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# State Register

STATE OF MINNESOTA



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- Licensure and Professional Conduct of Certified Public Accountants  
—Adopted Rules from the Board of Accountancy
- Employee Exposure to Benzene  
—Emergency Rule from the Department of Labor and Industry
- Registration and Licensing of Bicycles  
—Adopted Rules from the Department of Public Safety, Motor Vehicle Division
- Federal and State Outdoor Recreation Grants  
—Adopted Temporary Rules from the State Planning Agency
- Occupational Safety and Health  
—Proposed Rules from the Department of Labor and Industry
- Administration of Minnesota Public Social Service  
—Proposed Rules from the Department of Public Welfare
- Solar Energy Use in Minnesota  
—Notice of Intent to Solicit Outside Opinion from the Energy Agency
- Heating Fuel Inventory Study  
—Notice of Intent to Solicit Outside Opinion from the Energy Agency
- Code of Ethics for State Employees  
—Announcement from the Department of Personnel
- Railroad Changes in Rocksbury Township, Faribault, and Plymouth  
—Notices of Hearings from the Department of Transportation

## VOLUME 2, NUMBER 4

### AUGUST 1, 1977

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Cite all material in the *State Register* by Volume number and page number.  
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The *State Register* is published weekly, on Monday, by the State of Minnesota, Department of Administration, Office of the State Register, Suite 203, 95 Sherburne Avenue, St. Paul, Minnesota 55103, pursuant to Minn. Stat. § 15.0411. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$110 per year, and \$85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630.

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# RULES

## Board of Accountancy Licensure and Professional Conduct of Certified Public Accountants

The rules published at State Register Vol. 1, No. 33, p. 1236, February 22, 1977 (1 S.R. 1236), are adopted and are identical in every respect to their proposed form, with the following amendments:

Accy 30 all [regulations] **rules** of the board shall be adopted in the manner prescribed by [Atty. Gen. 301-306, Rule-Making Procedure For Non-Contested Cases, promulgated April, 1969] [[the rules of the State Office of Hearing Examiners, HE 101-109, filed December 10, 1975; amended and filed March 15, 1976]] Minn. Stat. ch. 15, and the rule hearing procedures of the State Office of Hearing Examiners.

Accy 110 **B.** Applications for reexamination in failed subjects. **\$25.00** per subject, but not in excess of **[\$50.00]** **\$100.00** (Accounting practice is considered to be **[[as]]** two subjects.) Accy 44 **[(d)] D.** provides that applicants must apply for reexamination in all failed subjects.

Accy 112 Once an application for examination or reexamination has been approved by the board, the fee will not be refunded. Such fee may be applied to any future examination fee **at any time** during a period of five years after **approval of the application, thereafter** which the fee shall be forfeited.

Accy 140 All revocation and suspension proceedings shall be conducted in accordance with [Chapter Forty-One and Chapter Forty-Two: Rules for Contested Cases, Accy 410-429] [[The Rules of the State Office of Hearing Examiners, HE 201-222, filed December 10, 1975; amended and filed March 15, 1976]] Minn. Stat. ch. 15, and the contested case procedures of the State Office of Hearing Examiners.

Chapter Fifteen:

Accy 150 **Definitions.**

**Certified Public Accountants** **[[f]]** or licensee. A person holding such certificate or license issued under the Accountancy Law of Minnesota.

**KEY:** Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within **[[double brackets]]**.

Accy 210 All contested cases before the board shall be conducted in accordance with [[the Rules of the State Office of Hearing Examiners, HE 201-222, filed December 10, 1975; amended and filed March 15, 1976]] Minn. Stat. ch. 15, and the contested case procedures of the State Office of Hearing Examiners.

## Department of Labor and Industry Stay of Enforcement of Emergency Rule Regarding Employee Exposure to Benzene

Please Take Notice that E. I. Malone, Commissioner, Minnesota Department of Labor and Industry, pursuant to authority contained in Minn. Stat. § 182.655, subd. 1 (1976), does this date issue a stay of enforcement of the emergency temporary standard on Benzene published previously at 1 S.R. 1796 on June 13, 1977. This administrative stay shall continue in effect up to and including close of business August 8, 1977, at which time this stay shall terminate. This action is prompted by a stay issued by the court in A.P.I. et al. v. OSHA et al. No. 77-1973 (5th Circuit Court of Appeals), staying the enforcement of the federal Occupational Safety and Health Administration's emergency temporary standard on Benzene as published in the Federal Register, Vol. 42, No. 85 at pp. 22525-22529 (May 3, 1977) amended at Federal Register, Vol. 42, No. 85 at p. 23601 (May 10, 1977).

Dated this 8th day of July, 1977.

## Department of Public Safety Division of Motor Vehicles Registration and Licensing of Bicycles

The rules published at State Register Vol. 1, No. 32, p. 1208, February 15, 1977 (1 S.R. 1208), are adopted and are identical in every respect to their proposed form, with the following amendments:

# RULES

Chapter Five: Bicycle Registration: Applications, Issuance, Transfer, Refunds, Motor Vehicle Deputy Registrars, and Bicycle Deputy Registrars.

## MoVeh 75 Proof of ownership.

B. If no proof of ownership has been supplied, [[no license]] a DPS2751, certification of ownership of a bicycle, must be completed. A license will be issued but no registration card will be issued until a check of the stolen files has been made.

C. If no proof of ownership is supplied and the bicycle is not listed as stolen, a [[license]] registration card will be issued and the records and registration card will be marked to indicate no proof of ownership was supplied. When the license is renewed at the end of three years the indicator that no proof of ownership was supplied will be removed from both the record and the registration card.

## MoVeh 81 Motor vehicle and bicycle deputy registrars, reports and deposits.

B. Bicycle Deputy Registrars shall deposit state fees collected whenever the total fees reach \$50 or [[each Friday]] the first and third Wednesday of each month, whichever comes first.

MoVeh 82 Motor vehicle and bicycle deputy registrars, inventories. Each deputy on June 30 and December 31 of each year shall submit to the division a report on the complete inventory of [[stickers]] licenses on hand.

## State Planning Agency Adopted Temporary Rules Administering Federal and State Outdoor Recreation Grants

The following temporary rules are adopted pursuant to Laws of 1977, ch. 421.

