

**RULES
OF
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
OCCUPATIONAL SAFETY AND HEALTH**

**CHAPTER 0800-1-5
SAFETY AND HEALTH PROVISIONS FOR THE PUBLIC SECTOR**

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0800-1-5-.01 PURPOSE AND SCOPE. The primary purpose of the Tennessee Occupational Safety and Health Act of 1972, as amended, T.C.A. §§50-3-101 through 50-3-919 is to assure so far as possible every working man and woman in the State of Tennessee safe and healthful working conditions and to preserve our human resources. This purpose is specifically extended to public sector employees through Section 19 of the Act (T.C.A. §§50-3-906 through 50-3-913). The purpose of this chapter is to implement the provisions of the Act applicable in the public sector by setting forth general policies and prescribing rules to effectuate the provisions of the Act.

Authority: T.C.A. §§4-3-1411, 50-3-101, 50-3-102, 50-3-201, and 50-3-906 through 50-3-913. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.02 DEFINITIONS.

- (1) "Employer" as used in this chapter means:
 - (a) The State of Tennessee including constitutional offices, administrative departments, commissions, boards, divisions and any other agency of the state.
 - (b) County, metropolitan and municipal governments and all departments, commissions, boards, divisions, and any other agency of the county, metropolitan or municipal government which has elected to develop its own program of occupational safety and health compliance under the provisions of T.C.A. §50-3-910.
- (2) "Employee" as used in this chapter means any person performing services for an employer as defined in Rule 0800-1-5-.02(1)(a) or (b) above under an appointment or contract of hire, including minors and persons performing such services on a part time or seasonal as well as a full time basis.
- (3) "Establishment" means a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single location, each activity shall be treated as a separate establishment.
- (4) "Local Government" means a county, metropolitan or municipal government and includes constitutional or charter and administrative offices, departments, boards, commissions, divisions or other agency of the county, metropolitan or municipal government.

(Rule 0800-1-5-.02, continued)

- (5) "Monitoring Inspection" means a walkaround inspection of the workplace and an evaluation of self-compliance programs carried out by the Commissioner to ensure that public sector employers are carrying out their duties or fulfilling their responsibilities under the Act.
- (6) "Notice of Unsafe or Unhealthful Working Conditions (Notice)" means the official document used by the Division of Occupational Safety and Health to transmit notification to public sector employers of violations of the Act or unsafe conditions that indicate a deficiency or deviation from the state agency's or local government's occupational safety and health program.
- (7) "Public Sector" means a unit of government, state or local, which is an employer as defined in Rule 0800-1-5-.02(1)(a) or (b) above. It does not include those local governments which have elected to be treated as a private employer or those considered to have elected to be treated as a private employer under the provisions of T.C.A. § 50-3-910.
- (8) "Safety and Health Official" as used in this chapter means the individual who is responsible for the management of the safety and health program within his or her state agency or local government. Although the chief executive officer of the state agency or local government bears the ultimate responsibility, he or she may delegate it to the safety and health official.
- (9) "State Agency" means any constitutional office, administrative department, commission, board, division or other unit of state government.
- (10) "Variance" means an alternate practice, mean, method, operation, or process to that prescribed by a standard which provides protection from the occupational safety or health hazard which is as effective as that required by the standard, or a program of coming into compliance with the standard.

Authority: T.C.A. §§4-3-1411, 50-3-101, 50-3-102, 50-3-103, 50-3-201, 50-3-601 through 50-3-606, 50-3-906, and 50-3-910. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1997. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.03 STANDARDS. Employers and employees shall comply with all occupational safety and health standards promulgated by the Commissioner under the rules in Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry, Chapter 0800-1-6 Occupational Safety and Health Standards for Construction, and Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture. Employers may develop and promulgate standards on issues not covered by the standards promulgated by the Commissioner, and a copy of such locally developed and promulgated standards shall be provided to the Commissioner.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-906, and 50-3-910. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.04 VARIANCES FROM STANDARDS. Employers may seek a variance from any occupational safety or health standard promulgated by the Commissioner. Any request for a variance shall be in accordance with the rules in Chapter 0800-1-2 Variances from Occupational Safety and Health Standards.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-601 through 50-3-606. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.05 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES.

