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# Rulemaking Hearing Rule Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Department of Labor and Workforce Development
<b>Division:</b>	Bureau of Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Drive, 1-B, Nashville, TN 37243
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

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

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0800-02-13	Procedures for Penalty Assessments and Hearing Contested Cases
Rule Number	Rule Title
0800-02-13-.01	Scope
0800-02-13-.02	Definitions
0800-02-13-.03	Receipt of Information and Investigation
0800-02-13-.04	Notification
0800-02-13-.05	Settlement
0800-02-13-.06	Initial Agency Decision
0800-02-13-.07	Filing and Service of Pleadings and Other Materials
0800-02-13-.08	Time
0800-02-13-.09	Appeal of an Initial Agency Decision
0800-02-13-.10	Commencement of Contested Case Proceedings
0800-02-13-.11	Service of Notice of Hearing
0800-02-13-.12	Representation by Counsel
0800-02-13-.13	Prehearing Motions
0800-02-13-.14	Continuances
0800-02-13-.15	Discovery

0800-02-13-.16	Intervention
0800-02-13-.17	Subpoena
0800-02-13-.18	Default and Uncontested Proceedings
0800-02-13-.19	Evidence in Hearings
0800-02-13-.20	Clerical Mistakes
0800-02-13-.21	Code of Judicial Conduct

<b>Chapter Number</b>	<b>Chapter Title</b>
0800-02-15	Uninsured Employers Fund
<b>Rule Number</b>	<b>Rule Title</b>
0800-02-15-.01	Definitions
0800-02-15-.02	Investigation of Non-Compliance
0800-02-15-.03	Departmental Actions
0800-02-15-.04	Monetary Penalties
0800-02-15-.05	Notice of Hearing
0800-02-15-.06	Discovery
0800-02-15-.07	Issuance of Subpoenas
0800-02-15-.08	Continuances
0800-02-15-.09	Effect of Employer's Failure to Appear at Hearing
0800-02-15-.10	Representation at Show Cause Hearing
0800-02-15-.11	Pre-Hearing Matters
0800-02-15-.12	Order of Proceedings of Show Cause Hearings
0800-02-15-.13	Scope of Examination and Rules of Evidence
0800-02-15-.14	Burden of Proof
0800-02-15-.15	Determinations pursuant to Show Cause Hearing
0800-02-15-.16	Collection of Penalties
0800-02-15-.17	Injunctions
0800-02-15-.18	Appeal

## Amendments

The former Rule 0800-02-13 and Rule 0800-02-15 are hereby deleted in their entirety and are replaced with the following:

### **0800-02-13-.01 SCOPE.**

- (1) Subject to any superseding federal or state law, these rules shall govern contested case proceedings before the Bureau of Workers' Compensation, and will be relied upon by administrative judges in all contested cases utilizing administrative judges appointed under T.C.A. §§ 50-6-118 or 50-6-412 or any future statute authorizing such appointments related to penalties assessed by the Bureau.
- (2) Any provision of these rules may be suspended where an administrative judge determines that suspension of the rules is clearly warranted in the interest of justice.
- (3) In any situation that arises that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

**Authority:** T.C.A. §§ 4-5-219(c), 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

### **0800-02-13-.02 DEFINITIONS.**

The following definitions apply to this Chapter and the procedure for seeking a contested case hearing within the Tennessee Bureau of Workers' Compensation.

- (1) "Administrative Hearing Clerk" means the Administrative Hearing Clerk of the Bureau of Workers' Compensation, 220 French Landing Drive, Suite 1-B, Nashville, Tennessee 37243-1002; Fax: (615) 253-6256. Email [WC.info@tn.gov](mailto:WC.info@tn.gov).
- (2) "Administrative Judge" - Wherever the term "administrative judge" is used in these rules, it is intended to include reference to the term "hearing officer," in cases in which hearing officers conduct the proceedings.
- (3) "Administrator" means the Administrator of the Bureau of Workers' Compensation of the Tennessee Department of Labor and Workforce Development, the Administrator's Designee, or any other Bureau member appointed to hear a contested case under the Tennessee Uniform Administrative Procedures Act.
- (4) "Administrator's Designee" means any person whom the Administrator indicates, selects, appoints, nominates, or sets apart for any purpose or duty.
- (5) "Agency Decision" means an official Bureau decision assessing a civil penalty. A ruling which disposes of a request for a contested case hearing for the Bureau to review the legitimacy of a penalty is a Final Agency Decision unless otherwise indicated in the ruling.
- (6) "Burden of Proof" - The "burden of proof" refers to the duty of a party to show by a

preponderance of the evidence that an allegation is true or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue. The administrative judge makes all decisions regarding which party has the burden of proof on any issue.