### 10 MCAR § 1.305 Athletic court grants program.

A. Distribution of grants. The Office of Local and Urban Affairs shall distribute state grants for the development of basketball, handball, tennis and volleyball courts in conformance with Laws of 1977, ch. 421, § 2, subd. 4 and the rules contained herein.

#### B. Application procedure.

1. Eligible applicants as defined by Laws of 1977, ch. 421 § 2, subd. 1 (c) may apply for state athletic court

grants for the 1977 construction season not later than September 5, 1977, and for the 1978 construction season not later than September 16, 1977.

2. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

3. Applications for projects outside of the jurisdiction of the Metropolitan Council shall be submitted to the Office of Local and Urban Affairs for review under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall be submitted to the Office of Local and Urban Affairs for review under those rules and the Metropolitan Council for their review.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Projects and facilities eligible for a state grant shall include the following:

1. A special surface area of asphalt or concrete materials with adequate foundation suitable for the soil and climatic conditions. Prior to construction, such surface areas and foundations shall be approved by the applicant's engineer, as being suitable. Courts shall be outlined on the surface area and be of proper size to meet generally recognized athletic court dimensions.

2. Hoops, nets and supporting structures for athletic court games which shall be of a proper size to utilize the facility.

3. Walls and fences for the athletic court games which shall be of a proper size to utilize the facility.

4. Adequate lighting to extend the use of the court games into hours of darkness.

#### D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by the Office of Local and Urban Affairs by giving equal consideration to each of the following criteria:

a. Priority shall be given to eligible applicants that demonstrate the athletic courts will be developed jointly with one or more eligible applicant. Included shall be evidence of cooperative use of such facilities between schools, cities, and other local units.

## RULES

b. Eligible project applications received by the Office of Local and Urban Affairs shall be ranked in order from highest to lowest in relation to those projects located in cities or towns which have the lowest number of similar public athletic courts to their population.

c. Eligible project applications received by the Office of Local and Urban Affairs shall be ranked in order from highest to lowest by the distance the project is located away from similar existing public athletic courts.

d. Priority shall be given to eligible applicants that can demonstrate that the courts will be readily accessible to the public by vehicular and pedestrian traffic, serve residential areas, and are available to the entire community.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by the Office of Local and Urban Affairs under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. Grants shall be distributed in order of ranking until athletic court funds are depleted. For those applicants recommended for a grant, the Office of Local and Urban Affairs will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by the Office of Local and Urban Affairs to verify the costs and compliance with the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of project. Property developed with an athletic court grant shall be retained and used for public outdoor recreation on a non-discriminatory basis during its useful life. Any property so developed shall not be changed to a non-recreational use or another recreational use without prior approval of the Office of Local and Urban Affairs. In the event that this occurs, the applicant shall return that percentage of the state

grant equal to the percentage of the developed property changed to a non-recreational use.

I. Responsibilities of recipient. A recipient of an athletic court grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

### § 1.306 A trail grants program.

A. Distribution of grants. The Office of Local and Urban Affairs shall distribute state grants for the development of hiking, biking, and cross-country skiing trails in conformance with Law of 1977, ch. 421, § 2, subd. 3 and the rules contained herein.

#### B. Application procedure.

1. Eligible applicants as defined by Laws of 1977, ch. 421, § 2, subd. 1(c) may apply for trail grants for the fiscal year 1978 not later than September 16, 1977.

2. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant, relationship to future plans, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

3. Applications for projects outside of the jurisdiction of the Metropolitan Council shall be submitted to OLU for review and ranking under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall be submitted to OLU for review and ranking under these rules, and to the Metropolitan Council for its review and ranking.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant.

1. Projects and facilities eligible for a state grant shall include the following:

a. Clearing of vegetation, grading, and construction of a surface area and necessary drainage structures suitable for the type of trails proposed.

b. Shelters, signs, toilet facilities, and water systems suitable for the type of trails proposed.

**KEY:** Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within [[double brackets]].

## RULES

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2. Project qualifications. A project must satisfy all of the following qualifications to be eligible for a grant:

a. The proposed project is an eligible recreational activity, as specified in the BOR Manual.

b. The proposed outdoor recreation activity has been identified as a need in the Minnesota State Comprehensive Outdoor Recreation Plan.

c. The proposed project has been identified as a need in the comprehensive land use planning program or a comprehensive recreation plan of the applicant, county or regional development commission.

d. The proposed project has been identified in the applicant's 5-year action program of recreational activities.

e. The applicant normally has responsibility to supply the types of outdoor recreation facilities and functions contained in the project, or a need can be demonstrated for the applicant to expand its involvement in supplying such recreational opportunities.

### D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLU. Applications for projects which meet the following criteria shall receive priority over similar projects that do not.

#### a. General criteria.

(1) The project meets generally recognized national design standards for recreational facilities.

(2) The project reflects quality site planning; recognizes and compliments existing land forms; provides for ease of maintenance and operation of the site and does not constitute major environmental intrusions which are detrimental to the intended use of the surrounding lands.

(3) The project complies with the recreational facility priority needs as designed in the applicant's recreation plan.

b. Trail development priorities. Applications shall also be evaluated and ranked by OLU by giving equal consideration to each of the following criteria:

(1) Priority shall be given to trail projects located so as to minimize interference with incompatible activities and features.

(2) Priority shall be given to trail projects that provide access to areas of outstanding natural resources or man-made features.

(3) Priority shall be given to trail projects that continue or link into other trail systems or proposed trail systems.

(4) Eligible trail project applications received by OLU shall be ranked from highest to lowest in relation to those projects located within applicant areas which have the fewest miles of similar trails in relation to their population.

(5) Priority shall be given to eligible applicants that can demonstrate that the proposed trails are readily accessible to the public by vehicular, pedestrian and bicycle traffic and are available to the entire community.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by the Office of Local and Urban Affairs under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. State grants shall be distributed in order of ranking until trail development funds are depleted. For those applicants who are recommended for a grant, OLU will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLU to verify the costs and compliance with the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of project. Property developed with a trail grant shall be retained and used for public outdoor recreation on a non-discriminatory basis during its useful life. Any property so developed shall not be changed to a non-recreational use or another recreational use without prior approval of OLU. In the event that this occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed to a non-recreational use.

I. Responsibilities of recipient. A recipient of a trail grant shall comply with all existing or subsequent state laws and regulations that apply to the project.



