall post a copy of the
22 employee notice of contest form where the citation and
23 notification of penalty or notification of failure to abate is
24 required to be posted by part 5210.0530, subpart 3. The notice
25 of contest must remain posted until the date of the hearing or
26 earlier final disposition of the contest.

27 B. If there are any other affected employees who are
28 represented by another authorized employee representative, the
29 contesting employee or authorized employee representative shall,
30 on or before the date the employee notice of contest form is
31 required to be filed with the commissioner, serve a copy of the
32 notice of contest upon that authorized employee representative.

33 C. The certification of posting and service required
34 by this subpart must be notarized and filed with the
35 commissioner as provided on the employee notice of contest form.

1 Subp. 2. Filing.

2 A. An employee or authorized employee representative
3 shall file a letter of contest with the commissioner within 20
4 days of the date the employer receives the citation and
5 notification of penalty or notification of failure to abate. If
6 an employee or authorized employee representative files a letter
7 of contest with the commissioner within 20 days of the date the
8 employer receives the citation and notification of penalty or
9 the notification of failure to abate, the commissioner shall
10 promptly send the employee or authorized employee representative
11 a notice of contest form by certified mail.

12 B. Within seven days of the employee's or authorized
13 employee representative's receipt of the employee notice of
14 contest form, the employee or authorized employee representative
15 shall file the fully completed form with the commissioner. For
16 purposes of this part, an employee notice of contest is filed
17 only upon its receipt by the commissioner. The day the notice
18 of contest is received shall not be included in calculating the
19 ~~20~~ seven calendar days. The last day of the ~~20-day~~ seven-day
20 period shall be included, unless it is a Saturday, Sunday, or
21 state holiday, in which event the period runs until the next day
22 which is not a Saturday, Sunday, or state holiday. An employee
23 notice of contest form may be filed with the commissioner by
24 postage prepaid first class mail, personal delivery, or
25 facsimile transmission according to part 5210.0554, subpart 2.

26 C. If the letter of contest is not filed within 20
27 days of the date the employer receives the citation and
28 notification of penalty or notification of failure to abate, or
29 if the employee notice of contest form is not filed within seven
30 days of the date the form is received, the citation and
31 notification of penalty or notification of failure to abate
32 becomes a final order of the commissioner and is not subject to
33 review by any court or agency.

34 5210.0542 PETITIONS FOR MODIFICATION OF ABATEMENT DATE.

35 Subpart 1. Right to file. An employer seeking to extend

1 the date by which a violation must be abated may file a petition
2 for modification of abatement date.

3 Subp. 2. Contents. A petition for modification of
4 abatement date must be in writing and include the following
5 information:

6 A. all action taken by the employer, and the dates of
7 the action, in an effort to achieve compliance during the
8 prescribed abatement period;

9 B. the specific additional abatement time necessary
10 in order to achieve compliance;

11 C. the reasons additional time is necessary,
12 including the unavailability of professional or technical
13 personnel or of materials and equipment, or because necessary
14 construction or alteration of facilities cannot be completed by
15 the original abatement date;

16 D. all available interim steps being taken to
17 safeguard the employees against the cited hazard during the
18 abatement period; and

19 E. a certification that a copy of the petition and
20 the notice to affected employees and authorized employee
21 representatives informing them of their right to object to the
22 petition as set out in subpart 5 have been posted and served
23 upon the authorized employee representative according to subpart
24 4 and the date the posting and service was completed.

25 Subp. 3. Time to file. A petition for modification of
26 abatement date must be filed with the commissioner no later than
27 the next working day following the date on which abatement was
28 originally required. For purposes of this part, a petition is
29 considered filed upon its receipt by the commissioner.

30 Subp. 4. Posting. A copy of the petition and notice to
31 employees and authorized employee representatives must be posted
32 on or before the filing date in the location where the citation
33 and notification of penalty is required to be posted. If
34 employees are represented by an authorized employee
35 representative, the representative shall be served with a copy
36 of the petition and notice. The petition must remain posted for

1 ten days.