- (1) All employers are required to keep and maintain occupational safety and health injury and illness records as required by the rules in Chapter 0800-1-3 Occupational Safety and Health Record-Keeping

(Rule 0800-1-5-.05, continued)

and Reporting. The partial exemptions in Rule 0800-1-3-.02(2) and Rule 0800-1-3-.02(3) do not apply in the public sector.

- (2) Under T.C.A. § 50-3-910, local governments which elect to develop their own program of self compliance must include in their written notification of such program with the Commissioner an assurance that the program includes provisions for recordkeeping as effective as the provision of T.C.A. § 50-3-701. Such recordkeeping provisions shall comply with Chapter 0800-1-3 Occupational Safety and Health Record-Keeping and Reporting.
- (3) Any request for a variance to the provisions of Rule 0800-1-5-.05(1) based on form, content, etc. shall be addressed to the Commissioner. Should the Commissioner determine that a variance is warranted, he shall request that the employer seeking the variance submit a petition through the Office of the Commissioner to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210. Any final determination on the granting of the variance within the public sector by the Commissioner shall be based upon the determination of the Assistant Secretary of Labor regarding such petition.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-701, 50-3-906, 50-3-910, and 50-3-917. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed January 14, 1978; effective February 13, 1978. Amendment filed March 17, 1978; effective April 16, 1978. Amendment filed October 3, 1978; effective January 29, 1979. Amendment filed November 25, 1983; effective February 13, 1984. Amendment filed November 30, 2000; effective March 30, 2001. Amendment filed August 30, 2001; effective December 28, 2001. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.06 DESIGNATED SAFETY AND HEALTH OFFICIAL.

- (1) A memorandum from the Governor of the State of Tennessee to All Agency and Department Heads dated September 27, 1972, requests each agency and department head to designate a staff member to serve as the administrator of each department's or agency's safety and health program. Item 1 under Guidelines to be Used for Approval and Evaluation of Self-Compliance Programs contained in Chapter IV, Part IV, Public Sector, Tennessee Occupational Safety and Health Plan requires local governments to indicate the official responsible for the local government's occupational safety and health program. The Act invests responsibility for carrying out its objectives with the Commissioner on a statewide level, and it is recognized that the chief executive officer bears the responsibility for carrying out the objectives of the Act within his jurisdiction. It is the considered judgement of the Commissioner that in most instances within the public sector, the chief executive officer of the state agency or local government should designate or appoint an official to be responsible for the management and administration of the state agency's or local government's occupational safety and health program. It is also the considered judgement of the Commissioner that such official should have, or have personnel reporting to him who have, necessary training and experience to carry out his functions. If the employer has less than 750 employees, the responsible official should devote up to fifty percent (50%) of his time to the safety and health program; if 750 to 999 employees at least fifty percent (50%); if 1,000 to 1,999 employees at least seventy-five percent (75%); and if 2,000 or more employees all of his time to the program.
- (2) The designated safety and health official should assist the chief executive officer of the state agency or local government in carrying out all facets of the program to include, but not be limited to, the following:
 - (a) Setting goals and objectives for reducing and eliminating occupational accidents, injuries and illnesses;
 - (b) Developing plans and procedures for evaluating the program's effectiveness at all operational levels;

(Rule 0800-1-5-.06, continued)

- (c) Setting priorities with respect to the factors which cause occupational accidents, injuries and illnesses so that appropriate corrective action can be taken; and
 - (d) Assisting in budgeting sufficient funds for necessary staff, equipment, material and training required to ensure an effective occupational safety and health program.
- (3) Employers shall provide the Commissioner with the designated safety and health official's name, business address and telephone number, and position title if designated on a part-time basis. The Commissioner shall be advised of any change of the official so designated within thirty (30) days after such change occurs.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-906 through 50-3-911, and 50-3-913. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.07 POSTING OF NOTICE; AVAILABILITY OF ACT, RULES, AND SAFETY AND HEALTH PROGRAMS.