# PROPOSED RULES

## Department of Labor and Industry Occupational Safety and Health

### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Veteran's Service Building, 20 West 12th Street, 5th Floor, Conference Room D, St. Paul, Minnesota on Tuesday, September 6, 1977 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, Hearing Examiners Office, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within 5 to 20 days after the close of the hearing upon order of the Hearing Examiner.

The proposed rules, if adopted, would:

(1) Amend Chapter 21 "Inspection, Citations and Proposed Penalties," Chapter 22 "Recording and Reporting Occupational Injuries and Illnesses," and Chapter 23 "Variances." These regulations were promulgated on February 20, 1974, and are now being amended to correct errors and omissions of a non-substantive nature. These editorial changes will correct errors in references to statutes and general terms, clarify the intent of the Minnesota Occupational Safety and Health Act and update the Minnesota Occupational Safety and Health Regulations to be as effective as the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) Regulations.

(2) Adopt Chapter 24 "Standards Promulgation" and Chapter 25 "Monitoring Toxic Materials and Harmful Physical Agents." Chapter 24 "Standards Promulgation," as mandated in Minn. Stat. § 182.655, provides the Commissioner with policies and procedures for the purpose of adopting, modifying or revoking Occupational Safety and Health Standards. Chapter 25 "Monitoring Toxic Materials and Harmful Physical Agents" as mandated in Minn. Stat. § 182.663, Subd. 3 requires employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are to be monitored under the Minnesota Occupational Safety and

Health Act of 1973. If adopted, these proposed regulations will establish requirements for recordkeeping, employee access to records, notification of employee exposure, rights of employees to observe monitoring and periodic inspections.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Deputy Commissioner, Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 182.655 (1976). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule-making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Phone: (612) 296-5615.

### Rules as Proposed

Chapter Twenty-One: MOSHC 270-289 Inspection, Citations and Proposed Penalties

MOSHC 270 Purpose and scope. The Minnesota Occupational Safety and Health Act of 1973 requires in part that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act and that employees comply with standards, rules, regulations and orders which are applicable to their own actions and conduct. The Act authorizes the Department of Labor and Industry to conduct inspections and to

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## PROPOSED RULES

issue citations and propose penalties for alleged violations. The Act, under [Section 10] **Minn. Stat. § 182.659**, authorizes the Commissioner to conduct inspections and question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations and proposed penalties by the Occupational Safety and Health Review [Commission] Board if contested by an employer or by an employee or authorized representative of employees and for judicial review. The purpose of the [Part B] **Chapter** is to prescribe rules and set forth general policies for enforcement of the inspection, citation and proposed penalty provisions of the Act.

MOSHC 271 Posting of notice; Availability of the act, regulations and applicable standards.

Paragraph (a) No Change.

[(b) "Place of Employment" means any factory, plant, foundry, construction site, farm workplace, premises, vehicle or any other work environment where any employee is during the course of his employment.]

Existing paragraph (c) has been redesignated as paragraph (b).

[(d)] (c) Any employer failing to comply with the provisions of **this section** shall be subject to citation and penalty in accordance with the provisions of [Section 17] **Minn. Stat. § 182.666**. [of the Act.]

MOSHC 272 Objection to inspection. No change

MOSHC 273 Entry not a waiver. No change

MOSHC 274 Conduct of inspections.

Paragraphs (a) through (e) remain the same.

(f) Inspections shall be conducted in accordance with the requirements of this [Part] **Chapter**.

MOSHC 275 Representatives of employers and employees.

Paragraphs (a) through (c) remain the same.

(d) OSHI are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of [§ 19] **Minn. Stat. § 182.668**. [of the Act]

**MOSHC 276 Trade secrets.**

**A. At the commencement of an inspection, the**

employer may identify areas in the establishment which contain or which might identify areas in the establishment which contain or which might reveal a trade secret. If the OSHI has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "Confidential-Trade Secret" and shall not be disclosed except in accordance with the provisions of **Minn. Stat. § 182.668**.

**B. Upon the request of an employer, any authorized representative of employees in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the OSHI shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.**

**MOSHC 277 Consultation with employers and employees.**

**A. OSHI may consult with employees concerning matters of occupational safety and health to the extent he deems necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the OSHI.**

**B. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the OSHI during the physical inspection of any workplace under **Minn. Stat. § 182.659** for the purpose of aiding such inspection.**

**C. The authorized representative of employees shall also be given the opportunity to participate in any conference or discussion held prior to or during any such inspection.**

**D. Where there are no authorized employee representatives, the OSHI shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.**

**E. No employee as a consequence of aiding such inspection, under this section, shall lose any privilege or payment that he would otherwise earn, such loss being a discriminatory act subject to sanctions.**

[MOSHC 278 Employer and Employee Contests Before the Review Commission]

[(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under Section 12 of the Act, notify the Commissioner in writing that he intends to

## PROPOSED RULES

contest such citation or proposed penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both.]

[(b) Any employee or representative of employees of an employer to whom a citation has been issued may, under Section 12 of the Act, file a written notice with the Commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed.]

### MOSHC 278 Complaints by employees.

A. Any employee or representative of employees who believes that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner or an OSHI. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Commissioner or OSHI no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released or made available by the Department of Labor and Industry.

B. If upon receipt of such notification the Commissioner determines that the complaint meets the requirements set forth in paragraph A. of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspection under this section shall not be limited to matters referred to in the complaint.

C. During any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the OSHI of any violation of the Act which they have reason to believe exists in such workplace.

**MOSHC 279 Inspection not warranted; Informal review. If the Commissioner determines that an inspection**

**is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under MOSHC 278, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the employee or the employer, the Commissioner, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Commissioner shall affirm, modify, or reverse the determination and furnish the complaining party and the employer a written notification of his decision and the reasons therefor.**

MOSHC [276] 280 Citations; Notices of de minimis violations.

(a) The Commissioner shall review the inspection report of the OSHI. If on the basis of the report the Commissioner believes that the employer has violated a requirement of [Section 4] Minn. Stat. § 182.653, subd. 2, 3 or 4, or any standard, rule or regulation promulgated pursuant to the Act he shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. **A copy of the citation and the proposed assessment of penalty shall also be issued by certified mail to the authorized representative of affected employees and, in the case of the death of an employee, to the next of kin if requested.** An appropriate citation or notice of de minimis violations shall be issued even though, after being informed of alleged violation by the OSHI, the employer immediately abates or initiates steps to abate each such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this section after the expiration of six months following the occurrence of any alleged violation.

