

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 03-04-15  
Rule ID(s): 5883  
File Date: 3/3/15  
Effective Date: 6/1/15

## 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.*

<b>Agency/Board/Commission:</b>	Department of Labor and Workforce Development
<b>Division:</b>	Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Drive Side 1-B, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0719
<b>Email:</b>	troy.haley@tn.gov

**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
0800-02-21	Mediation and Hearing Procedures
Rule Number	Rule Title
0800-02-21-.14	Expedited Hearing and Decision on the Record

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendments

### Chapter 0800-02-21 Mediation and Hearing Procedures

Rule 0800-02-21-.14: Expedited Hearing and Decision on the Record is amended by adding the following new paragraph:

(4) A workers' compensation judge may, in conducting an expedited hearing, take testimony in any manner that is practical for the fair and effective resolution of the request for temporary disability and/or medical benefits including taking testimony from a witness by telephonic or video conferencing means.

Authority: T.C.A. § 50-6-233(c); T.C.A. § 50-6-239(c)(1).

\* 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 2/6/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 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: February 6, 2015

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: February 6, 2015

Notary Public Signature: Shara Hamlett

My commission expires on: January 24, 2016

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.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
February 19, 2015 Date

Department of State Use Only

Filed with the Department of State on: 3/3/15

Effective on: 6/1/15

Tre Hargett  
Tre Hargett  
Secretary of State

SECRETARY OF STATE RECEIVED  
2015 MAR -3 AM 9:17

### **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.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The rule will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: None.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This proposed rule will have little, if any, impact on these entities.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

The change to rule will allow testimony in expedited hearings to be taken by telephone or video.

- (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;

This change is made for the purpose of allowing video or telephone testimony during an expedited hearing. There is no law or regulation mandating the promulgation of this rule.

- (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 parties to a workers' compensation claim will be affected by this amendment, so that telephonic or video testimony can be taken. No entity has urged adoption or rejection of these rules.

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

None

- (D) 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;

The effect of the rule change will be negligible.

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

Troy Haley, Administrative Attorney and Legislative Liaison

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

Troy Haley, Administrative Attorney and Legislative Liaison

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

Tennessee Division of Workers' Compensation  
220 French Landing Drive  
Floor 1-B  
(615) 532-0179  
troy.haley@tn.gov

- (H) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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**Revision Type (check all that apply):**

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**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)**

<b>Chapter Number</b>	<b>Chapter Title</b>
0800-02-21	Mediation and Hearing Procedures
<b>Rule Number</b>	<b>Rule Title</b>
0800-02-21-.14	Expedited Hearing and Decision on the Record

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendments

### Chapter 0800-02-21 Mediation and Hearing Procedures

Rule 0800-02-21-.14: Expedited Hearing and Decision on the Record is amended by adding the following new paragraph (4):

(1) After a case is placed on the docket, if there is a dispute over temporary disability or medical benefits, either party may request an expediting hearing of the issue of temporary disability or medical benefits by indicating its desire for an expedited hearing on the request for hearing form or by a filing a separate motion. The indication of the desire for an expedited hearing on the request for hearing form shall serve as the motion for expedited hearing.

(a) All motions for expedited hearing must be accompanied by affidavits and any other information demonstrating that the employee is entitled to temporary disability or medical benefits.

(b) Immediately upon receiving the motion, but in no event later than five (5) business days after the motion is filed with the clerk, the opposing party shall submit all information in its possession demonstrating that the employee is not entitled to temporary disability or medical benefits. The party shall also indicate if it believes that the motion should be set for an evidentiary hearing and provide an explanation of why a hearing is necessary.

(c) Seven (7) business days after the motion is filed with the clerk, the clerk shall compile the file and the motion shall be assigned to a workers' compensation judge. Upon receipt of the file, the judge shall have discretion to either set the matter for a hearing or enter an interlocutory order based on a review of the file upon determining that no additional information is needed to determine whether the employee is likely to prevail at a hearing on the merits of the claim.

(d) Any party aggrieved by an interlocutory order may appeal the interlocutory order to the board of appeals in the manner provided by the Tennessee Workers' Compensation Law and these rules.

(e) An interlocutory order awarding or denying temporary disability or medical benefits shall not be binding on the workers' compensation judge assigned to preside over the compensation hearing.

(2) The parties may request that a case be decided by a workers' compensation judge on the record and a compensation order issued based on a judge's review of the written materials and without the benefit of a hearing.

(a) All cases in which the parties have agreed that the case should be submitted to the judge for an on-the-record determination will be placed on a separate docket for a decision on the record. The assigned workers' compensation judge shall determine whether an on-the-record determination is appropriate under the circumstances and may decline to issue a decision on the record and order the parties to appear for a hearing.

(b) If a case is selected for an on-the-record determination, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the file number and the judge assigned to the request for hearing. The clerk shall also send information to the parties detailing the actions required to present the case to the judge

for a decision on the record.

(3) If, as a result of the expedited hearing, the claim is denied on the grounds of compensability, the claim shall continue as provided in these rules. The aggrieved party may file an appeal pursuant to Rule 0800-02-22-.01(1)(a). If the denial on the grounds of compensability is affirmed by the appeals board or if no appeal is taken, the employer may file a motion to dismiss with the assigned workers' compensation judge. If a motion to dismiss pursuant to this paragraph is filed, the employer shall serve a copy on the employee, or the employee's counsel, and the employee shall have thirty (30) calendar days to file a written response. Thereafter, the motion shall be set for a hearing and the judge shall issue an appropriate order.

(4) A workers' compensation judge may, in conducting an expedited hearing, take testimony in any manner that is practical for the fair and effective resolution of the request for temporary disability and/or medical benefits including taking testimony from a witness by telephonic or video conferencing means.

Authority: T.C.A. § 50-6-233(c); T.C.A. § 50-6-239(c)(1).

\* 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 \_\_\_\_\_ (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 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: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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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.

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

### **Regulatory Flexibility Addendum**

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2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
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5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: None.

### **Impact on Local Governments**

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- (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;

This change is made for the purpose of allowing video or telephone testimony during an expedited hearing. There is no law or regulation mandating the promulgation of this rule.

- (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 parties to a workers' compensation claim will be affected by this amendment, so that telephonic or video testimony can be taken. No entity has urged adoption or rejection of these rules.

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

None

- (D) 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;

The effect of the rule change will be negligible.

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- (H) Any additional information relevant to the rule proposed for continuation that the committee requests.

None