2 Subp. 5. **Objections.** Employees or their authorized
3 employee representatives who file an objection in writing with
4 the commissioner must serve a copy of the objection on the
5 employer. Failure to serve and file an objection within ten
6 days of the date of posting of the petition or of service upon
7 an authorized employee representative shall constitute a waiver
8 of any further right to object to the petition. The objection
9 must state the reasons for opposing the petition.

10 Subp. 6. **Approval or denial of petition.** The commissioner
11 shall not approve a petition by the employer until the
12 expiration of ten days from the date the petition was served
13 upon affected employees or their authorized employee
14 representatives. The commissioner may deny a petition at any
15 time after its receipt. When approving or denying a petition,
16 the commissioner shall consider the actions taken by the
17 employer to achieve compliance during the prescribed abatement
18 period, the additional abatement time requested by the employer,
19 whether abatement has not been completed because of factors
20 beyond the employer's control, what interim steps the employer
21 has taken to safeguard employees against the cited hazard, and
22 any other relevant information obtained by the department or
23 provided by affected employees and authorized employee
24 representatives regarding the employer's petition. A copy of
25 the approval or denial shall be posted with the petition and the
26 citation.

27 **CONTESTED CASE HEARINGS**

28 5210.0548 RECORD ADDRESS.

29 All pleadings filed by a person must contain the person's
30 name, address, and telephone number. Any change in the
31 information must be communicated promptly in writing to the
32 administrative law judge or the commissioner and to all other
33 parties. A party who fails to furnish the information waives
34 the right to service and notice under part 5210.0551.

35 5210.0551 SERVICE AND NOTICE.

1 Subpart 1. Parties and intervenors. At the time of filing
2 pleadings or other documents, a copy must be served by the
3 filing party on every other party.

4 Subp. 2. Representatives. Service on a party who has
5 appeared through a representative need only be made on the
6 representative.

7 Subp. 3. Methods of service. Unless otherwise ordered,
8 service may be made by postage prepaid first class mail or
9 personal delivery. Service is made at the time of mailing or
10 personal delivery.

11 Subp. 4. Proof of service; filing. Service must be
12 certified by a written statement that states the date and manner
13 of service. The statement must be signed by the person
14 accomplishing service, and it must be filed with the pleading or
15 document.

16 5210.0554 FILING; FACSIMILE.

17 Subpart 1. Filing by mail and personal delivery. All
18 pleadings and other documents must be filed with the
19 commissioner before a case is assigned to an administrative law
20 judge. After the case has been assigned to an administrative
21 law judge, all pleadings or other documents must be filed with
22 the administrative law judge at the address given in the notice
23 informing the parties of the assignment. All pleadings and
24 documents may be filed by postage prepaid first class mail or
25 personal delivery. Except for the notice of contest, letter of
26 contest, and petition for modification of abatement date, filing
27 of pleadings and documents is effective on the postmark date or
28 date of personal delivery.

29 Subp. 2. Filing by facsimile. Any pleading or document,
30 including a notice of contest, letter of contest, or petition
31 for modification of abatement date may be filed with the
32 commissioner by facsimile transmission. Filing is completed at
33 the time that the facsimile transmission is received by the
34 commissioner, and the filed facsimile has the same force and
35 effect as the original. The commissioner is not responsible for

1 unsuccessful facsimile transmissions. Documents received by
2 facsimile after 4:30 p.m. Central Standard Time (CST) are deemed
3 filed on the next day.

4 Within five days after the commissioner has received the
5 transmission, the party filing the document must file with the
6 commissioner the original signed document.

7 Subp. 3. Time computation. In computing any period of
8 time prescribed or allowed by parts 5210.0410 to 5210.0595 or
9 Minnesota Statutes, chapter 182, the day of the act, event, or
10 default from which the designated period of time begins to run
11 shall not be included. The last day of the period so computed
12 shall be included, unless it is a Saturday, Sunday, or legal
13 holiday, in which event the period runs until the end of the
14 next day which is not a Saturday, Sunday, or legal holiday.
15 When the period of time prescribed or allowed is less than seven
16 days, intermediate Saturdays, Sundays, and legal holidays shall
17 be excluded in the computation.

18 5210.0557 FORM OF PLEADINGS.

19 Except as provided in parts 5210.0533 to 5210.0542 and
20 5210.0557 to 5210.0570, pleadings and other documents must
21 comply with parts 1400.5100 to 1400.8401. The pleadings and
22 other documents must include the commissioner's and the
23 administrative law judge's docket number.

