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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

**Agency/Board/Commission:** Tennessee Department of Labor and Workforce Development  
**Division:** Labor Standards  
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**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
0800-05-01	Child Labor
Rule Number	Rule Title
0800-05-01-.01	Purpose
0800-05-01-.02	Informal Conferences
0800-05-01-.03	Appeal of Civil Penalty
0800-05-01-.04	Production of Records
0800-05-01-.05	Charges for Copies of Public Records
0800-05-01-.06	Hazardous Occupations

(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>)

Chapter 0800-05-01  
 Child Labor

The Table of Contents is amended by deleting the words "Procedures for " from Rule 0800-05-01-.03, and by adding Rules 0800-05-01-.04 through 0800-05-01-.06 so that as amended the Table of Contents shall read:

- 0800-05-01-.01 Purpose
- 0800-05-01-.02 Informal Conferences
- 0800-05-01-.03 Appeal of Civil Penalty
- 0800-05-01-.04 Production of Records
- 0800-05-01-.05 Charges for Copies of Public Records
- 0800-05-01-.06 Hazardous Occupations

## Amendments

Paragraph (1) of Rule 0800-05-01-.01 Purpose is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (1) The purpose of these rules is to implement the provisions of the Child Labor Act of 1976 by providing employers and others with information regarding informal conferences, appeals of civil penalties, production of records, charges for copies of public records, and occupations particularly hazardous for the employment of minors.

Authority: T.C.A. §§50-5-101 et seq., and 50-5-114.

Paragraph (1) of Rule 0800-05-01-.02 Informal Conferences is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (1) At the request of an affected employer, the Commissioner or his/her designated representative may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. If the employer requests such conference, an affected employee or his/her representative will be afforded an opportunity to participate at the discretion of the Commissioner or his/her designated representative. Counsel at such conference may represent any party. No such conference or request for such conference shall operate as a stay of any twenty (20) day period for filing a notice of appeal as prescribed in Rule 0800-05-01-.03.

Authority: T.C.A. §§50-5-101 et seq., 50-5-110, 50-5-112, and 50-5-114.

Paragraph (1) of Rule 0800-05-01-.03 Appeal of Civil Penalty is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (1) A party assessed a penalty pursuant to T.C.A. §50-5-112 may appeal such decision directly to the Commissioner or his/her designated representative. Said appeal shall be submitted in writing within twenty (20) working days of receipt of the notice of proposed penalty. The Commissioner or his/her designated representative shall hear the appeal in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

Authority: T.C.A. §§4-5-101 et seq., 50-5-112, and 50-5-114.

## New Rules

0800-05-01-.04 Production of Records.

- (1) All records required by T.C.A. §50-5-111 shall be open for inspection by the Commissioner or his/her designated representative during regular working hours at any place a minor may be employed. After credentials are presented and a request to inspect the records has been made, the records shall be provided to the Commissioner or his/her designated representative within thirty (30) minutes of the request.

Authority: T.C.A. §§50-5-110(2), 50-5-111, and 50-5-114.

0800-05-01-.05 Charges for Copies of Public Records.

- (1) The rules in Chapter 0800-08-.01 regarding charges for copies of public records are incorporated herein by reference.

Authority: T.C.A. §§8-4-604, 10-7-501 through 10-7-515, and 50-5-114.

0800-05-01-.06 Hazardous Occupations.

- (1) The Commissioner adopts and incorporates herein by reference all the sections of Part 570 of Title 29 of the Code of Federal Regulations with the exception of Code of Federal Regulations §570.52 of Subpart E.

Authority: T.C.A. §§50-5-106 and 50-5-114.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Labor and Workforce Development on 4/26/10, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/19/2010

Rulemaking Hearing(s) Conducted on: (add more dates). 03/30/2010



Date: 4/26/10

Signature: James G. Neeley

Name of Officer: James G. Neeley

Title of Officer: Commissioner

Subscribed and sworn to before me on: 4/26/10

Notary Public Signature: Rosemary S. Cole

My commission expires on: 8/18/12

All rulemaking hearing 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.  
 Attorney General and Reporter  
5-4-10  
 Date

**Department of State Use Only**

Filed with the Department of State on: 5/14/10

Effective on: 8/12/10

Tre Hargett

Tre Hargett  
 Secretary of State

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## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no written or oral comments made at the public hearing. Written comments were submitted by the Tennessee Retail Association and Publix Super Markets, Inc. on April 5, 2010. Their comments addressed Rule 0800-05-01-.04 Production of Records. They were as follows:

- The rule requiring that child labor records be provided to Department representatives within thirty (30) minutes of the request is unreasonable and not based on recognized and accepted standards.
- The United States Department of Labor requires wage and hour records to be available within seventy-two (72) hours upon request.
- Various Tennessee rules and statutes allow for records to be produced in, for example, four business hours (TOSHA regulations) and up to seven days (Public Records Act).
- The seventy-two (72) hour time period is a reasonable standard and allows a business time to contact management so they can produce the correct records in a manner that is efficient, cooperative, and protects the confidential nature of the employee relationship.

