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For Department of State Use Only

Sequence Number: 02-10-10
Rule ID(s): 4614-4618
File Date: 02/12/2010
Effective Date: 07/29/2010

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Mike Maenza
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Mike.maenza@state.tn.us

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	Rule Title
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	Chapter Title
0800-01-04	Occupational Safety and Health Inspections, Citations and Proposed Penalties
Rule Number	Rule Title
0800-01-04-.18	Employer and Employee Contests

Chapter Number	Chapter Title
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	Rule Title
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	Chapter Title
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	Rule Title
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

Chapter Number	Chapter Title
0800-01-10	Sharps Injury Prevention
Rule Number	Rule Title
0800-01-10-.06	Availability of Lists

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 01/11/2010 (date as mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 1-11-2010

Signature: James Neeley

Name of Officer: James G. Neeley

Title of Officer: Commissioner of Labor and Workforce Development



Subscribed and sworn to before me on: 1/11/10

Notary Public Signature: Frances Travis

My commission expires on: 1/23/10

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
2-5-10
 Date

Department of State Use Only

Filed with the Department of State on: 2/12/10

Effective on: 7/29/10

Tre Hargett
 Tre Hargett
 Secretary of State

Regulatory Flexibility Addendum

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or public necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no changes to the Occupational Safety and Health Standards.

Rule 0800-01-04 is amended to conform to the requirements contained in the statute requiring notification of contest to be received by the Commissioner within the prescribed time frame.

Rule 0800-01-10 is amended to correct the mailing address of the Division of Occupational Safety and Health.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons subject to T.C.A. §§ 50-3-101 *et seq.* are directly affected by the rules in Chapters 0800-01-01, 0800-01-04, 0800-01-06, 0800-01-07 and 0800-01-10. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There have been no Attorney General opinions or judicial rulings relevant to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Michael M. Maenza, Manager of Standards and Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Michael M. Maenza, Manager of Standards and Procedures, Division of Occupational Safety and Health

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health
220 French Landing Drive
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2010" to "July 1, 2010".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~January 1, 2010~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2010 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-04

Rule 0800-01-04-.18 Amended

Paragraph (1) of Rule 0800-01-04-.18 Employer and Employee Contests is amended by removing the words "shall be postmarked" from the second sentence and replacing them with the words "must be received by the Commissioner".

Existing Rule:

- (1) Any employer to whom a citation or notice of proposed penalty has been issued may, under T.C.A. §§50-3-307(b) and 50-3-407, notify the Commissioner in writing that he intends to contest such citation or proposed penalty before the TOSHRC. Such notice of intention to contest ~~shall be postmarked~~ within twenty (20) days of the receipt by the employer of the citation or 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. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Proposed Amended Rule:

- (1) Any employer to whom a citation or notice of proposed penalty has been issued may, under T.C.A. §§50-3-307(b) and 50-3-407, notify the Commissioner in writing that he intends to contest such citation or proposed penalty before the TOSHRC. Such notice of intention to contest must be received by the Commissioner within twenty (20) days of the receipt by the employer of the citation or 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. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Authority: T.C.A. §§ 4-3-1411, 50-3-307 and 50-3-407.

Paragraph (2) of Rule 0800-01-04-.18 Employer and Employee Contests is amended by removing the words "shall be postmarked" from the second sentence and replacing them with the words "must be received by the Commissioner".

Existing Rule:

- (2) Any employee or representative of employees of an employer to whom a citation has been issued may, under T.C.A. §50-3-407, file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions of the citation. Such notice ~~shall be postmarked~~ within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Proposed Amended Rule:

- (2) Any employee or representative of employees of an employer to whom a citation has been issued may, under T.C.A. §50-3-407, file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions of the citation. Such notice must be received by the Commissioner within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Authority: T.C.A. §§ 4-3-1411, 50-3-307 and 50-3-407.

Chapter 0800-01-06

Rule 0800-01-006-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2010" to "July 1, 2010".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~January 1, 2010~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2010 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2010" to "July 1, 2010".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~January 1, 2010~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2010 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "January 1, 2010" to "July 1, 2010".

Existing Rule:

- (1) As of ~~January 1, 2010~~, there are no exceptions.

Proposed Amended Rule:

- (1) As of July 1, 2010, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Chapter 0800-01-10

Paragraph (1) of Rule 0800-01-10-.06 Availability of Lists is amended by removing the third sentence and replacing it with "To obtain a copy of the list, employers may contact the Department of Labor and Workforce Development, Division of Occupational Safety and Health, 220 French Landing Drive, Nashville, TN 27243-1002, (615) 741-2793, (800) 249-8510".

Existing Rule:

- (1) The Department of Labor and Workforce Development and the Department of Health shall maintain a list of the types of existing needleless systems and sharps with engineered sharps injury protection. A copy of the list and available resources can be obtained upon request to assist employers in complying with the requirements of this rule. ~~To obtain a copy of the list, employers may contact the Department of Labor and Workforce Development, Division of Occupational Safety and Health, Andrew Johnson Tower, 3rd Floor, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-2793, (800) 249-8510; or the Department of Health, Bureau of Health Services, Cordell Hull Building, 5th Floor, 425 Fifth Avenue North, Nashville, TN 37247, (615) 532-2431.~~

Proposed Amended Rule:

- (1) The Department of Labor and Workforce Development and the Department of Health shall maintain a list of the types of existing needleless systems and sharps with engineered sharps injury protection. A copy of the list and available resources can be obtained upon request to assist employers in complying with the requirements of this rule. To obtain a copy of the list, employers may contact the Department Labor and Workforce Development, Division of Occupational Safety and Health, 220 French Landing Drive, Nashville, TN 27243-1002, (615) 741-2793, (800) 249-8510.

Authority: T.C.A. §§ 4-3-1411, 50-3-201 and 50-3-203(e)(4).