Paragraph (b) No change.

(c) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Review [Commission] **Board.**

**KEY:** Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within [[double brackets]].

## PROPOSED RULES

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MOSHC 281 Petitions for modification of abatement date.

A. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.

B. A petition for modification of abatement date shall be in writing and shall include the following information:

1. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

2. The specific additional abatement time necessary in order to achieve compliance.

3. The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

4. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

5. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with subsection C.1. of this section and a certification of the date upon which such posting and service was made.

C. A petition for modification of abatement date shall be filed with the Commissioner of the Department of Labor and Industry no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

1. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

2. Affected employees or their representative may file an objection in writing to such petition with the Commissioner. Failure to file such objection within ten (10) days of the date of posting of such petition or of

service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

3. The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to paragraphs B. and C. of this section. Such uncontested petitions shall become final orders.

4. The Commissioner or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) days from the date the petition was posted or served pursuant to paragraphs C.1. and 2. of this section by the employer.

D. Where any petition is objected to by the Commissioner or affected employees, such petition shall be processed as follows:

1. The petition, citation and any objections shall be forwarded to the Board within three (3) days after the expiration of the fifteen (15) day period set out in paragraph C.4.

2. The Board shall docket and process such petition in the same manner as any other contested case, except that all hearings on such petitions shall be handled in an expeditious fashion.

3. An employer petitioning for a modification of abatement period shall have the burden of proving that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

4. Within ten (10) days after the receipt of notice of the docketing by the Board of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

MOSHC [277] 282 Posting of citations.

A. Upon receipt of any citation and proposed penalty under the Act, the employer shall immediately post such citation and proposed penalty, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation and proposed penalty at or near each place of alleged violation, such citation and proposed penalty shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in

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activities which are physically dispersed, the citation and proposed penalty may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation and proposed penalty may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation and proposed penalty [is] are not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

B. Each citation and proposed penalty, or a copy thereof, shall remain posted until the violation has been abated, or for [3 working] 15 days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect his posting responsibility under this section unless and until the Review [Commission] Board issues a final order vacating the citation and proposed penalty.

C. An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Review [Commission] Board, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

D. Any employer failing to comply with the provisions of paragraphs A. and B. of this section shall be subject to citation and penalty in accordance with the provisions of [Section 17] Minn. Stat. § 182.666. [of the Act.]

MOSHC [279] 283 Informal conferences. No change.

Chapter Twenty-Two: MOSHC 290-309 Recording and Reporting Occupational Injuries and Illnesses

MOSHC 290 Purpose and scope. The regulations in this [part] chapter implement [Section 14] Minn. Stat. § 182.663 of the Minnesota Occupational Safety and Health Act of 1973. These sections provide for recordkeeping and reporting by employers covered under the Act as necessary or appropriate for enforcement of the Act, for developing information regarding the cause and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics.

MOSHC [300] 291 Definitions.

Paragraph (a) remains the same.

(b) The definitions and interpretations contained in [Sec-

tion 2] Minn. Stat. § 182.651 [of the Act] shall be applicable to such terms when used in this Chapter 22.

Paragraphs (c) through (g) remain the same.

MOSHC [291] 292 Log of occupational injuries and illnesses. No Change.

MOSHC [292] 293 Period covered. No Change.

MOSHC [293] 294 Supplementary record. In addition to the log of occupational injuries and illnesses provided for under MOSHC [291] 292, each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for the establishment. The record shall be completed in the detail prescribed in the instructions accompanying OSHA Form No. 101. [Workmen's] Worker's compensation, insurance, or other reports are acceptable alternative records if they contain the information required by OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

MOSHC [294] 295 Annual summary.

Paragraphs (a) through (c) remain the same.

(d)(1) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under MOSHC 271(a) of [this] Chapter 21. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

(2) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Minn. Stat. § 182.666, subd. 5.

MOSHC [295] 296 Retention of records. Records provided

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for in MOSHC [291] **292**, MOSHC [293] **294**, and MOSHC [294] **295** shall be retained in each establishment for 5 years following the end of the year to which they relate.

MOSHC [296] **297** Access to records. Records provided for in MOSHC [291] **292**, MOSHC [293] **294**, and MOSHC [294] **295** shall be available for inspection and copying by authorized representatives of the Department of Labor and Industry and the Department of Health.

MOSHC [297] **298** Reporting of fatality or multiple hospitalization accidents. No change.

MOSHC [298] **299** Falsification, or failure to keep records or reports.

A. [Section 18] **Minn. Stat. § 182.667** [of the Act] provides that "Whoever knowingly makes any false statement, representation, or certification in any application, record, report plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment, for not more than 6 months or both."

B. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in [Section 18] **Minn. Stat. § 182.667** [of the Act.]

MOSHC [299] **300** Change of ownership. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this [part] **Chapter**. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under MOSHC [295] **296**.

MOSHC 301 Petitions for recordkeeping exceptions — **Public employment sector**.

(a) Submission of petition. Any public employer who wishes to maintain records in a manner different from that required by this [part] **Chapter** may submit a petition containing the information specified in paragraph (c) of this section to the Commissioner of Labor and Industry.

Paragraphs (b) through (i) remain the same.

MOSHC **302** Petitions for recordkeeping exceptions — **Private employment sector**.

A. **Submission of petition. Private employment sector employers who wish to maintain records in a manner**

**different from that required by this chapter may submit a petition to the Regional Director of the Bureau of Labor Statistics, OSH Statistics Program, U.S. Department of Labor, 9th floor, 230 South Dearborn Street, Chicago, Illinois 60604.**

MOSHC [302] **303** Employees not in fixed establishments. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of MOSHC [291] **292**, MOSHC [293] **294**, and MOSHC [295] **296** with respect to such employees by:

A. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

B. Having the address and telephone number of the central place available at each worksite; and

C. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

MOSHC [303] **304** Small employers.

A. An employer who had no more than [seven (7)] **ten (10)** employees at any one time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this [part] **Chapter** except MOSHC [297] **298** concerning fatalities or multiple hospitalization accidents (i.e., he need not prepare the log, OSHA 100; the Supplementary record, OSHA 101, nor prepare or post the summary, OSHA 102).