Publix also commented that the proposed rule is not justified by statute because it does not impose a deadline, and as written it is unconstitutional because of warrantless searches and seizures of pertinent records without the employer's consent.

In response, the Department will not change the thirty (30) minute time period for the production of records to seventy-two (72) hours. Our reasons are as follows:

- In order to effectively enforce the mandate under T.C.A. § 50-5-110, the Department is required to inspect all places where minors may be employed and all pertinent records of employment, at any reasonable time, and as often as necessary.
- Under T.C.A. § 50-5-111, employers are required to make, keep and preserve a separate and independent file record for each minor employed, which shall be kept at the location of the minor's employment and shall include an employment application; a copy of the minor's birth certificate or other evidence of the minor's age as provided in T.C.A. § 50-5-109; an accurate time record showing the hours of the minor's beginning and ending of work each day if the minor is one subject to T.C.A. § 50-5-104 or T.C.A. § 50-5-105; and any records required under T.C.A. § 50-5-107(8)-(14). In addition, employers are required to allow the Department to inspect, during regular working hours, any and all premises where minors are or could be employed and the contents of the individual file records as specified. Employers are required to furnish to the Department records relative to the employment of minors.
- Under T.C.A. § 50-5-114, the Commissioner may issue, amend and rescind all rules, regulations and procedures necessary to effectuate the purpose of the Child Labor Act of 1976.
- Since the records are already required to be at the location of the minor's employment, thirty (30) minutes is a reasonable standard and a sufficient amount of time to provide records to an inspector. The United States Department of Labor does not have a location requirement. Because of the duties of employers of minors, employers should designate a responsible individual to adequately protect, maintain, and provide records of minors upon request. When records are requested by an inspector, all applicable laws regarding confidentiality are followed. Under the statutory provisions, an administrative warrant nor an employer's consent are required. Based on the foregoing, the proposed rule is justified and as written is constitutional.

**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.

(If applicable, insert Regulatory Flexibility Addendum here)

**Regulatory Flexibility Addendum**

- (1) **Overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The rulemaking hearing rules do not overlap, duplicate, or conflict with other federal, state or local governmental rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule.**

The rulemaking hearing rules are clear in purpose and intended execution.

- (3) **Flexible compliance and reporting requirements for small businesses.**

The rulemaking hearing rules were not written with special consideration for flexible compliance and reporting requirements because the Department has, as its primary mission, the protection of a minor's schooling, health or well-being. However, the rulemaking hearing rules were written with a goal of avoiding unduly onerous regulations.

- (4) **Friendly schedules or deadlines for compliance and reporting requirements for small businesses.**

The rulemaking hearing rules will not cause a deviation from any current deadlines already associated with recordkeeping. Under the law, small businesses are already required to make records available for inspection by inspectors of the Labor Standards Division. The rulemaking hearing rules merely clarify how long an inspector should wait before they are produced.

- (5) **Consolidation or simplification of compliance or reporting requirements for small businesses.**

There will be no additional reporting requirements associated with the rulemaking hearing rules for small businesses.

- (6) **Performances standards for small businesses.**

The Department expects all small businesses engaged in the hiring of minors to comply with all applicable laws and rules.

- (7) **Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

The rulemaking hearing rules do not contain any foreseeable inhibitors of entrepreneurial activities of small businesses since they do not intensify any of the existing recordkeeping requirements.

**Economic Impact Statement**

- (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.**

There will be no impact on any type of small business subject to the proposed rule.

- (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 will be no additional reporting requirements or cost associated with the proposed rule for small businesses.

(3) A statement of the probable effect on impacted small businesses and consumers.

There will be no effect on any small businesses or consumers.

(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;

A less burdensome, less intrusive method of achieving the purpose and objectives of the proposed rule does not exist. The main purposes of the proposed rule are the life, health and safety of all employed minors.

(5) A comparison of the proposed rule with any federal or state counterparts.

The rule regarding the production of records is different from the rule of the United States Department of Labor. In Tennessee, when an inspection is conducted no advance notice is required since employment records must be maintained at the location of the minor's employment. The Department decided that thirty (30) minutes was a sufficient amount of time to provide records upon request to an inspector.

The United States Department of Labor, however, may give advance notice since businesses do not have to maintain their records at the location of the minor's employment. Because of this, businesses may have seventy-two (72) hours to provide records upon request to an inspector.

The rule regarding charges for copies of public records is very similar to rules adopted by other state agencies. They adopt and reference the provisions contained in the Tennessee Public Records Act, T.C.A. §§10-7-501, *et seq.* which provides for the establishment of a schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5.