- (7) "Bureau" means the Tennessee Bureau of Workers' Compensation.
- (8) "Department" means the Tennessee Department of Labor and Workforce Development.
- (9) "Employee" shall have the same meaning as set forth in T.C.A. § 50-6-102.
- (10) "Employer" means an employer as defined in T.C.A. § 50-6-102 but also includes an employer's insurer, third party administrator, self-insured employer, self-insured pool and trust, as well as the employer's legally-authorized representative or legal counsel, as applicable.
- (11) "Entity" means any person who may be subject to the Workers' Compensation Law and Bureau rules.
- (12) "Filing" - Unless otherwise provided by law or by these rules, "filing" means actual receipt by the Administrative Hearing Clerk.
- (13) "Inspection" means any inspection of an Employer's factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by at least one person who is or may be an Employee of an Employer, or other place that is reasonably calculated to lead to the discovery of relevant evidence.
- (14) "Investigation" means any reasonable efforts made by a Bureau Employee to find out relevant information or information reasonably calculated to lead to the discovery of relevant information necessary to determine whether an Employer, Employee, or other person or entity is subject to the Workers' Compensation Law or Bureau Rules, to determine whether an Employer or Employee has failed to comply with any provision of the Workers' Compensation Law or Bureau Rules, or to determine the amount of any monetary penalty which may be assessed against an Employer, Employee, or other person or entity subject to the Workers' Compensation Law or Bureau Rules for failure to comply with any provision of the Workers' Compensation Law or Bureau Rules.
- (15) "Petitioner" - The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings by filing a request for contested case hearing. The party seeking relief from a penalty bears the burden of proving the penalty should not have been assessed.
- (16) "Pleadings" - "Pleadings" are written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form - as for example, an "Agency Decision," "Request for a Contested Case Hearing" or "Answer" - or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (17) "Records of the Department and Bureau" means any data, including electronic, computer-generated, telephonic, or on paper, used in the business of the Bureau and obtained by any Bureau Employee from within the Bureau or from other governmental entities or agencies, through an investigation or inspection, or from any other lawful source.

- (18) "Respondent" - The "respondent" in a contested case proceeding is the party who is responding to the request for contested case hearing filed by the "petitioner".
- (19) "Workers' Compensation Law" means the Workers' Compensation Act as currently enacted by the Tennessee General Assembly, specifically including any future enactments by the Tennessee General Assembly involving amendments, deletions, additions, repeals, or any other modification, in any form, of the Workers' Compensation Act.

**Authority:** T.C.A. §§ 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.03 RECEIPT OF INFORMATION AND INVESTIGATION.**

- (1) A Bureau Employee may accept information concerning possible non-compliance or a possible violation of the Workers' Compensation Law or Bureau Rules from another Bureau Employee, from within the Bureau, from within the Department, from other governmental entities or agencies, through an investigation or inspection, from any records of the department and Bureau, or from any lawful source.
- (2) When a Bureau Employee receives information which may reasonably indicate possible non-compliance or a possible violation of the Workers' Compensation Law or Bureau Rules, the Bureau Employee shall document the information, and the Bureau Employee or another Bureau Employee may perform a further investigation or inspection to inquire about and gather additional information concerning the facts and circumstances of the possible non-compliance or possible violation.

**Authority:** T.C.A. §§ 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.04 NOTIFICATION.**

- (1) When the records of the Bureau reasonably indicate that an Employer, Employee, or other person or entity subject to the Workers' Compensation Law has or may have violated or failed to comply with the requirements of the Workers' Compensation Law or Bureau Rules and the Administrator or Administrator's Designee determines that a monetary civil penalty may be warranted by the facts and circumstances found during the investigation or inspection, a Bureau Employee shall notify the appropriate person or entity of the potential monetary civil penalty by any reasonable means. Failure to claim certified mail after attempted delivery is deemed to be delivery of the certified mail.
- (2) The notification shall set out the basis of the proposed penalty and give the Employer, Employee, or other person or entity subject to a penalty the Bureau Employee contact person's name and address and the time within which to respond. The response may be to provide additional information that may alter or amend the proposed penalty and may include inquiry regarding settlement of and terms for paying a proposed penalty.

**Authority:** T.C.A. §§ 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.05 SETTLEMENT.**

- (1) In accordance with applicable statutes and as warranted by the facts and circumstances found during the investigation or inspection or the response to the notice, the Administrator or Administrator's Designee may dismiss the matter and/or enter into a settlement agreement resolving potential penalties with the Employer, Employee, or other person or entity subject to penalties under the Workers' Compensation Law or Bureau Rules. In deciding whether to dismiss the matter and/or to enter into a settlement agreement, the Administrator or Administrator's Designee may take into consideration actions taken by the Employer, Employee, or other person subject to penalties under the Workers' Compensation Law or Bureau Rules to mitigate or correct the circumstances relevant to the potential penalty, non-compliance, or violation.
- (2) All settlement agreements resolving instances of potential violations or potential non-compliance with the Workers' Compensation Law or Bureau Rules shall be set forth in writing and shall be signed by the Employer, Employee, or other person or entity subject to penalties as well as by the Administrator or Administrator's Designee.

**Authority:** T.C.A. §§ 4-5-105, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.06 INITIAL AGENCY DECISION.**

- (1) If an Employer, Employee, or other person or entity subject to the Workers' Compensation Law or Bureau Rules fails to timely respond to a certified letter or other appropriate notification or fails to demonstrate to the satisfaction of the Administrator or Administrator's Designee that a civil monetary penalty is not warranted, the Administrator or Administrator's Designee shall issue an initial Agency Decision assessing civil monetary penalties. Failure to retrieve certified mail after attempted delivery is deemed to be delivery of the certified mail.
- (2) The initial Agency Decision shall notify the Employer, Employee, or other person or entity subject to penalties under the Workers' Compensation Law or Bureau Rules of the right to request a contested case hearing.
- (3) If an Employer, Employee, or other person or entity subject to penalties under the Workers' Compensation Law or Bureau Rules fails to timely request a contested case hearing, the initial Agency Decision shall be deemed a Final Agency Decision, and the Administrator or Administrator's Designee may take additional steps to collect the civil monetary penalty or may refer the penalties for collection to the Tennessee Attorney General. Failure to retrieve certified mail after attempted delivery is deemed to be delivery of the certified mail.