B. Paragraph A. of this section shall not apply when an employer has been notified in writing by the Bureau of Labor Statistics that he has been selected to participate in a statistical survey of occupational injuries and illnesses. If selected, an employer will be required to maintain a log of occupational injuries and illnesses (OSHA 100) in accordance with MOSHC [291] **292** and to make reports in accordance with MOSHC [305] **306** for the period of time which is specified in the notice.

MOSHC [304] **305** [Description of] Statistical program.

Paragraph remains the same.

MOSHC [305] **306** Duties of employers.

Paragraph remains the same.

MOSHC 307-309 Reserved for future use.

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## Chapter Twenty-Three: MOSHC 310-319 Variances

**MOSHC 310 Purpose and scope.** This chapter contains rules of practice for administrative proceedings to grant variances and other reliefs under Minn. Stat. § 182.655.

**MOSHC [310] 311 Effect of variances.** All variances granted pursuant to this part shall have only future effect. In his discretion, the Commissioner may decline to entertain an application for a variance on a subject or issue concerning which a citation has been [issued to the employer involved and a proceeding on the citation has been] issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review [Commission] Board until the completion of such proceeding.

[MOSHC 311 Public Notice of a Granted Variance, Limitation, Variation, Tolerance, or Exemption.]

[Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be made public. Every such final action shall specify the alternative to the standard involved which the particular variance permits.]

**MOSHC 312 Temporary Variances.** [Variances Under § 6, Subdivisions 5, 6 and 7]

A. Application for Variance. Any employer, or class of employers, desiring a **temporary** variance from a standard or provision thereof, authorized by [Section 6] **Minn. Stat. § 182.655**, subd. 5, 6 and 7 [of the Act] may file a written application containing the information specified in paragraph B. of this section with the Commissioner.

B. Contents. An application filed pursuant to paragraph A. of this section shall include:

1. **The name and address of the employer;**
2. **The address of the place or places of employment involved;**

Existing paragraphs (b), (1) through (6) are redesignated as new paragraphs B.3. through 8. No other changes are made.

### C. Hearing.

1. **The Commissioner may at his discretion provide for a hearing on the variance.**

2. **Affected employees shall be given notice of any such hearing and allowed to participate.**

[(c)] D. Interim order.

Existing paragraph (c), Interim Order, has been redesignated as new paragraph D. No other changes are made.

### E. Variance order.

1. **The Commissioner shall, by rule or order, grant a temporary variance from a promulgated standard when he finds by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those provided for by the standard.**

2. **The rule or order granting the variance shall prescribe the conditions the employer must maintain, the practices, means, methods, operations and processes which he must adopt and utilize.**

**MOSHC 313 Permanent variances.** [Variances under § 6 Subdivisions 8 & 9]

(a) Application for variance. Any employer, or class of employers, desiring a **permanent** variance authorized by [Section 6] **Minn. Stat. § 182.655**, subd. 8 or 9 [of the Act] may file a written application containing the information specified in paragraph B. of this section, with the Commissioner of Labor and Industry.

(b) Contents. An application filed pursuant to paragraph (c) of this section shall include:

- (1) **The name and address of the employer;**
- (2) **The address of the place or places of employment involved;**

Existing paragraphs (b) 1, 2 and 3 are redesignated as paragraphs (b)(3), (4) and (5).

(6) **A description of how affected employees have been informed of their right to petition the Commissioner for a hearing.**

Paragraph (c), Hearing, remains the same as the existing paragraph.

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### (d) Interim order.

(1) **Application.** An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of facts and arguments as to why the order should be granted.

(2) **Notice of denial of application.** If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) **Notice of the grant of an interim order.** If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties. It shall be a condition of the order that the employer shall give notice thereof to affected employees by the same means to be used to inform.

### (d) (e) Variance order.

No other changes made.

MOSHC 314 Modification, revocation and renewal of rules or orders. No change.

### MOSHC 315 Order denying variance.

A. In the event the Commissioner denies an application for variance, he shall prepare an order setting forth:

1. The name and address of the person or organization requesting the variance;
2. The rule or regulation, or particular provisions thereof, from which the application requested a variance;
3. The extent and duration of the variance requested; and
4. A concise statement of the reasons for denial of the application for variance.

MOSHC 316 Contest of variance denial before review board.

A. Any employer who has been denied a variance may under Minn. Stat. § 182.664, subd. 2, notify the Commissioner in writing that he intends to contest such a variance denial before the Review Board. Such notice of intention to contest shall be postmarked within 15 days of receipt by the employer of the variance denial.

The Commissioner shall, within 7 days of receipt of notice of contest, transmit the original notice to the Review Board together with copies of all relevant documents in accordance with the rules of procedure prescribed by the Board.

B. Any affected employee shall be given notice of such application and an opportunity to participate in such a hearing as required under Minn. Stat. § 182.654, subd. 5.

### MOSHC 317 Multi-State variances.

A. Where a Federal variance has been granted with multi-state applicability, including the State of Minnesota, from a standard or portion thereof, identical to a Minnesota Occupational Safety and Health Standard or a portion thereof, without filing the information required in MOSHC 312 or MOSHC 313 of this chapter, such variance shall likewise be deemed an authoritative interpretation of the employer(s) compliance obligations with regard to a Minnesota Department of Labor and Industry Standard or portion thereof, provided no objections of substance are found to be imposed by the Minnesota Department of Labor and Industry.

### Chapter Twenty-Four: MOSHC 320-329 Standards Promulgation

**MOSHC 320 Purpose and scope.** This Chapter sets forth procedures for promulgating, modifying or revoking occupational safety and health standards under Minn. Stat. § 182.655. The purpose of this chapter is to provide a procedure for standards promulgation.

**MOSHC 321 Definitions.** "Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promulgated under Minn. Stat. § 182.655 establishing, modifying or revoking an occupational safety and health standard.

**MOSHC 322 Petition for the promulgation, modification or revocation of a standard.** Any interested person may file with the Commissioner of the Department of Labor and Industry, a written petition for the promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed standard, a statement of the intended effect, and the reasons for the standard.