- (1) Employers shall post and keep posted a notice or notices, provided by the Tennessee Department of Labor and Workforce Development, informing employees of the protections and obligations afforded under the Act and the state agency's or local government's occupational safety and health program. Such notice or notices shall be posted in each establishment in a conspicuous place or places where notices to employees are customarily posted. Employers shall take steps to insure that all such notice or notices are not altered, defaced or covered by other material. For assistance and information, including copies of the Act, rules, specific occupational safety and health standards, and state agency or local government programs, employees should contact their designated safety and health official or the Administrator, Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development.
- (2) Where distinctly separate activities are performed at a single physical location, each activity shall be considered as a separate physical establishment, and a separate notice or notices shall be posted at each such establishment. Where employees are engaged in activities which are physically dispersed, such as electric, gas and sanitary services or highway maintenance, the notice or notices required by this rule shall be posted in accordance with the provisions of paragraph (1) of this rule.
- (3) Copies of the Act, rules and all applicable standards will be available in the area offices of the Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or authorized representative(s) of employees for review. The review should occur in the establishment where the program or materials are maintained on file on the same day the request is made, or at the earliest possible time mutually convenient to the employee or the authorized representative(s) of employees and the employer.
- (4) Employers shall make available upon request to any employee or authorized representative(s) of employees a copy of the state agency's or local government's occupational safety and health program for review. The review should occur in the establishment where the program is maintained on file on the same day the request is made, or at the earliest possible time mutually convenient to the employee or the authorized representative(s) of employees and the employer.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-915. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.08 PROGRAM MONITORING INSPECTIONS.

- (1) Authority for Program Monitoring Inspections. T.C.A. §§50-3-906 and 50-3-911 provide authority for the Commissioner to conduct inspections under T.C.A. §50-3-301.
- (2) Right of Entry. T.C.A. §50-3-301 states, “In order to carry out the purposes of this chapter, the Commissioner of Labor and Workforce Development, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized to:
 - (a) Enter without delay and at any reasonable time any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and
 - (b) Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment and materials therein, and question privately any such employer, owner, operator, agent or employee.” In accordance with Rule 0800-1-3-.05(2) of Chapter 0800-1-3, the Commissioner is authorized to review records required by the Act.
- (3) Conduct of Inspections. The Commissioner has delegated authority to conduct monitoring inspections of state agency and local government occupational safety and health programs to occupational safety specialists, industrial hygienists, and environmental engineers of the Public Sector Section, Division of Occupational Safety and Health, herein referred to as public sector safety and health officers (PSSHOs). Monitoring inspections shall be conducted by PSSHOs in accordance with the following:
 - (a) Subject to the provisions of paragraph (2) of this rule, monitoring inspections shall take place at such times and in such places of employment as the Commissioner may direct. Monitoring inspections of each employer will be conducted at least biennially and shall cover, at a minimum, inspection of at least one (1) workplace in at least two (2) departments or establishments. At the beginning of a monitoring inspection, the PSSHO shall present his credentials to the chief executive officer, the designated safety and health official, or the agent in charge at the establishment; explain the nature, purpose, and scope of the inspection and the records to be reviewed.
 - (b) PSSHOs shall have authority to take environmental samples, take or obtain photographs, employ other reasonable investigative techniques, and question privately any employer, agent or employee of an establishment. As used herein, the term “employ other reasonable investigative techniques” includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.
 - (c) In taking photographs and samples, the PSSHOs shall take reasonable precautions to insure that such actions with flash, spark-producing or other equipment will not be hazardous. PSSHOs shall comply with all employer safety and health rules and practices at the establishment, and they shall wear and use appropriate protective clothing and equipment.
 - (d) The conduct of monitoring inspections shall be such as to preclude unreasonable disruption of the operations of the employer’s establishment.
 - (e) At the conclusion of a monitoring inspection, the PSSHO shall confer with the chief executive officer, the designated safety and health official, or a representative of either or both, and informally advise him of any apparent safety or health violations discovered during the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the PSSHO any pertinent information regarding conditions in the workplace.