**Authority:** T.C.A. §§ 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.07 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.**

- (1) All pleadings, requests for contested case hearings, requests for pre-hearing conference, and any other materials are required to be filed with the Administrative Hearing Clerk by a time certain as set by these rules and shall be filed by delivering such materials in person or in any other manner, including by mail, so long as they are actually received by the Administrative Hearing Clerk within the required time period. A copy of any filing with the Administrative Hearing Clerk must also contain a statement that the filing party did comply with (4) below.
- (2) Once the Administrative Hearing Clerk has become involved in any contested case

proceeding, all pleadings and other materials required to be filed or submitted prior to the hearing of a contested case shall be stamped with the date of their receipt.

- (3) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 0800-02-13-.15 (3).
- (4) Copies of any and all materials filed with the Administrative Hearing Clerk in a contested case shall also be served upon all parties, or upon their counsel, once counsel has made an appearance. Any such material shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or by hand delivery or other appropriate means.

**Authority:** T.C.A. §§ 4-5-219, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.08 TIME.**

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- (2) Except where otherwise prohibited by law, when an act is required to be done within a specified time, the administrative judge may (a) order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect.

**Authority:** T.C.A. §§ 4-5-219, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.09 APPEAL OF AN INITIAL AGENCY DECISION.**

- (1) Any affected person may appeal an Initial Agency Decision by filing a Request for Contested Case Hearing.
- (2) The Appeal of an Initial Agency Decision shall be filed in writing with the Administrative Hearing Clerk within fifteen (15) days of receipt of the initial Agency Decision assessing a civil penalty.
- (3) The form of such a Request for Contested Case Hearings shall be substantially as shown in Appendix 1.
- (4) The Administrative Hearing Clerk shall be provided originals or legible copies of all pleadings, motions, objections, etc.

**Authority:** T.C.A. §§ 4-5-219, 4-5-223, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:**

Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

**0800-02-13-.10 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.**

- (1) Commencement of Action. A contested case proceeding in the Bureau may be commenced by filing a Request for Contested Case Hearing to appeal an Initial Agency Decision by an affected person.
- (2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the Bureau, which notice shall comply with *T.C.A. §4-5-307 (b)*. The requirement of providing a short and plain statement of the matters asserted may be satisfied with a copy of the Initial Agency Decision having been previously furnished to the affected person prior to the Bureau's receipt of the Request for Contested Case Hearing.
- (3) Supplemented Notice. In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later writings. Requirements of notice may be satisfied during the course of prehearing conferences.
- (4) Filing of Documents. When a contested case is commenced in which an administrative judge will be conducting the proceedings, the Administrative Hearing Clerk will provide the administrative judge with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been filed with or generated by the Bureau. Legible copies may be filed in lieu of originals.
- (5) Answer. The party may respond to the assessment set out in the notice by filing a written answer with the Administrative Hearing Clerk in which the party may:
  - (a) Object to the assessment upon the ground that it does not state acts or omissions upon which the Bureau may proceed.
  - (b) Object on the basis of lack of jurisdiction over the subject matter.
  - (c) Object on the basis of lack of jurisdiction over the person.
  - (d) Object on the basis of insufficiency of the notice preceding the assessment.
  - (e) Object on the basis of insufficiency of service of the assessment.
  - (f) Object on the basis of failure to join an indispensable party.
  - (g) Generally deny all the allegations contained in the assessment or state that he is without knowledge to each and every allegation, both of which shall be deemed a general denial of the basis of the assessment.
  - (h) Admit in part or deny in part allegations in the assessment and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues.
  - (i) Assert any available defense.
- (6) Motion for More Definite Statement. Within two (2) weeks after service of the notice of hearing in a matter, or at any later time with the permission of the administrative judge for good cause shown, a party may file a motion for more definite statement pursuant to *T.C.A. §4-5-307* on the ground that the assessment or other original pleading is so indefinite or uncertain that one cannot identify the transaction or facts at issue or prepare a defense. The administrative judge may order a more definite statement to be provided by a date

certain, not to exceed fifteen (15) days from the date of filing the motion, and may continue the hearing until at least ten (10) days after a more definite statement is provided.

- (7) Amendment to assessment. The Bureau may amend the assessment or other original pleading within two (2) weeks from service of the notice of hearing and before an answer is filed, unless the party requesting the contested case hearing shows to the administrative judge that undue prejudice will result from this amendment. Otherwise the Bureau may only amend the assessment or other original pleading by written consent of the other party or by leave of the administrative judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory violation without original service and running of times applicable to service of the original notice. The administrative judge may grant a continuance if necessary to assure that a party has adequate time to prepare for a hearing in response to an amendment.
- (8) Amendments to Conform to the Evidence - When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the administrative judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The administrative judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments.