### MOSHC 323 Initiation.

A. The Commissioner shall initiate promulgation of a standard in the following manner:



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1. The Commissioner may request the recommendations of the Governor's Occupational Safety and Health Advisory Council appointed under Minn. Stat. § 182.656. In such event, the Commissioner shall submit to the Council any proposal of his own or of the State Board of Health, together with all pertinent factual information available to him, including the results of research, demonstration, and experiments. The Council shall submit to the Commissioner a report with its recommendations regarding the rule to be promulgated within the period prescribed by the Commissioner; or

2. The Commissioner may publish in the State Register a notice of proposed rule making. The notice shall include:

a. The terms of the proposed rule;

b. A reference to the Act and to the appropriate section of any particular statute applicable to the employments affected by the rule.

c. Notification to interested persons of their right to submit, within 30 days after publication of the notice, written data comments or objections, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;

d. Notification to interested persons that they may request a public hearing on their objections within 30 days after publication of the notice;

e. Any other appropriate provisions with regard to the proceeding.

B. Initiation of standards promulgation under A.2. above may occur whether or not the Governor's Occupational Safety and Health Advisory Council recommends proposals submitted by the Commissioner and shall be followed by the Commissioner if promulgation is desired after receipt of the Advisory Council's report.

### MOSHC 324 Objections.

A. Objections submitted pursuant to MOSHC 323 A.2.c. shall comply with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked on or before the 30th day after the date of publication of the notice of proposed rulemaking;

3. The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

4. Each objection must be separately stated and numbered;

5. The objections must be accompanied by a summary of the evidence proposed to be adduced.

B. Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with paragraph A. above and the objecting party requests a public hearing, the Commissioner shall, and in any other case may, publish in the State Register a notice of a public hearing. The notice shall contain:

1. A statement of the time, place and nature of the hearing;

2. A reference to the authority under which the hearing is to be held;

3. A specification of the provisions of the proposed rule which have been objected to, and on which a hearing has been requested;

4. A specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;

5. The requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;

6. The designation of a presiding officer to conduct the hearing; and

7. Any other appropriate provisions with regard to the proceeding.

C. Any objecting party requesting a hearing on a proposed standard, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.

MOSHC 325 Emergency temporary standards. Whenever an emergency temporary standard is published pursuant to Minn. Stat. § 182.655, subd. 11, the Com-

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## PROPOSED RULES

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missioner must commence a standards promulgation proceeding under Minn. Stat. § 182.655, subd. 2, and MOSHC 323 A.2. The standard as published shall serve as a proposed rule. Any notice of proposed rulemaking shall also give notice of any appropriate subsidiary proposals.

### MOSHC 326 Conduct of hearing.

A. The hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rule making process.

B. The presiding officer shall be a hearing examiner from the Office of Hearing Examiners.

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

### MOSHC 327 Powers of presiding officer

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

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections, and comparable matters;
3. To confine the presentations to the issues specified in the notice of hearing, or, where no issues are specified, to matters pertinent to the proposed rule;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In his discretion, to permit cross-examination of any witness;
6. To take official notice of material facts not appearing in the evidence in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary; and
7. In his discretion, to keep the record open for a reasonable stated time, to receive written recommendations, and supporting reasons, and additional data, views and arguments from any person who has participated in the oral proceeding.

MOSHC 328 Certification of the record of a hearing. Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the presiding officer to the Commissioner.

### MOSHC 329 Decision.

#### A. Determination on rule.

1. Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the Commissioner shall publish in the *State Register* either an appropriate rule promulgating, modifying, or revoking a standard, or a determination that such a rule should not be issued. The action of the Commissioner shall be taken after consideration of all relevant matter presented in written submissions and in any hearings held under this chapter.

2. A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. In which event, an appropriate rule or other determination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

B. Any rule or standard adopted under paragraph A. of this section shall incorporate a concise general statement of its basis and purpose. Although the statement is not required to include specific and detailed findings and conclusions, it shall show the significant issues which have been faced, and shall articulate the rationale for their solution.

C. Where the Advisory Council has been consulted in the formulation of a proposed rule, the Commissioner may seek the advice of the Advisory Council as to the disposition of the proceeding. In giving advice to the Commissioner, the Advisory Council shall consider all matter presented to the Commissioner. The advice of the Advisory Council shall take the form of written recommendations to be submitted to the Commissioner within a period to be prescribed by the Commissioner. When the recommendations are contained in the transcript of the meeting of the Advisory Council, they shall be summary in form.

Chapter Twenty-Five: MOSHC 330-339 Monitoring Toxic Materials and Harmful Physical Agents.

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**MOSHC 330 Purpose and Scope.** This Chapter applies to those places of employment to be monitored because employees may be or are exposed to toxic materials or harmful physical agents as required by Minn. Stat. § 182.663, subd. 3.

### **MOSHC 331 Definitions.**

A. Toxic material is any material that will produce a harmful effect on the human body by physical contact, ingestion or inhalation. The toxic material may be in solid, liquid, dust, fume, mist, vapor or gas form.

B. Harmful physical agents are any environmental factors and stresses which adversely influence health and include electromagnetic (ionizing and non-ionizing) radiation, noise and extremes of temperature and pressure.

### **MOSHC 332 Periodic Inspections.**

A. Environmental monitoring. Periodic samples shall be collected or measurements made which are representative of exposure to toxic materials or to harmful physical agents. Samples or measurements shall be taken for the determination of the 8-hour time weighted average exposure or for any other evaluation period dictated by applicable standards.

#### **B. Monitoring frequency.**

1. Within 2 years of the publication of this Chapter, every employer shall cause every place of employment, where toxic materials or harmful physical agents can reasonably be expected to be present in the allowable limit, to be monitored in such a way to determine whether every employee's exposure to toxic materials or harmful physical agents are below the prescribed limits of the applicable standard. If the limits are exceeded, the employer shall immediately undertake a compliance program. If there are monitoring requirements included in any Minnesota Department of Labor and Industry Standards, they shall take precedence over these regulations.

2. After the initial determinations required by paragraph 1. of this regulation, monitoring shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling or testing be at intervals greater

than 6 months for employees where exposures may reasonably be foreseen to exceed the exposure limits prescribed by applicable standard.

**MOSHC 333 Rights of employees to observe monitoring or measuring.** Whenever an employer is required to conduct tests or to engage in monitoring or measuring, to determine employee exposure to toxic materials or harmful physical agents, the employer shall notify the affected employees or their representative, prior to commencement, of the date, time and place of testing, monitoring or measuring of employee exposure. The employer shall provide the affected employees or their representatives with the opportunity to observe the testing, sampling, monitoring or measuring pursuant to such standards.