24 Pleadings and other documents, other than exhibits, must be
25 typewritten or otherwise be legible on 8-1/2 by 11 inch paper.

26 5210.0561 SIGNATURE ON PLEADINGS.

27 Pleadings must be signed by the party filing or by the
28 party's representative. Signing constitutes a representation by
29 the signer that the signer has read the document or pleading,
30 that to the best of the signer's knowledge, information, and
31 belief the statements made in it are true, and that it is not
32 interposed for delay.

33 5210.0564 REFUSAL OF PLEADING.

34 The commissioner or administrative law judge may refuse to

1 accept for filing any pleading or document that does not comply
2 with the requirements of parts 1400.5100 to 1400.8401,
3 5210.0557, and 5210.0567.

4 5210.0567 CAPTION; CASE TITLE.

5 Subpart 1. Notice of contest. Pleadings after receipt of
6 a notice of contest must be titled:

7 Commissioner of the Minnesota
8 Department of Labor and Industry,
9 Complainant

10 v.
11 (Name of contestant),
12 Respondent

13
14 Subp. 2. Third party interests. Cases in which a third
15 party interest has been exercised must be titled:

16 Commissioner of the Minnesota
17 Department of Labor and Industry,
18 Complainant

19 v.
20 (Name of employer),
21 Respondent

22 (Name of employee or authorized
23 employee representative),
24 Employee or
25 authorized
26 employee
27 representative

28
29 Subp. 3. Placement of titles. The titles listed in
30 subparts 1 and 2 must appear at the left upper portion of the
31 first page of any pleading or document filed, other than an
32 exhibit.

33 The first page of any pleading or document, other than an
34 exhibit, must show, at the upper right of the page, opposite the
35 title, the docket numbers assigned by the commissioner and the
36 Office of Administrative Hearings, if any.

37 5210.0570 COMPLAINT; NOTICE; ANSWER.

38 Subpart 1. Complaint. The commissioner shall serve the
39 contesting party and every other party with a complaint no later
40 than 90 days after receiving the notice of contest.

41 The complaint must set forth alleged violations and
42 proposed penalties that are contested, by stating or referring
43 to the contested citation and notification of penalty or
44 notification of failure to abate:

45 A. the basis for jurisdiction;

1 B. the date, location, place, and circumstances of
2 alleged violations; and

3 C. the abatement date and the proposed penalty for
4 the alleged violation.

5 The commissioner may amend the complaint at any time before
6 the close of the hearing without filing a motion with the
7 administrative law judge, provided that, should the amended
8 complaint raise new issues or allegations, if requested by a
9 party, a reasonable time to prepare to respond to the new issues
10 or allegations must be provided.

11 Subp. 2. **Withdrawal of contest.** A person who filed a
12 notice of contest may withdraw the notice at any time in the
13 proceedings.

14 Subp. 3. **Summons and notice to respondent.** The
15 commissioner shall serve on all parties a notice with the
16 complaint that states the following:

17 A. that the respondent has 20 days within which to
18 file an answer;

19 B. that the parties have a right to be represented by
20 legal counsel in all proceedings;

21 C. that the rules of the commissioner and the rules
22 of the Office of Administrative Hearings apply to the
23 proceedings and where a copy of those rules may be obtained; and

24 D. the name of the agency official or member of the
25 attorney general's staff to be contacted to discuss informal
26 disposition under part 1400.5900 or discovery under part
27 1400.6700, subparts 2 and 3.

28 Subp. 4. **Answer.** Within 20 days after service of the
29 complaint, the party or parties against whom the complaint was
30 issued shall file with the commissioner an answer and serve the
31 answer on every other party.

32 The answer must contain a short and plain statement denying
33 those allegations in the complaint that the party intends to
34 contest and assert any and all affirmative defenses. Any
35 allegation not denied is deemed admitted and any affirmative
36 defense not asserted is deemed waived.

1 Subp. 5. Failure to serve or file. If the complaint is
2 not served or the answer is not filed and served within the time
3 prescribed by this part, the administrative law judge, upon a
4 motion by a party, may enter an order affirming or vacating the
5 contested citation and notification of penalty or notification
6 of failure to abate.