**Authority:** T.C.A. §§ 4-5-219, 4-5-301, 4-5-307, 4-5-308, 4-5-312, 4-5-313, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.11 SERVICE OF NOTICE OF HEARING.**

- (1) In any case in which a party has requested a contested case hearing from the Bureau and provided the Bureau with an address, a copy of the notice of hearing shall, within a reasonable time before the hearing, be delivered to the party to be affected at the address provided, by certified or registered mail or equivalent carrier with a return receipt, personal service, or service by the methods set forth in paragraphs (2) and (3) of this rule.
- (2) In any case in which the party to be affected evades or attempts to evade service, service may be made by leaving the notice or a copy thereof at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein, whose name shall appear on the proof of service or return receipt card. Service may also be made by delivering the notice or copy to an agent authorized by appointment or by law to receive service on behalf of the individual served, or by any other method allowed by law in judicial or administrative proceedings.
- (3) Where the law governing the Bureau includes a statute or Rule allowing for service of the notice by mail, without specifying the necessity for a return receipt, and a statute or Rule requiring a person to keep the Bureau informed of his or her current address, service of notice shall be complete upon placing the notice in the mail in the manner specified in the statute or Rule, to the last known address of such person. However, in the event of a motion for default where there is no indication of actual service on a party, the following circumstances will be taken into account in determining whether to grant the default, in addition to whether service was complete as defined above:

- (a) Whether any other attempts at actual service were made;
  - (b) Whether and to what extent actual service is practicable in any given case;
  - (c) What attempts were made to get in contact with the party by telephone or otherwise; and
  - (d) Whether the Bureau has actual knowledge or reason to know that the party may be located elsewhere than the address to which the notice was mailed.
- (4) The methods of service authorized and time limits required pursuant to paragraphs (1) through (3) of this rule shall apply specifically to the request for contested case hearing and the notice of hearing required to be filed pursuant to rule 0800-02-13-.10(2) which is intended to memorialize the commencement of a contested case proceeding as described by rule 0800-02-13-.10(1). All other documents including, but not limited to, supplemented notice pursuant to rule 0800-02-13-.10(3), and notices of continuances that are ordered or required by statute or rule to be served during the course of the resulting contested case proceeding shall not be required to be served by return receipt mail or its equivalent, or by personal service and may be accomplished upon agreement of the parties by electronic mail or other paperless delivery systems.

**Authority:** T.C.A. §§ 4-5-307, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.12 REPRESENTATION BY COUNSEL.**

- (1) Any party to a contested case hearing may be advised and represented, at the party's own expense, by a licensed attorney.
- (2) Any party to a contested case may represent themselves or, in the case of a corporation or other artificial person, may participate through a duly authorized representative such as an officer, director or appropriate employee as provided in (3) below.
- (3) A party to a contested case hearing may not be represented by a non-attorney, except in any situation where federal law so requires or state law specifically so permits.
- (4) The notice of hearing shall notify all parties in a contested case hearing of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (5) Entry of an appearance by counsel shall be made by:
  - (a) the filing of pleadings;
  - (b) the filing of a formal or informal notice of appearance; or
  - (c) appearance as counsel at a prehearing conference or a hearing.
- (6) After appearance of counsel has been made, all pleadings, motions, and other documents shall be served upon such counsel.
- (7) Counsel wishing to withdraw shall give written notice by a motion to withdraw to their client, the attorney representing the Bureau in the contested case, and the Administrative Hearing Clerk. The administrative judge may rule on the written motion or may direct a hearing by

teleconference *sua sponte* or by request of any affected party.

- (8) Out-of-state counsel shall comply with *T.C.A. § 23-3-103(a)* and Supreme Court Rule 19, except that the affidavit referred to in Supreme Court Rule 19 shall be filed with the Administrative Hearing Clerk, with a copy to the Bureau Attorney in the matter in which counsel wishes to appear.

**Authority:** *T.C.A. §§ 4-5-219, 4-5-301(b), 4-5-305, 4-5-312, 23-3-103(a), 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801.* **Administrative History:** *Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.*

#### **0800-02-13-.13 PREHEARING MOTIONS.**

- (1) Scope - This rule applies to all motions made prior to a hearing on the merits of a contested case, except that discovery-related motions shall not be subject to Interlocutory Review. This rule does not preclude the administrative judge from convening a hearing or converting a prehearing conference to a hearing at any time pursuant to *T.C.A. § 4-5-306 (b)* to consider any question of law.
- (2) Motions - Parties to a contested case are encouraged to resolve matters on an informal basis; however, if efforts at informal resolutions fail, any party may request relief in the form of a motion by serving a copy on all parties and by filing the motion with the Administrative Hearing Clerk. Any such motion shall set forth a request for all relief sought, and shall set forth grounds which entitle the moving party to relief.
- (3) Time Limits; Argument - A party may request oral argument on a motion; however, a brief memorandum of law submitted with the motion is preferable to oral argument. Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the administrative judge.
- (4) Oral Argument - If oral argument is requested, the motion may be argued by conference telephone call or other reasonable means.
- (5) Affidavits; Briefs and Supporting Statements
  - (a) Motions and responses thereto shall be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses thereto shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under *T.C.A. § 4-5-313*, and to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto.
  - (b) In the discretion of the administrative judge, a party or parties may be required to submit briefs or supporting statements pursuant to a schedule established by the administrative judge.
- (6) Disposition of Motions; Drafting the Order
  - (a) When a prehearing motion has been made in writing or orally, the administrative judge shall render a decision on the motion by issuing an order or by instructing the prevailing party to prepare and submit an order in accordance with (b) below.
  - (b) The prevailing party on any motion shall draft an appropriate order, unless waived by

the administrative judge. This order shall be submitted to the administrative judge through the Administrative Hearing Clerk electronically in Microsoft Word format within five (5) days of the ruling on the motion, or as otherwise ordered by the administrative judge.

- (c) The administrative judge after signing any order shall cause the order to be served forthwith upon the parties.