**MOSHC 334 Notification of employee of exposure.** Whenever any employee has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels exceeding those prescribed by applicable standards, the employer of the affected employee must promptly notify any employee so affected, in writing, of the fact that the employee has been exposed, and of the corrective action being taken by the employer.

**MOSHC 335 Recordkeeping.** Every employer, under the provisions of Minn. Stat. § 182.663, subd. 3 shall maintain records of any employee exposure or environmental monitoring required by this Chapter. Records shall be maintained for the duration of the employee's employment plus 5 years (or for such period as required by applicable standards) and shall be made available upon request to the Commissioner or the Secretary of the State Board of Health and to authorize representatives of either.

**MOSHC 336 Employee access to records.** Every employee and former employee shall have reasonable access to any record pertaining to that employee required to be maintained by this Chapter. Upon receipt of a written request from an employee, the employer shall provide access to accurate records of that employee's exposure to the toxic materials or harmful physical agents to the affected employee or his representative.

**MOSHC 337-339 Reserved for future use.**

**KEY:** Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within [[double brackets]].

## PROPOSED RULES

# Department of Public Welfare

## Administration of Minnesota Public Social Service

### Notice of Hearing

NOTE: This Notice of Hearing changes the hearing date of Rule 160 from August 19, 1977, to September 2, 1977. The proposed Rule 160 was published in the *State Register*, Cite 1 S.R. 60 through 1 S.R. 73 (July 11, 1977). The proposed Rule 160 cited below is unchanged for the September 2, 1977, hearing except for errata changes listed at the end of this issue of the *State Register*.

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on September 2, 1977, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Russell Doty, Hearing Examiner, Office of Hearing Examiners, 1045 Grand Avenue, St. Paul, Minnesota 55105, 612-298-0836, either before the hearing or within 5 working days after the close of the hearing.

Minn. Rule DPW 160 governs the administration of publicly funded social services as provided or purchased by county welfare and human services boards in Minnesota. Generally, the proposed amendments are responsive to changes in federal regulations governing Title XX of the Social Security Act. Major proposed changes in Minn. Rule DPW 160 include:

- Elimination of Letter of Contract Certification.
- Addition of Comprehensive Annual Services Program (CASP) Plan amendment policy.
- Addition of an option to provide services with eligibility for Title XX funds determined on a group basis.

— Addition of time limitations on county welfare/human services board response to applications for social services.

— Addition of services which are provided in protective situations without considering household income in determining eligibility for Title XX funds.

— Addition of an option providing for family planning services to minors without considering household income.

— Revision of household definition for Title XX.

— Addition of options in using different methods of eligibility determination for Title XX funds.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Margaret Holt, Department of Public Welfare, Division of Social Services, Centennial Office Building, Fourth Floor, St. Paul, Minnesota 55155, tele. number (612) 296-2338. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 256.01, Subd. 4 (2). A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Edward J. Dirkswager, Jr.  
Acting Commissioner

# OFFICIAL NOTICES

## Energy Agency

### Notice of Intent to Solicit Outside Opinion Regarding Solar Energy Use in Minnesota

The Minnesota Energy Agency, pursuant to Minn. Laws 1977, Chapter 381, is conducting a study to analyze the financial, institutional and legal aspects of solar energy use in Minnesota. The project will recommend legislative proposals dealing with financial incentives, sun rights, building codes and zoning, consumer protection, and the supply of reliable back-up energy.

The Agency invites information and comments on the above project. Inquiries should be addressed to: John Gostovich, Solar Study Coordinator, Minnesota Energy Agency, 740 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone: 612/296-9083.

### Notice of Intent to Solicit Outside Opinion Regarding Scope and Format of Heating Fuel Inventory Study

Notice is hereby given that the Minnesota Energy Agency (hereinafter the "Agency") is seeking information and comments from all interested individuals or groups on preparing and conducting a heating fuel inventory study.

The Agency, pursuant to Laws of 1977, ch. 381, § 21, must conduct a heating fuel inventory study and report the study's findings and recommendations to the Legislature by November 15, 1977. The report's findings shall include:

1. An estimate of cumulative capacity of all heating fuel storage facilities in the state;
2. A determination of normal fill levels for storage facilities; and
3. An estimate of whether or not the state's storage capacity is adequate.

Recommendations in the report shall include:

1. Measures the state can take to ensure that storage capacity is filled prior to the beginning of the heating season; and
2. Measures the state can take to initiate construction and/or utilization of additional storage facilities if increased storage is found to be necessary.

Interested or affected persons or groups may submit statements of information and comment orally or in writing. Written statements may be addressed to:

Thomas A. Moore  
Minnesota Energy Agency  
150 East Kellogg Boulevard  
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-8896, and in person at the above address.

All statements of information and comment must be received by September 1, 1977.

Ronald D. Visness  
Assistant Director

## Department of Personnel

### Announcement Regarding the Hearing on a Code of Ethics for All Executive Branch State Employees

Whereas, the Commissioner of Personnel has determined that it is in the best interest of the State to allow time for state employees to present their views on the Proposed Code of Ethics for All Executive Branch State Employees without being required to utilize leave time, it is hereby announced that following the conclusion of testimony on the proposed rules on August 30, 1977, the hearing will be continued until (reconvened at) 7:00 p.m. on August 31, 1977, in Room 83, State Office Building, St. Paul, Minnesota, 55101 to permit affected state employees to present their views.

Richard W. Session  
Commissioner of Personnel

## Soil and Water Conservation Board

### Notice of Change of Meeting Location

The State Soil and Water Conservation Board will hold its regular monthly meeting on August 9, 1977. The location of this meeting has been changed from the Centennial Building in St. Paul, Minnesota to the Rainbow Inn, Grand Rapids, Minnesota.

**Department of  
Transportation**

**Petition by Rocksbury Township to  
Establish a Public Railroad Grade  
Crossing in Pennington County  
(Section 10, Township 153, Range 43)  
Where an Existing Farm Crossing  
Traverses the Right of Way and Track  
of the Soo Line Railroad Company**

**Order for Hearing and Notice Thereof**

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on August 12, 1977 at 10:00 A.M., in the City Council Chambers, City of Crookston, 100 South Broadway, Crookston, Minnesota.

The hearing will be held before Mr. Bernard Singer, 1745 University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8110), a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. § 15.0411 through Minn. Stat. § 15.052 and Minn. Rule HE201 through 222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Frederick S. Suhler, Jr., 5th Floor Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-3257).