(Rule 0800-1-5-.08, continued)

- (4) Representatives of Employers and Employees.
 - (a) PSSHOs shall be in charge of monitoring inspections and questioning of persons. A representative of the employer and an authorized representative of employees shall be given an opportunity to accompany the PSSHO during the physical inspection of any workplace for the purpose of aiding such inspection. A PSSHO may permit additional employer representatives and additional authorized representatives of employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and/or employee representative may accompany the PSSHO during each different phase of an inspection if this will not interfere with the conduct of the inspection.
 - (b) Normally the designated safety and health official will be the representative of the employer. The PSSHO shall have authority, however, to resolve all disputes as to who is the authorized representative of the employer and employees for the purposes of this rule. If there is no authorized representative(s) of employees or if the PSSHO is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
 - (c) PSSHOs are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.
- (5) Consultation with Employees. PSSHOs may consult with employees concerning matters of occupational safety and health to the extent they deem necessary to conduct an effective and thorough inspection. During the course of a monitoring 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 PSSHO.
- (6) Objection to Inspection. Upon a refusal to permit a PSSHO to inspect, review records, or permit a representative of employees to accompany the PSSHO during the physical inspection of any workplace, the PSSHO shall terminate the inspection or confine the inspection to areas in which no objection is raised. The PSSHO shall immediately report such refusal and the reason(s) therefor to the Manager of Public Sector Operations, Administrator, and/or the Commissioner. Should entry be denied, the Manager of Public Sector Operations will report to the Administrator and Commissioner who may then proceed under the provisions of Rule 0800-1-5-.18.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-301 through 50-3-306, 50-3-906, and 50-3-911.
Administrative History: Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed March 31, 1983; effective June 15, 1983. Amendment filed November 25, 1983; effective February 13, 1984. Amendment filed March 27, 2001; effective July 30, 2001. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.09 ADVANCE NOTICE OF MONITORING INSPECTIONS.

- (1) In accordance with T.C.A. §50-3-306, advance notice of inspections may not be given except as authorized by the Commissioner when the giving of such notice is essential to the effectiveness of such inspection, and in keeping with the rules issued by him.
 - (a) Advance notice may be given in the following situations:
 1. In cases of apparent imminent danger to enable the employer to abate the danger as quickly as possible;
 2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(Rule 0800-1-5-.09, continued)

3. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and
 4. In other circumstances where the Commissioner determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
- (b) When advance notice as authorized by the Commissioner is given, it shall be the employer's responsibility to promptly notify the authorized representative(s) of employees, if any and if known to the employer, of the inspection. The employer may, however, request that the PSSHO inform the authorized representative(s) of employees of the inspection. Advance notice shall not be given more than twenty-four (24) hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-306. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.10 NOTICE OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS AND INSPECTION REPORTS.

- (1) The Commissioner has delegated authority for review of monitoring inspections by PSSHOs to the Manager of Public Sector Operations, Division of Occupational Safety and Health. If, on the basis of the PSSHO's report, the Manager of Public Sector Operations believes that the employer has violated a provision of the Act, any standard, or rule as may be applicable, he shall issue to the employer a Notice of Unsafe or Unhealthful Working Conditions (notice) for such violation. A notice shall be issued even though after being informed of an alleged violation by the PSSHO, the employer immediately abates, or initiates steps to abate, such alleged violation. Any notice shall be issued with reasonable promptness and in no event later than six (6) months following the monitoring inspection.
- (2) Any notice shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, regulation or order alleged to have been violated. Any notice shall also fix a reasonable time or times for the abatement of the alleged violation.
- (3) If a notice is issued for a violation alleged in a request for inspection under Rule 0800-1-5-.15 or a notification of violation under Rule 0800-1-5-.08(5), a copy of the notice shall also be sent to the employee(s) or authorized representative(s) of employees who made such request or notification.
- (4) Employer and Employee Objections to Notice. Any employer, employee or authorized representative(s) of employees of an employer to whom a notice has been issued may file a written declaration with the Commissioner advising him of objections to the terms or conditions of the notice. Employers, employees or authorized representative(s) of employees must file such declaration within twenty (20) days of receipt by the employer of the notice.
- (5) Notice, if any, and a report of findings concerning the general effectiveness of the employer's occupational safety and health program shall be sent to the employer following a monitoring inspection by the Manager of Public Sector Operations. If no alleged violations were found during the monitoring inspection which would be subject to the issuance of a notice in accordance with the provisions of paragraphs (1) through (3) of this rule, the report shall so state. Any report shall be issued with reasonable promptness and in no event later than six (6) months following the monitoring inspection.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-304, 50-3-907, 50-3-908, and 50-3-912. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.11 POSTING OF NOTICE OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS.