**Authority:** T.C.A. §§ 4-5-219, 4-5-301(b), 4-5-306, 4-5-308, 4-5-312, 4-5-313, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.14 CONTINUANCES.**

- (1) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the administrative judge as soon as practicable.
- (2) Any case may be continued by mutual consent of the parties when approved by the administrative judge or sua sponte upon the administrative judge's own initiative.

**Authority:** T.C.A. §§ 4-5-219, 4-5-301, 4-5-308, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### **0800-02-13-.15 DISCOVERY.**

- (1) Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.
- (2) Upon motion of party or upon the administrative judge's own motion, the administrative judge may order that the discovery be completed by a certain date.
- (3) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion shall:
  - (a) quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a disposition which shows the question and objection or response if applicable;
  - (b) state the reason or reasons supporting the motion; and
  - (c) be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- (4) The administrative judge shall decide any motion relating to discovery under the Administrative Procedures Act, T.C.A. § 4-5-101 et seq., or the Tennessee Rules of Civil Procedure. The procedures for the consideration of motion are set forth at Rule 0800-02-13-.13.

- (5) Other than as provided in subsection (3) above, discovery materials need not be filed with the Administrative Hearing Clerk.

**Authority:** T.C.A. §§ 4-5-219, 4-5-311, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801.

**Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

**0800-02-13-.16 INTERVENTION.**

- (1) All petitions for leave to intervene in a pending contested case shall be filed in accordance with T.C.A. § 4-5-310, and shall state any and all facts and legal theories under which the petitioner claims to be qualified as an intervenor.
- (2) In deciding whether to grant a petition to intervene, the following factors shall be considered:
- (a) Whether the petitioner claims an interest relating to the case and that he or she is so situated that the disposition of the case may as a practical matter impair or impede his ability to protect that interest;
  - (b) Whether the petitioner's claim and the main case have a question of law or fact in common;
  - (c) Whether prospective intervenor interests are adequately represented;
  - (d) Whether admittance of a new party will render the hearing unmanageable or interfere with the interests of justice and the orderly and prompt conduct of the proceedings.
- (3) In deciding a petition to intervene, the administrative judge may impose conditions upon the intervenor's participation in the proceedings as set forth at T.C.A. § 4-5-310(c).
- (4) When the validity of a statute of this state or an administrative rule or regulation of this state is drawn in question in any case, the administrative judge shall require that notice be given to the office of the Tennessee attorney general, specifying the pertinent statute, rule or regulation, and the attorney general's office will be permitted to intervene or to serve as co-counsel with the state's counsel, if any.

**Authority:** T.C.A. §§ 4-5-219, 4-5-301(b), 4-5-310, 4-5-312, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801.

**Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

**0800-02-13-.17 SUBPOENA.**

The administrative judge at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

Parties shall complete and be responsible for service of their own subpoenas.

**Authority:** T.C.A. §§ 4-5-219, 4-5-311, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

## 0800-02-13-.18 DEFAULT AND UNCONTESTED PROCEEDINGS.

### (1) Default.

- (a) The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to *T.C.A. § 4-5-309*. Failure to comply with any lawful order of the administrative judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding of default.
- (b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.
- (c) If the notice is held to be adequate the administrative judge hearing a case shall grant or deny the motion for default, taking into consideration the criteria listed in rule 0800-02-13-.11, where appropriate. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.
- (d) The administrative judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than ten (10) days after service of such notice of default, may file a motion for reconsideration under *T.C.A. §4- 5-317*, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to *T.C.A. §4-5-317*.

### (2) Effect of Entry Default.

- (a) Upon entry into the record of the default of the petitioner at a contested case hearing, the penalty assessed shall be sustained as to all issues on which the petitioner bears the burden of proof, unless the proceedings are adjourned.
- (b) Upon entry into the record of the default of the respondent at a contested case hearing, the matter shall be tried as uncontested as to such respondent, unless the proceedings are adjourned.

- (3) Uncontested Proceeding. When the matter is tried as uncontested, the petitioner has the burden of proof of establishing its allegations by a preponderance of the evidence presented.

**Authority:** *T.C.A. §§ 4-5-219, 4-5-309, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. Administrative History: Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.*

## 0800-02-13-.19 EVIDENCE IN HEARINGS.

In all Bureau hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the administrative law judge, or at the motion of any party, witnesses may be excluded prior to their testimony. The standard for admissibility of evidence is set forth at *T.C.A. § 4-5-313*.

**Authority:** *T.C.A. §§ 4-5-219, 4-5-312, 4-5-313, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. Administrative History:*

Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

**0800-02-13-.20 CLERICAL MISTAKES.**

Prior to any judicial review being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions may be corrected by the administrative judge at any time on the initiative of the administrative judge or on motion of any party and after such notice, if any, as the administrative judge may require. The entry of a corrected order will not affect the dates of the original appeal time period.

**Authority:** T.C.A. §§ 4-5-219, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

**0800-02-13-.21 CODE OF JUDICIAL CONDUCT.**

Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all administrative judges and hearing officers of the State of Tennessee. However, any complaints regarding any individual administrative judge's or hearing officer's conduct under the code shall be made to the chief administrative judge or hearing officer or other comparable entity with supervisory authority over the administrative judge or hearing officer, and any complaints about the chief administrative judge or hearing officer shall be made to the appointing authority.