7 5210.0573 PARTY STATUS.

8 Subpart 1. Affected employees and authorized
9 representatives. If a notice of contest is timely filed by an
10 employer, affected employees or authorized employee
11 representatives may participate as parties in the contested case
12 proceeding by filing a notice of intent to participate as a
13 party at least 45 days before the starting date of the hearing.
14 The notice of intent to participate as a party must contain the
15 name, address, and representative, if any, of the affected
16 employee or authorized employee representative requesting party
17 status and a statement that the person identified is an affected
18 employee or authorized employee representative of affected
19 employees of the cited employer. The notice shall be filed with
20 the commissioner or the administrative law judge if one has been
21 assigned to the proceeding and served upon all parties at the
22 time of filing.

23 Subp. 2. Employers. If a notice of contest is timely
24 filed by an employee or by an authorized employee
25 representative, the cited employer may participate as a party in
26 the contested case proceeding by filing a notice of intent to
27 participate as a party at least 45 days before the starting date
28 of the hearing. The notice of intent to participate as a party
29 must contain the employer's name, address, and representative,
30 if any. The notice must be filed with the commissioner or the
31 administrative law judge, if one has been assigned to the
32 proceeding, and served upon all parties at the time of filing.

33 Subp. 3. Objection to notice of intent to participate as
34 party. A party to the contested case proceeding may file a
35 written objection to a notice of intent to participate as a

1 party on the grounds that the person requesting party status is
2 not an affected employee, an authorized employee representative
3 of affected employees, or the cited employer, or that the notice
4 does not comply with the requirements of this subpart. The
5 objecting party shall file the written objection with the
6 commissioner or with the administrative law judge, if one has
7 been assigned to the proceeding, and serve the written objection
8 upon all other parties and upon the person requesting party
9 status. The written objection must be filed and served within
10 ten days after the date the notice of intent to participate as a
11 party was filed and served upon the parties. If no written
12 objection to the notice of intent to participate as a party is
13 filed and served within ten days after the date the notice was
14 filed and served upon the parties, the person requesting party
15 status shall become a party to the proceeding. If a written
16 objection is filed by a party with the commissioner, the
17 commissioner shall immediately request that an administrative
18 law judge be assigned to the proceeding and refer the notice and
19 the objection to the assigned administrative law judge for a
20 determination of party status.

21 Subp. 4. Intervention by other persons. Intervention by
22 other persons may be granted by the administrative law judge
23 according to part 1400.6200.

24 5210.0576 REPRESENTATIVES OF PARTIES AND INTERVENORS.

25 Parties and intervenors may be represented by an attorney,
26 by themselves, or by a person of their choice throughout the
27 proceedings in a contested case if not otherwise prohibited as
28 the unauthorized practice of law.

29 If the authorized employee representative is a party,
30 affected employees who are represented by an authorized employee
31 representative may appear only through the authorized employee
32 representative.

33 The withdrawal of appearance of a representative may be
34 accomplished by filing a written notice of withdrawal and by
35 serving a copy of the notice on all parties and intervenors.

1 5210.0579 MOTIONS.

2 All motions must be made according to part 1400.6600.

3 5210.0583 CONSOLIDATION AND SEVERANCE OF CASES.

4 Consolidation and severance of cases must be done according
5 to part 1400.6350.

6 5210.0589 PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL
7 INFORMATION.

8 On application by a person in a proceeding where trade
9 secrets or other matters may be divulged, the administrative law
10 judge shall issue orders as appropriate to protect the
11 confidentiality of these matters.

12 5210.0595 HEARING.

13 Subpart 1. Notice of hearing and order. When the matter
14 is scheduled for hearing before an administrative law judge, the
15 commissioner shall serve on all parties, and the employer if the
16 employer is not a party, a written notice and order of hearing
17 under part 1400.5600, and all further proceedings must be
18 conducted under chapter 1400 and Minnesota Statutes, chapter 14.

19 Subp. 2. Notice of hearing.

20 A. A copy of the notice of hearing to be held before
21 an administrative law judge must be posted by the employer
22 within five days of receipt in the same place where the citation
23 and notification of penalty is required to be posted. The
24 notice of hearing must remain posted until the date of the
25 hearing or earlier final disposition of the contest.

