

**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
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For Department of State Use Only

Sequence Number: 12-21-14
Rule ID(s): 5852-585
File Date: 12/22/14
Effective Date: 3/22/15

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.

Agency/Board/Commission: Department of Labor and Workforce Development
Division: Workers' Compensation
Contact Person: Troy Haley
Address: 220 French Landing Drive Side 1-B, Nashville, Tennessee
Zip: 37243
Phone: (615) 532-0719
Email: 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
0800-02-13	Penalty Program
Rule Number	Rule Title
0800-02-13-.09	Representation at the Hearing
0800-02-13-.14	Determinations Pursuant to the Hearing
0800-02-13-.15	Review of Initial Order

Chapter Number	Chapter Title
0800-02-21	Mediation and hearing procedures
Rule Number	Rule Title
0800-02-21-.04	Ombudsman

(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 0800-02-13 Penalty Program

Rule 0800-02-13-.09: Representation at the Hearing is amended by deleting paragraph (3) of the rule in its entirety and substituting instead the following:

(3) All notices of appearance should be sent to the Commissioner by regular mail at the following address:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Penalty Program
220 French Landing Drive, 1-B
Nashville, TN 37243

Authority: T.C.A. § 50-6-118.

Rule 0800-02-13-.14: Determinations Pursuant to the Hearing is amended by deleting every mention of the language "Initial Order" in each paragraph of the Rule and substituting instead the language "Final Order".

Authority: T.C.A. § 50-6-118.

Rule 0800-02-13-.15: Review of Initial Order is repealed.

Chapter 0800-02-21 Mediation and Hearing Procedures

Rule 0800-02-21-.04: Ombudsman is amended by deleting the language of paragraph (6) in its entirety and substituting instead the following:

(6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Division and the Division shall assign an ombudsman to assist the person or entity so long as the Division determines that the person or entity is qualified to receive the services of the ombudsman. The Division shall retain sole authority to determine the nature of the services to be provided by the ombudsman, pursuant to T.C.A. § 50-6-216(a).

Authority: T.C.A. § 50-6-216.

* 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)

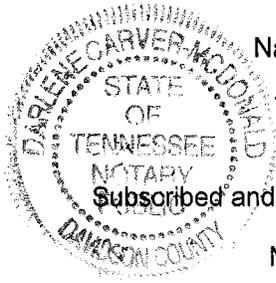
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 11/05/2014 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the 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: November 5, 2014

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: November 5, 2014

Notary Public Signature: Darlene Carver-McDowell

My commission expires on: May 8, 2017

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
12/17/2014
 Date

Department of State Use Only

SECRETARY OF STATE
 RECEIVED
 2014 DEC 22 PM 2:01

Filed with the Department of State on: 12/22/14

Effective on: 3/22/15

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.

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 amended rules 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: Exempting small businesses could frustrate the small business owners' access to the services provided by the Ombudsman program which would be counter-productive.

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)

These proposed rules will ensure access to the ombudsman program by employees of state and local governments but will otherwise 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 0800-02-13-.09 corrects an error in the current rules concerning the proper address for filing a notice of appearance. The change to Rule 0800-02-13-.14 will amend the current process so that the hearing officer will be issuing a final rather than an initial order following a penalty assessment hearing. The deletion of Rule 0800-02-13-.15 is a repeal. The change to Rule 0800-02-21-.04(6) removes language in the Division's rules that termed access to Ombudsman services a privilege.

- (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;

Public Chapter 837 (2013), Section 1, states that unrepresented parties have a right to access ombudsman services. In light of this legislation, the text of Rule 0800-02-21-.04(6) needed to be changed to remove language labeling access to Ombudsman services a privilege.

- (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;

Any unrepresented party to a workers' compensation claim will be directly affected by this rule change. In addition, all parties to a workers' compensation claim will be affected by having to send their notices of appearance to an updated address and will be issued final rather than initial orders following a hearing. 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;

There will a slight decrease in the use of state human resources by the removal of the initial order provision in Rules 0800-02-13-.14 and -.15 but the overall effect will have little fiscal impact. The effect of the change to Rule 0800-02-21-.04(6) necessitated by Public Chapter 837 should also 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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Sequence Number: _____
Rule ID(s): _____
File Date: _____
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Proposed Rule(s) Filing Form(Redline)

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Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive Side 1-B, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0719
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Revision Type (check all that apply):

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Amendments

Chapter 0800-02-13 Penalty Program

Rule 0800-02-13-.09: Representation at the Hearing is amended by deleting paragraph (3) of the rule in its entirety and substituting instead the following:

~~(3) All notices of appearance shall be delivered to the Commissioner or mailed to:~~

~~Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Penalty Program
Andrew Johnson Tower, Second Floor
710 James Robertson Parkway
Nashville, TN 37243-0664~~

(3) All notices of appearance should be sent to the Commissioner by regular mail at the following address:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Penalty Program
220 French Landing Drive, 1-B
Nashville, TN 37243

Authority: T.C.A. § 50-6-118.

Rule 0800-02-13-.14: Determinations Pursuant to the Hearing is amended by deleting every mention of the language "Initial Order" in each paragraph of the Rule and substituting instead that language "Final Order".

(1) If the Commissioner determines that the employer is not subject to the Workers' Compensation Law and has not been subject to the Workers' Compensation Law at any relevant times, then the Commissioner shall issue an ~~Initial~~ Final Order that all civil penalties assessed against the employer or insurer are void.

(2) If the Commissioner determines that the employer or insurer either does not owe to an employee any workers' compensation benefits or has timely paid all workers' compensation benefits owed to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an ~~Initial~~ Final Order that all civil penalties assessed against the employer or insurer are void.

(3) If the Commissioner determines that the employer or insurer has either not paid or not timely paid all workers' compensation benefits due to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an ~~Initial~~ Final Order that a civil penalty equal to twenty-five percent (25%) of the unpaid or untimely paid benefits due to the employee under the Workers' Compensation Law be paid by the employer or insurer directly to the employee to whom the unpaid or untimely paid benefits are/were owed.

Authority: T.C.A. § 50-6-118.

Rule 0800-02-13-.15: Review of Initial Order is repealed.

Chapter 0800-02-21 Mediation and Hearing Procedures

Rule 0800-02-21-.04: Ombudsman is amended by deleting the language of paragraph (6) in its entirety and substituting instead the following:

~~(6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Division. The Division shall assign an ombudsman to assist the person or entity qualified to receive the services of an ombudsman. Access to the services provided by an ombudsman is a privilege, not a right, and the Division has sole authority to determine whether a person or entity qualifies for ombudsman services and the nature of the services to be provided by the ombudsman.~~

(6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Division and the Division shall assign an ombudsman to assist the person or entity so long as the Division determines that the person or entity is qualified to receive the services of the ombudsman. The Division shall retain sole authority to determine the nature of the services to be provided by the ombudsman, pursuant to T.C.A. § 50-6-216(a).

Authority: T.C.A. § 50-6-216.

* 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: _____

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.
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: Exempting small businesses could frustrate the small business owners' access to the services provided by the Ombudsman program which would be counter-productive.

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)

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- 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;

There will a slight decrease in the use of state human resources by the removal of the initial order provision in Rules 0800-02-13-.14 and -.15 but the overall effect will have little fiscal impact. The effect of the change to Rule 0800-02-21-.04(6) necessitated by Public Chapter 837 should also 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