**Authority:** T.C.A. §§ 4-5-321, 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

\* 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 Bureau of Workers' Compensation (board/commission/ other authority) on 1/25/17 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/21/16

Rulemaking Hearing(s) Conducted on: (add more dates). 12/16/16

Date: 1/25/17

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator



Subscribed and sworn to before me on: January 25, 2017

Notary Public Signature: Shara Hamlett

My commission expires on: 2/19/20

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.

Herbert H. Slatery III

Herbert H. Slatery III  
Attorney General and Reporter

3/27/2017

Date

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Filed with the Department of State on: 3/29/17

Effective on: 6/27/17

Tre Hargett

Tre Hargett  
Secretary of State

## Public Hearing Comments

Comment: There should be a time limit or statute of limitations on reporting noncompliance or a violation of the workers' compensation law or rules.

Response: The bureau disagrees with the comment. There is no statutory authority for a statute of limitations on penalties for violation of the Tennessee Workers' Compensation law, and the bureau does not have statutory authority to promulgate a rule regarding statutes of limitations. Further, the Uninsured Employer Fund is already limited in collection time frames by Tenn. Code Ann. Section 50-6-412.

Comment: There should be a definition of "compliance" or "noncompliance".

Response: The bureau neither agrees nor disagrees with the comment, but due to the various penalties associated with violations of the Tennessee Workers' Compensation law and rules, it would be impractical to define "compliance" or "noncompliance" for all current and future examples of failure to act in accordance with those directives. Ultimately, an administrative law judge will have the authority to determine on a case-by-case basis whether there was compliance with the law and rules.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking 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. It is noted that the workers' compensation statutes provide some exemptions, such as fewer than 5 employees, agricultural workers, etc.). 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 Bureau of Workers' Compensation and timely medical treatment for injured workers, 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 have little, if any, impact on local governments.

**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 rules of the bureau of workers' compensation relating to processes in the assessment of penalties and providing contested case hearings are being amended to conform to and accommodate relevant statutory changes as follows:

- The Penalty Program rules and the Uninsured Employer's Fund rules are being replaced by the Procedures for Penalty Assessments and Hearing Contested Cases rules using the chapter formerly called Penalty Program.
- Now all penalties in each program of the bureau of worker' compensation will follow a single base procedure.
- The statutory changes modify the procedures by which the bureau provides a required contested case hearing, and the procedures are an adaptation of the Secretary of State rules as set forth in Tenn. Code Ann. § 4-5-219.

- (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;

See Tenn. Code Ann. § 50-6-118 and Tenn. Code Ann. § 4-5-219.

- (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 who are subject to a penalty assessment under the Tennessee workers' compensation law will be affected by adoption or rejection of these rules.

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

None

- (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;

The overall effect will have little fiscal impact upon state or local government.

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

- (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

Bureau of Workers' Compensation  
220 French Landing Drive  
Floor 1-B  
Nashville, TN 37243  
(615) 532-0179  
troy.haley@tn.gov

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

None

**RULES  
OF  
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 0800-02-13  
PENALTY PROGRAM**

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~~**0800-02-13-.01 DEFINITIONS.** The following definitions are for the purposes of this chapter only.~~

- ~~(1) "Administrative Appeal" means after notice and an opportunity for a hearing, a contested hearing to review an Agency Decision wherein the Division has assessed a civil penalty.~~
- ~~(2) "Administrator" means the Administrator of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.~~
- ~~(3) "Agency Decision" means a ruling which disposes of a petition, contested case hearing, appeal, or other request for the Division to review the legitimacy of issuing a penalty.~~
- ~~(4) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development, the Commissioner's Designee, or any other agency member appointed by the Commissioner to hear a contested case under the Tennessee Uniform Administrative Procedures Act.~~
- ~~(5) "Commissioner's Designee" or "Designee" means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.~~
- ~~(6) "Department" means the Tennessee Department of Labor and Workforce Development.~~
- ~~(7) "Division" means the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.~~
- ~~(8) "Employee" shall have the same meaning as set forth in T.C.A. Section 50-6-102.~~
- ~~(9) "Employer" shall have the same meaning as set forth in T.C.A. Section 50-6-102.~~
- ~~(10) "Insurer" means an employer's workers' compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of T.C.A. Section 50-6-405 of Chapter 0780-1-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.~~

~~(Rule 0800-02-13-.01, continued)~~

- ~~(11) "Judicial Review" means a petition to Davidson County Chancery Court to review a Final Order issued by the Commissioner.~~
- ~~(12) "Records of the Department" or "Department Records" means any data, including electronic, computer-generated, telephonic, or on paper, used in the business of the Department and obtained by any employee of the Department:~~
- ~~(a) from within the Department~~
  - ~~(b) through an investigation; or~~
  - ~~(c) from any other lawful source.~~
- ~~(13) "Worker" means an employee or injured worker.~~
- ~~(14) "Workers' Compensation Law" means the Workers' Compensation Act as currently enacted by the Tennessee General Assembly, specifically including any future enactments by the Tennessee General Assembly involving amendments, deletions, additions, repeals, or any other modification, in any form of the Workers' Compensation Act.~~
- ~~(15) "Workers' Compensation Specialist" or "Specialist" shall mean a departmental employee who provides information and communication services regarding workers' compensation for employees and employers and who may assess penalties for failure to timely pay workers' compensation benefits or other violations of the Workers' Compensation Law or the General Rules of the Workers' Compensation Division of Tennessee.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