- (1) Upon receipt of any notice, the employer shall post such notice or a copy thereof, unedited, at or near each place of an alleged violation except as provided below. Posting of the notice or a copy shall be accomplished within one (1) working day following receipt. Where, because of the nature of the employer's operations, it is not practicable to post the notice at or near each place of alleged violation, such notice shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. The employer shall take steps to insure that the notice is not altered, defaced, or covered by other material. Reports under the provisions of Rule 0800-1-5-.10(5) need not be posted.
- (2) Each notice or a copy thereof shall remain posted until the violation has been abated or for three (3) working days, whichever is later.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-906 through 50-3-913. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.12 CORRECTION OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS.

- (1) It is the responsibility of the employer to correct unsafe or unhealthful working conditions for which he has been notified within the abatement period specified on the notice for each violation. Factors such as budget limitations shall be taken into consideration by the Commissioner when setting abatement dates.
- (2) If a follow-up inspection discloses that an employer has failed to correct an alleged violation within the abatement period permitted for its correction, the PSSHO shall ascertain why compliance has not been achieved. If this cannot be accomplished, he shall contact the Manager of Public Sector Operations or Administrator. The Manager of Public Sector Operations, Administrator, and/or Commissioner shall communicate with the chief executive officer of the state agency or local government who in turn will attempt to attain compliance. If deemed appropriate by the Commissioner, the program will be determined to be less effective than as required by the Act and the provisions of Rule 0800-1-5-.18 shall be implemented.
- (3) Whenever an employer has made a good faith effort and abatement has not been completed because of factors beyond his reasonable control, such employer may submit a petition requesting in writing an extension of the abatement date as set forth in the notice or in a prior extension. The petition for modification of abatement date shall include the following information:
 - (a) Identification of the violation and the item(s) listed thereon to which a change in abatement date is requested.
 - (b) All steps taken by the employer and the date of such action in an effort to achieve compliance during the prescribed abatement period for all violations.
 - (c) The specific additional abatement time necessary in order to achieve compliance.
 - (d) The reason(s) additional time is necessary.
 - (e) All available interim protective measures that have been taken to safeguard employees against the hazard(s) identified during the abatement period and the date of such action.
 - (f) A certification that a copy of the petition for modification of abatement date has been posted and, if appropriate, served on the authorized representative(s) of affected employees in accordance with subparagraph (a) of paragraph (4) of this rule, and a certification of the date upon which such posting and service was made.

(Rule 0800-1-5-.12, continued)