The rule regarding hazardous occupations incorporates by reference all the sections of Part 570 of Title 29 of the Code of Federal Regulations with the exception of Code of Federal Regulations §570.52 of Subpart E. Those sections are as follows:

§570.50 provides general information; §570.51 addresses occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components; §570.53 addresses coal-mine occupations; §570.54 addresses logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill; §570.55 addresses occupations involved in the operation of power-driven woodworking machines; §570.57 addresses exposure to radioactive substances and to ionizing radiations; §570.58 addresses occupations involved in the operation of power-driven hoisting apparatus; §570.59 addresses occupations involved in the operations of power-driven metal forming, punching, and shearing machines; §570.60 addresses occupations in connection with mining, other than coal; §570.61 addresses occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat packing or processing, or rendering; §570.62 addresses occupations involved in the operation of bakery machines; §570.63 addresses occupations involved in the operation of paper-products machines, scrap paper balers, and paper box compactors; §570.64 addresses occupations involved in the manufacture of brick, tile, and kindred products; §570.65 addresses occupations involved in the operations of circular saws, band saws, and guillotine shears; §570.66 addresses occupations involved in wrecking, demolition, and shipbreaking operations; §570.67 addresses occupations in roofing operations and on or about a roof; and §570.68 addresses occupations in excavation operations.

The exception referenced in §570.52 addresses occupations of a motor-vehicle driver and outside helper. The United States Department of Labor allows some limited driving by minors under certain criteria. No minors in Tennessee, however, will be allowed to operate a motor vehicle.

(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;

It is not possible to exempt any business regardless of size from all or any part of the requirements contained in the proposed rule because of the need to protect the life, health and safety of all employed minors.

## **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;

Paragraph (1) of Rule 0800-05-01-.01 Purpose was amended to make editorial changes and add the new rules regarding production of records, charges for copies of public records, and occupations particularly hazardous for the employment of minors.

Paragraph (1) of Rule 0800-05-01-.02 Informal Conferences was amended to make editorial changes.

Paragraph (1) of Rule 0800-05-01-.03 Appeal of Civil Penalty was amended to make editorial changes.

Paragraph (1) of Rule 0800-05-01-.04 Production of Records was added to address the mandate in T.C.A. §50-5-111 that all records shall be open for inspection by the Commissioner upon request and provided within thirty (30) minutes of the request.

Paragraph (1) of 0800-05-01-.05 Charges for Copies of Public Records was added to incorporate by reference the rules in Chapter 0800-08-.01. Charges for copies of public records will be assessed in accordance with the current schedule of reasonable charges established by the Office of Open Records Counsel.

Paragraph (1) of 0800-05-01-.06 Hazardous Occupations was added to incorporate by reference all the sections of Part 570 of Title 29 of the Code of Federal Regulations with the exception of Code of Federal Regulations §570.52 of Subpart E. Those sections are as follows:

§ 570.50 provides general information.

§ 570.51 addresses occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

§ 570.53 addresses coal-mine occupations.

§ 570.54 addresses logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill.

§ 570.55 addresses occupations involved in the operation of power-driven woodworking machines.

§ 570.57 addresses exposure to radioactive substances and to ionizing radiations.

§ 570.58 addresses occupations involved in the operation of power-driven hoisting apparatus.

§ 570.59 addresses occupations involved in the operations of power-driven metal forming, punching, and shearing machines.

§ 570.60 addresses occupations in connection with mining, other than coal.

§ 570.61 addresses occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat packing or processing, or rendering.

§ 570.62 addresses occupations involved in the operation of bakery machines.

§ 570.63 addresses occupations involved in the operation of paper-products machines, scrap paper balers, and

paper box compactors.

§ 570.64 addresses occupations involved in the manufacture of brick, tile, and kindred products.

§ 570.65 addresses occupations involved in the operations of circular saws, band saws, and guillotine shears.

§ 570.66 addresses occupations involved in wrecking, demolition, and shipbreaking operations.

§ 570.67 addresses occupations in roofing operations and on or about a roof.

§ 570.68 addresses occupations in excavation operations.

**(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 T.C.A. § 50-5-114, the Commissioner may issue, amend and rescind all rules, regulations and procedures necessary to effectuate the purpose of the Child Labor Act of 1976.

Under T.C.A. § 8-4-604(a), the Office of Open Records Counsel was required to establish a schedule of reasonable charges which a records custodian may use as guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5.

**(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 Tennessee employers engaged in the hiring of minors are most directly affected by this rule. Other than departmental staff, no one attended the rulemaking hearing conducted on March 30, 2010. After the rulemaking hearing, written comments were submitted on behalf of the members of the Tennessee Retail Association and Publix Super Markets, Inc, urging rejection of Rule 0800-05-01-.04.

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

To our knowledge, there have been no opinions of the Attorney General and Reporter or any judicial ruling that directly relates to the rule.

**(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;

It is estimated that state and local government revenues and expenditures will not increase or decrease as a result of the promulgation of this rule.

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

Mary Ellen Grace, Director of Labor Standards Division

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

Mary Ellen Grace, Director of Labor Standards Division

**(H)** 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

220 French Landing Drive, Nashville, Tennessee 37243, 615 - 741-7983, MaryEllen.Grace@tn.gov

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