~~**0800-02-13-.02 INVESTIGATION OF UNPAID OR UNTIMELY PAID WORKERS' COMPENSATION BENEFITS.**~~

- ~~(1) When investigating whether to assess a civil penalty for unpaid or untimely paid benefits, a Specialist may inquire into instances where an Employer or Insurer:~~
- ~~(a) reasonably appears to be subject to the Workers' Compensation Law; and~~
  - ~~(b) has or may have failed to pay, or has or may have failed to timely pay, workers' compensation benefits to an employee as required by the Workers' Compensation Law.~~
- ~~(2) When an investigation reasonably indicates that an employer is subject to the Workers' Compensation Law and that the employer or insurer has failed to pay or timely pay all workers' compensation benefits due to an employee as required by the Workers' Compensation Law, the Department shall so notify the employer or the insurer.~~
- ~~(3) The notice shall advise the employer or insurer of the potential civil penalty which may be assessed against the employer or insurer if it is determined that the employer or insurer has failed to pay or timely pay all workers' compensation benefits due to an employee as required by the Workers' Compensation Law.~~
- ~~(4) The employer or insurer shall have seven (7) days, excluding Saturdays, Sundays and holidays, from the date of the notice to respond and provide to the Department:~~

(Rule 0800-02-13-.02, continued)

- ~~(a) — documented proof that the employer or insurer timely paid all workers' compensation benefits to which an employee is or was entitled under the Workers' Compensation Law; or~~
- ~~(b) — a verified sworn affidavit, with supporting documentation, that either:~~
- ~~1. — no workers' compensation benefits are or were owed to an employee under the Workers' Compensation Law; or~~
  - ~~2. — all workers' compensation benefits owed to an employee under the Workers' Compensation Law have been and continue to be timely paid to the employee; or~~
  - ~~3. — the employer or insurer has acted diligently, as determined by the Commissioner or Commissioner's Designee, to obtain necessary information to process the claim and has not been able to obtain it.~~
- ~~(5) — In deciding whether a benefit is unpaid or untimely paid, compensation shall be deemed promptly paid if the first payment is made fifteen (15) calendar days after the employer has knowledge of the injury and every subsequent payment is made within consecutive fifteen (15) calendar day increments, until all temporary benefits have been paid. A benefit is paid on the date the employer or insurer places the benefits into the mail for delivery to the injured employee. After twenty (20) calendar days from the date of the employer's knowledge of any disability that would qualify for benefits, the twenty-five percent (25%) penalty will attach to all payments unpaid or untimely paid.~~

~~**Authority:** T.C.A. §§ 50-6-110, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-238, 50-6-244, 50-6-412, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006.~~

#### ~~0800-02-13-.03 — DEPARTMENTAL ACTIONS.~~

- ~~(1) — The Division shall:~~
- ~~(a) — not issue a civil penalty if either:~~
- ~~1. — the employer or insurer had at all relevant times timely paid to the employee all workers' compensation benefits required by the Workers' Compensation Law; or~~
  - ~~2. — the employer or insurer does not owe any workers' compensation benefits under the Workers' Compensation Law; or~~
  - ~~3. — in the sole discretion of the Commissioner or the Commissioner's Designee, the Commissioner or Commissioner's Designee finds that the employer or insurer has acted diligently to obtain necessary information to process the claim and has not been able to obtain it.~~
- ~~(b) — issue an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law if:~~
- ~~1. — the employer is subject to the Workers' Compensation Law; and~~
  - ~~2. — the employer or insurer is liable to pay workers' compensation benefits to an employee for a compensable work-related injury under the Workers' Compensation Law; and~~

~~(Rule 0800-02-13-.03, continued)~~

- ~~3. — the employer or insurer has failed for any relevant period of time to timely pay all workers' compensation benefits as required by the Workers' Compensation Law.~~
- ~~(2) — If the Division issues an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law, the Agency Decision shall require that the civil penalty be made payable by the employer or insurer directly to the employee to whom the workers' compensation benefits are owed.~~
- ~~(3) — The Commissioner, or the Commissioner's Designee, shall have the sole discretion not to issue a penalty even if the technical requirements of subparagraph (1)(b) are satisfied.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-238, 50-6-244, 50-6-412, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed April 26, 2006; effective July 10, 2006.~~

~~**0800-02-13-.04 ADMINISTRATIVE APPEAL OF AN AGENCY DECISION ASSESSING A CIVIL PENALTY FOR UNPAID OR UNTIMELY PAID WORKERS' COMPENSATION BENEFITS.**~~

- ~~(1) — An employer or insurer assessed a civil penalty for unpaid or untimely paid worker's compensation benefits has the right to file, in writing, with a copy to the employee or their representative, a petition for informal reconsideration by the Commissioner or Commissioner's Designee, other than the specialist who issued the Agency Decision, to determine if the civil penalty should have been assessed. However, the filing of the petition shall not be a prerequisite for requesting a contested case hearing, and the fifteen calendar day period for a party to request a contested case hearing shall not be tolled by the filing of a petition for informal reconsideration. The petition for informal reconsideration shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid workers' compensation benefits and shall be filed with the Designee who issued the Agency Decision assessing the civil penalty within seven (7) calendar days of the date upon which the Agency Decision was issued.~~
- ~~(2) — An employer or insurer assessed a civil penalty for unpaid or untimely paid workers' compensation benefits has the right to request a contested case hearing to determine if the civil penalty should have been assessed.~~
- ~~(3) — The request for a hearing shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid worker' compensation benefits.~~
- ~~(4) — Any request for a hearing shall be filed with the Designee who issued the Agency Decision assessing the penalty within fifteen (15) calendar days of the date upon which the Agency Decision was issued. Failure to file a request for a hearing within fifteen (15) calendar days of the date of entry of the agency decision shall result in the Agency Decision becoming a Final Order not subject to further review.~~
- ~~(5) — The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have the authority to hear the matter as a contested case and determine if the civil penalty assessed for unpaid or untimely paid workers' compensation benefits should have been assessed.~~
- ~~(6) — Upon receipt of a timely filed request for a hearing, the Commissioner shall issue a Notice of Hearing to the employer or insurer.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-238, 50-6-244, 50-6-412, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed April 26, 2006; effective July 10, 2006.~~