The purpose of the hearing is that the Township of Rocksbury has petitioned to upgrade a farm crossing so as to be adequate for public travel for a proposed township road to allow the development of the North Half of the Southeast Quarter (N½ SE¼) of Section Ten (10), Township One Hundred Fifty-three (153), Range Forty-three (43) lying West of the Soo Line Railroad Tracks.

The petitioners allege that a public crossing is necessary and that the public need will be served by said crossing.

All parties are advised that if a party intends to appear at the hearing scheduled for August 12, 1977 at 10:00 A.M., the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. **SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THE PETITION MAY BE TAKEN AS TRUE.**

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington  
Commissioner of Transportation

**Notice of Appearance**

Date of Hearing: August 12, 1977

Name and Telephone Number of Hearing Examiner:

Mr. Bernard Singer  
1745 University Avenue  
Saint Paul, Minnesota 55104  
296-8110

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above hearing.

Name of Party: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Party's Attorney or Other Representative: \_\_\_\_\_

Signature of Party or Attorney: \_\_\_\_\_

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

## OFFICIAL NOTICES

### **Request of the City Council of Faribault, Minnesota, for Authority to Establish and Maintain a Public Highway Railroad Grade Crossing at the Point Where Highland Place, When Extended, Would Cross the Right of Way and Tracks of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company**

#### **Order for Hearing and Notice Thereof**

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on August 16, 1977 at 10:00 A.M., in the City Council Chambers, City of Faribault, 208-1st Avenue N.W., Faribault, Minnesota.

The hearing will be held before Mr. Leonard Nelson, 1745 University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8119), a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The Hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. § 15.0411 through Minn. Stat. § 15.052 and Minn. Rule HE 201 through 222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Frederick S. Suhler, Jr., 5th Floor Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-3257).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. § 219.39 all parties and potential parties of interest are given an opportunity to be heard on the public safety conditions surrounding the proposed establishment of a public highway railroad grade crossing at the point where Highland Place, when extended, would cross the right of way and tracks of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the City of Faribault, Minnesota.

All parties are advised that if a party intends to appear at the hearing scheduled for August 16, 1977 at 10:00 A.M., the Notice of Appearance form enclosed within this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. **SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THE PETITION MAY BE TAKEN AS TRUE.**

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington  
Commissioner of Transportation

#### **Notice of Appearance**

Date of Hearing: August 16, 1977

Name and Telephone Number of Hearing Examiner:

Mr. Leonard Nelson  
1745 University Avenue  
Saint Paul, Minnesota 55104  
612-296-8119

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above hearing.

Name of Party: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Party's Attorney or Other Representative: \_\_\_\_\_

Signature of Party or Attorney: \_\_\_\_\_

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

# OFFICIAL NOTICES

## Application of the Schaper Manufacturing Company for Lateral Clearance Variances at its Plant in Plymouth, Minnesota, Alongside of Trackage Served by the Chicago and North Western Transportation Company

### Order for Hearing and Notice Thereof

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on August 23, 1977 at 10:00 A.M., in the Offices of the Department of Transportation, Room B-9, Transportation Building, Saint Paul, Minnesota.

The hearing will be held before Mr. George Deretich, 1745 University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8116), a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. § 15.0411 through Minn. Stat. § 15.052 and Minn. Rule HE 201 through 222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Frederick S. Suhler, Jr., 5th Floor Transportation Building, Saint Paul, Minnesota 55155, (Telephone: 612-296-3257).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. § 219.47 all parties and potential parties of interest are given an opportunity to be heard on the proposed lateral clearance variances at Schaper Manufacturing Company's Plant located at 9909 South Shore Drive, Minneapolis, Minnesota 55441.

All parties are advised that if a party intends to appear at the hearing scheduled for August 23, 1977 at 10:00 A.M., the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. **SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THE PETITION MAY BE TAKEN AS TRUE.**

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing con-

ference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington  
Commissioner of Transportation

### Notice of Appearance

Date of Hearing: August 23, 1977

Name and Telephone Number of Hearing Examiner:

Mr. George Deretich  
1745 University Avenue  
Saint Paul, Minnesota 55104  
612-296-8116

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above hearing.

Name of Party: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Party's Attorney or Other Representative: \_\_\_\_\_

Signature of Party or Attorney: \_\_\_\_\_

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

### Errata

1. 1 S.R. 61: change "manual" to "manual", at DPW 160 A.2.

2. 1 S.R. 61: change "building" to "binding", at DPW 160 A.4.



## OFFICIAL NOTICES

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3. 1 S.R. 61: change "vendor" to "vendors", at DPW 160 A. 6. c.

4. 1 S.R. 61: change "Comprehensive annual services program plan (hereinafter CASP plan)" to "Comprehensive Annual Services Program Plan (hereinafter CASP Plan)", at DPW 160 A. 6. e.

5. 1 S.R. 62: bracket "An original", at DPW 160 A.6.u.

6. 1 S.R. 62: change "State administrative plan" to "State Administrative Plan" at DPW 160 A.6.v.

7. 1 S.R. 66: change "State administrative plan" to "State Administrative Plan", at DPW 160 H.2.

8. 1 S.R. 67: bold face "case remains open, the local social services agency shall reevaluate and document the continued need for services for preventing or remedying neglect, abuse, or exploitation of the adult. The appropriateness of the social services plan shall be reassessed at the same time", at DPW 160 H. 6. a. (3).

9. 1 S.R. 68: change ";" to "," at DPW 160 H.6. b. (1).

10. 1 S.R. 69: change "9" to "7", at DPW 160 H.9.

11. 1 S.R. 71: bracket "not", bold face "only", bracket "out" and "only", bold face "only", at DPW 160 H.9. d. (4).

12. 1 S.R. 71: eliminate bold face on "for", at DPW 160 H.9. f. (1).

13. 1 S.R. 71: bracket "reassessed" and bold face "redetermined", at DPW 160 H.9.g.

14. 1 S.R. 71: change "exists[s]" to "exist[s]", at DPW 160 H.10.c.

15. 1 S.R. 72: change "prurchase" to "purchase" and bracket "whether major or limited contract", at DPW 160 H.11.b. (1) (a).

16. 2 S.R. 43: insert brackets before "Hair cut 2.00" and after "Instant Conditioner 1.00" at MSBC 64.

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