26 B. If there are any affected employees who are
27 represented by an authorized employee representative, the
28 employer shall, within five days of receipt, serve a copy of the
29 notice of hearing on the representative.

30 C. Certification of the service and posting required
31 by this subpart must be filed with the commissioner and served
32 on the administrative law judge within five days of receipt of
33 the notice of hearing. If the employer fails to certify service
34 and posting, the administrative law judge may, on a motion by

1 one of the parties or on the judge's own motion, render a
2 default judgment in favor of the commissioner.

3 5210.0596 SETTLEMENT; MISCELLANEOUS PROVISIONS.

4 Subpart 1. Service and notice. A settlement agreement
5 must be posted where the citation and notification of penalty or
6 notification of failure to abate is required to be posted and
7 must be served on authorized employee representatives by the
8 employer.

9 Subp. 2. Contents of settlement agreements. Settlement
10 agreements must contain:

11 A. a provision that states the date the employer
12 posted and served the agreement under subpart 1;

13 B. an affirmative statement that the contesting party
14 withdraws the notice of contest; and

15 C. a statement that describes how the settlement
16 agreement affects the status of the contested citation, type of
17 violation, abatement date, and proposed penalty.

18 Subp. 3. Objection to settlement agreement. If there is
19 no timely objection to the agreement by affected employees or
20 authorized employee representatives, a settlement agreement
21 becomes a final order ten days after it has been posted and
22 served upon the authorized employee representatives.

23 An affected employee or authorized employee representative
24 may file an objection to a proposed settlement with the
25 commissioner within ten days after posting and service of the
26 settlement agreement on the authorized employee representative.
27 On receipt of a timely objection, the commissioner may
28 renegotiate the settlement, refer the agreement and objection to
29 an administrative law judge for approval despite the objection,
30 or withdraw the settlement agreement and continue proceedings on
31 the contested citation.

32 5210.0597 EXPEDITED PROCEEDING.

33 On the application of a party, or on the commissioner's own
34 motion, the commissioner may order an expedited proceeding.
35 When an expedited proceeding is ordered, the commissioner shall

1 notify all parties. The administrative law judge assigned in an
2 expedited proceeding shall make necessary rulings concerning the
3 time for filing pleadings and all other matters, without
4 reference to the times in parts 5210.0410 to 5210.0595. The
5 administrative law judge shall do all other things necessary to
6 complete the proceeding in the minimum time consistent with
7 fairness.

8 5210.0650 ANNUAL SUMMARY.

9 [For text of subps 1 to 3, see M.R.]

10 Subp. 4. Posting. Each employer shall post a copy of the
11 establishment's summary in each establishment in the same manner
12 that notices are required to be posted under part 5210.0420.
13 The summary covering the previous calendar year shall be posted
14 no later than February 1, and shall remain in place until March
15 1. For employees who do not primarily report or work at a
16 single establishment, or who do not report to any fixed
17 establishment on a regular basis, employers shall satisfy this
18 posting requirement by presenting or mailing a copy of the
19 summary during the month of February of the following year to
20 each such employee who receives pay during that month. For
21 multiestablishment employers where operations have closed down
22 in some establishments during the calendar year, it will not be
23 necessary to post summaries for those establishments.

24 [For text of subp 5, see M.R.]

25 VARIANCES

26 5210.0800 PURPOSE AND SCOPE.

27 Parts 5210.0800 to 5210.0870 establish general policies to
28 implement the provisions of Minnesota Statutes, section 182.655,
29 subdivisions 5 to 9, governing variances.

30 5210.0810 EFFECT OF VARIANCES.

31 All variances granted pursuant to Minnesota Statutes,
32 section 182.655, subdivisions 5 to 9, shall have only future
33 effect. The commissioner may decline to entertain an
34 application for a variance on a subject or issue concerning a

1 citation that has been issued to the employer seeking the
2 variance if the citation has been contested.

3 5210.0820 TEMPORARY VARIANCES.

4 Subpart 1. Application. An employer desiring a temporary
5 variance from a standard must file with the commissioner a
6 written application containing the information specified in
7 Minnesota Statutes, section 182.655, subdivisions 5 and 7.