- (4) A petition for modification of abatement date shall be filed with the Manager of Public Sector Operations 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.
 - (a) 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 twenty (20) calendar days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.
 - (b) Affected employees or their authorized representative(s) may file an objection in writing to such petition with the Manager of Public Sector Operations. Failure to file such objection within twenty (20) calendar 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.
 - (c) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date.
- (5) Whenever abatement periods specified in the notice exceed thirty (30) days, the Commissioner may require the employer to provide interim protection for employees from the hazard(s) noted such as administrative controls, use of personal protective equipment, etc. When such interim protection is required, the notice shall so state. Whenever abatement periods specified in the notice exceed ninety (90) days, employers may be requested to submit reports of progress toward achieving abatement as a means of assuring continuing program effectiveness. Employers shall comply with any such progress reports requested by the Commissioner.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-907, 50-3-908, and 50-3-912. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed January 14, 1978; effective February 13, 1978. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.13 IMMINENT DANGER. Whenever and as soon as a PSSHO concludes that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and the employer of danger and request that the employer take immediate action to abate such danger. Appropriate notice may be issued with respect to an imminent danger even though the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger. In the event the employer does not take immediate action to abate such danger, the PSSHO shall immediately inform the Commissioner. The Commissioner may obtain compulsory process in an effort to obtain immediate abatement or action as authorized by T.C.A. §50-3-918.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-918. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.14 OTHER INSPECTIONS. Under the provisions of the Act, the Commissioner may make additional inspections as he deems appropriate whenever there is a fatality, catastrophe, employee complaint, or discrimination complaint. Inspections in these categories shall be conducted in accordance with this chapter and a notice may be issued, if appropriate.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, 50-3-906, and 50-3-911. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.15 EMPLOYEE COMPLAINTS.

- (1) Under the provisions of T.C.A. §§50-3-106 and 50-3-304, any employee or authorized representative(s) of employees may submit a complaint concerning occupational safety and health conditions in his or her workplace. Within the public sector, employees should submit complaints or request inspections in accordance with procedures set forth in their employer's occupational safety and health program.
- (2) Employees who have complained to their employer who feel that the action taken to satisfy their complaint was not appropriate, or who feel that their employer's occupational safety and health program is no longer effective can submit a complaint to or request an inspection from the Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development. Such complaint or request for inspection shall be in writing and shall set forth with reasonable particularity the grounds for the complaint or inspection request. The complaint or inspection request should be signed and the name of the person signing the complaint or request shall be withheld from the employer if such desire is indicated in the complaint or inspection request.
- (3) If the Manager of Public Sector Operations determines that an employee complaint or inspection request meets the requirements set forth in paragraphs (1) and (2) of this rule, and there are reasonable grounds to believe that the complaint or inspection request is valid, he shall cause an inspection to be made. The inspection shall be conducted by a PSSHO, as soon as practicable, to determine if program deficiencies exist. Inspections under this rule shall not be limited to matters referred to in the complaint or inspection request.
- (4) If the Manager of Public Sector Operations determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation of the Act, any standard, rule or danger exists, he shall notify the complaining or requesting party, if known, in writing of such determination. If the complaining or requesting party is dissatisfied with such determination, he may resubmit his complaint or inspection request without prejudice to the Commissioner. Any decision of the Commissioner regarding the complaint or inspection request resubmission shall be final and not subject to further review.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, 50-3-304, and 50-3-906. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Amendment filed March 27, 2001; effective July 30, 2001. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.16 DISCRIMINATION AGAINST EMPLOYEES.

- (1) Part IV of the Tennessee Occupational Safety and Health Plan and T.C.A. §§ 50-3-106(7), 50-3-106(8), and 50-3-409 prohibit discriminatory action by an employer toward an employee who has exercised his rights under the Act. In addition to filing a complaint alleging discrimination with the Commissioner, employees have the option of (1) filing a grievance in accordance with the grievance procedures of the Tennessee Department of Personnel if a state employee, or (2) filing a complaint alleging discrimination in accordance with the procedures in the local government's program if a local government employee. In order to be assured the rights and protection afforded by T.C.A. §50-3-409, however, employees must file a complaint in accordance with the provisions of the code.
- (2) When employees utilize local procedures in an attempt to settle alleged discrimination, they should include a statement of such fact in the complaint filed with the Commissioner. The Commissioner shall conduct an investigation of such complaint as required by T.C.A. §50-3-409. The Commissioner shall notify the complainant of his determination as required by T.C.A. §50-3-409 but may delay filing any action in chancery court pending resolution of local procedures. In no event shall the Commissioner delay such filing beyond one (1) year from the date of the alleged discrimination.

(Rule 0800-1-5-.16, continued)

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, and 50-3-409. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed April 17, 1978; effective July 14, 1978. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.17 INFORMATION ON TOXIC MATERIALS OR HARMFUL PHYSICAL AGENTS.

Employers shall notify any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard. If medical examinations or other tests are required by applicable standards, the employer shall make such examinations or tests available or at his expense to determine whether the health of such employee is adversely affected by such exposure pursuant to the provisions of T.C.A. §§50-3-106(5) and 50-3-203.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, and 50-3-203. **Administrative History:** Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.

0800-1-5-.18 ACTION ON PROGRAMS DETERMINED TO BE LESS EFFECTIVE THAN AS REQUIRED BY THE ACT.

- (1) Whenever the Commissioner, as a result of inspections or other activity conducted under the provisions of any rule of this chapter, determines that an employer's occupational safety and health program is less effective than as required by T.C.A. §50-3-906 in the case of state agencies, or T.C.A. §50-3-910 in the case of local governments electing to develop their own program of compliance he shall:
 - (a) In the case of state agencies:
 1. Issue the chief executive officer of the agency a written notification stating in what respects the agency has not adequately met its responsibilities, and provide a period of twenty (20) days for the agency to respond by establishing procedures to attain an "at least as effective as" status or contesting the notification.
 2. When an agency responds to the Commissioner's notification by establishing procedures to attain an "at least as effective as" status, such procedures shall be in detail and include dates for accomplishment of each item required.
 3. If an agency does not advise the Commissioner within twenty (20) days of its intention to contest such notification, the Commissioner shall submit a copy of such notification to the governor, together with a request that such action be taken as will bring such agency into compliance with the provisions of the Act.
 4. If, within twenty (20) days of receipt of notification, the agency advises the Commissioner of its intention to contest the notification, the Commissioner shall promptly notify the commission, which shall afford opportunity for a hearing and shall thereafter issue to the governor its findings of fact and recommendations for action.
 - (b) In the case of local governments:
 1. Issue the chief executive officer of the local government written notification by certified mail stating in what respects the local government has not met its duty to provide its employees with conditions of employment consistent with the objectives of the Act, and request a response within twenty (20) days of receipt of the notification which states procedures and dates to attain an "at least as effective as" status.

(Rule 0800-1-5-.18, continued)

2. Should the local government not respond to the Commissioner's letter of notification within the twenty (20) day period prescribed, the Manager of Public Sector Operations, Administrator, or the Commissioner shall contact the chief executive officer of the local government by telephone or in person in an attempt to ascertain what the local government's response will be. Such contact shall be made within twenty (20) to thirty (30) days following receipt of the Commissioner's letter of notification. An additional ten (10) days may be granted for the response by the local government. If no response is received within forty-five (45) days, the local government shall be considered as not having responded.
 3. If the local government's response is not considered satisfactory toward achieving an "as least as effective as" status, the Commissioner shall negotiate with the local government in an effort to obtain a satisfactory response. Such negotiation, however, will not extend beyond one hundred twenty (120) days following the date of the Commissioner's original letter of notification.
 4. Whenever a local government is considered as not having responded or whenever negotiations have not resulted in a satisfactory response, the Commissioner shall, within twenty (20) days following a time period specified for response or negotiation, submit a copy of all written communications and a written summary of all verbal communications of his efforts to have the local government attain an "at least as effective as" status to the Governor. The Commissioner shall request that the Governor issue an executive order declaring the local government's program under T.C.A. §50-3-910 null and void, thereby allowing such local government to be treated as a private employer for the purpose of enforcing all provisions of the Act.
- (c) The Commissioner shall include a summary of any action taken under the provisions of this rule in his annual report to the governor and the general assembly, together with the reasons therefor, and may recommend legislation as appropriate to insure that employers meet the objectives of the Act.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-906 through 50-3-908, 50-3-910, and 50-3-912.
Administrative History: Original rule filed August 14, 1977; effective September 13, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and new rule filed September 13, 2002; effective January 28, 2003.