8 Subp. 2. [See repealer.]

9 Subp. 3. [See repealer.]

10 Subp. 4. Hearing. The commissioner may hold a hearing on
11 the variance application. Affected employees and authorized
12 employee representatives of the affected employees shall be
13 given notice of the hearing and allowed to participate.

14 Subp. 5. [See repealer.]

15 Subp. 6. [See repealer.]

16 Subp. 7. Temporary variance order. The commissioner may
17 grant a temporary variance from an adopted standard in
18 accordance with Minnesota Statutes, section 182.655, subdivision
19 6.

20 5210.0830 PERMANENT VARIANCES.

21 Subpart 1. Application. An employer desiring a permanent
22 variance from a standard must file a written application with
23 the commissioner containing the information specified in
24 Minnesota Statutes, section 182.655, subdivision 8.

25 Subp. 2. [See repealer.]

26 Subp. 3. Hearing. The commissioner may hold a hearing on
27 the variance application. Affected employees and authorized
28 employee representatives of the affected employees shall be
29 given notice of the hearing and allowed to participate.

30 Subp. 4. [See repealer.]

31 Subp. 5. [See repealer.]

32 Subp. 6. Permanent variance order. The commissioner may
33 grant a permanent variance from an adopted standard in
34 accordance with Minnesota Statutes, section 182.655, subdivision
35 8.

1 5210.0835 INTERIM ORDERS.

2 An employer may request an interim order to be effective
3 until a decision is made on the application for variance.
4 Affected employees and authorized employee representatives of
5 affected employees shall be notified of the interim order
6 request by the same means used to notify them of the application
7 for variance. No interim order may remain in effect for longer
8 than 180 days. If the commissioner denies the request for an
9 interim order, the applicant shall be given a written notice of
10 the denial including an explanation of the reasons for denying
11 the request.

12 5210.0850 ORDER DENYING VARIANCE.

13 If the commissioner denies an application for a temporary
14 or a permanent variance, the order denying the variance must
15 include:

16 A. the name and address of the person or organization
17 requesting the variance;

18 B. the rule, or provisions of the rule, from which
19 the application requested a variance;

20 C. the extent and duration of the variance requested;
21 and

22 D. a concise statement of the reasons for denying the
23 variance request.

24 5210.0860 OBJECTION TO VARIANCE DENIAL.

25 An employer who has been denied a variance under Minnesota
26 Statutes, section 182.655, subdivisions 5 to 9, may notify the
27 commissioner in writing that the employer intends to object to
28 the variance denial. The objection shall be postmarked within
29 15 days of receipt by the employer of the variance denial. The
30 commissioner shall, within seven days of receipt of the
31 objection, transmit the objection to an administrative law judge
32 together with copies of all relevant documents.

33 Affected employees shall be given notice of the application
34 according to Minnesota Statutes, section 182.655, subdivision 7,

1 paragraph (e), and an opportunity to participate in the hearing
2 as required under Minnesota Statutes, section 182.654,
3 subdivision 5.

4 5210.0870 MULTISTATE VARIANCES.

5 If a federal variance is granted with multistate
6 applicability and the employer has not filed a separate
7 application in accordance with part 5210.0820 or 5210.0830 with
8 the commissioner, the granted variance shall be considered to be
9 applicable in Minnesota under the following conditions:

- 10 A. the multistate application included Minnesota;
11 B. the standard from which the variance is granted is
12 identical to a Minnesota occupational safety and health
13 standard; and
14 C. no objections are received.

15 REPEALER. Minnesota Rules, parts 5210.0010; 5210.0030;
16 5210.0100, subpart 4; 5210.0200; 5210.0220; 5210.0230;
17 5210.0240; 5210.0250; 5210.0260; 5210.0270; 5210.0280;
18 5210.0290; 5210.0310, subparts 3 and 4; 5210.0340, subpart 1;
19 5210.0400; 5210.0430; 5210.0440; 5210.0470, subparts 3, 4, and
20 6; 5210.0540; 5210.0550; 5210.0560; 5210.0820, subparts 2, 3, 5,
21 and 6; 5210.0830, subparts 2, 4, and 5; and 5210.0840, are
22 repealed.