**0800-02-13-.05 — NOTICE OF HEARING.**

- (1) ~~The Notice of Hearing shall specify:~~
  - (a) ~~the time, place, and nature of the hearing;~~
  - (b) ~~the right of the parties to be represented by counsel;~~
  - (c) ~~the legal authority and jurisdiction under which the hearing is to be held;~~
  - (d) ~~civil penalties subject to the requested hearing; and~~
  - (e) ~~a short and plain statement of the matters asserted.~~
- (2) ~~The Notice of Hearing shall be sent to the employer's and/or insurer's last known address, according to department records.~~
- (3) ~~The Division shall schedule the hearing in a timely manner, not to exceed thirty (30) business days from the date on which the employer or insurer filed the request for a hearing.~~

**Authority:** ~~T.C.A. §§ 4-5-307, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

**0800-02-13-.06 — DISCOVERY.**

- (1) ~~Any party to a contested case shall have the right to reasonable discovery pursuant to T.C.A. §4-5-311.~~

**Authority:** ~~T.C.A. §§ 4-5-311, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

**0800-02-13-.07 — CONTINUANCES.**

- (1) ~~The Commissioner shall strongly discourage the continuance of a hearing.~~
- (2) ~~All requests for continuances shall be made in writing as soon as reasonably and practicably possible prior to the scheduled date of the hearing. Such requests may only be granted at the discretion of the Commissioner and only for good cause shown. In addition, the Commissioner may grant a continuance during the course of a hearing in order to secure all of the evidence which the Commissioner deems necessary for a fair hearing to all parties of interest or at any time for other good cause shown.~~

**Authority:** ~~T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

**0800-02-13-.08 — EFFECT OF EMPLOYER'S FAILURE TO APPEAR AT HEARING.**

- (1) ~~Failure of an employer or insurer to appear at a scheduled hearing before the Commissioner after due notice thereof may result in a Default Judgment being entered against such employer or insurer.~~
- (2) ~~In such cases as described in paragraph (1), the Commissioner shall render a decision on the basis of whatever evidence is submitted by the Division.~~

(Rule 0800-02-13-.08, continued)

~~Authority: T.C.A. §§ 4-5-309, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). Administrative History: Original rule filed October 13, 2004; effective February 28, 2005.~~

**~~0800-02-13-.09 REPRESENTATION AT THE HEARING.~~**

- ~~(1) Each individual or entity may be represented at the hearing as follows:~~
- ~~(a) Any individual receiving due notice to appear at a hearing may appear at the hearing in his or her own behalf or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.~~
  - ~~(b) Any general partnership receiving due notice to appear at a hearing may appear at the hearing by any of its partners with written authority from all other partners or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.~~
  - ~~(c) Any corporation, limited partnership, limited liability company, state-certified business entity, or any other entity not specifically referenced in this rule 0800-02-13-.09 which received due notice to appear at a hearing shall appear at the hearing only by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.~~
- ~~(2) The Commissioner, in his or her discretion, may refuse to allow any person to continue representation or participation in any proceeding before the Commissioner if the Commissioner finds said person guilty of disorderly, disruptive, or unethical conduct during the course of the hearing.~~
- ~~(a) Any attorney seeking to appear for or to represent a party to any proceeding before the Commissioner or any other person seeking to assist in the appearance of a party to such proceeding shall cause to be filed, not later than the date of the hearing, a written notice of appearance. Such written notice of appearance shall specify sufficient information necessary to identify the particular proceeding involved and which must include, at least:
 
    - ~~1. the name and address of the employer or insurer; and~~
    - ~~2. the name, address, telephone and facsimile numbers, and BPR number of the attorney or other person filing the notice of appearance.~~~~
- ~~(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~~
- ~~(4) Any notice of appearance received by the Commissioner shall be deemed as having been filed for the purpose of any further proceeding in the same matter before the Commissioner.~~
- ~~(a) After the expiration of three (3) days from the date of receipt of a notice of appearance, any notice of hearing, decision, or other hearing-related documentation subsequently~~

(Rule 0800-02-13-.09, continued)

~~mailed by the Commissioner shall be mailed to the attorney or other person who has on file a properly executed notice of appearance.~~

- ~~(5) Any requests for copies of other documents in any pending matter before the Commissioner shall be subject to a reasonable copy fee.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

#### ~~0800-02-13-.10 PRE-HEARING MATTERS.~~

- ~~(1) The names and addresses of all witnesses who may be called at a hearing and a list of all proposed exhibits shall be both filed with the Commissioner and served on opposing counsel at least seven (7) calendar days prior to the date of the hearing.~~
- ~~(2) Copies of affidavits which may be used at a hearing shall be furnished to opposing counsel at least ten (10) calendar days prior to the date of the hearing.~~
- ~~(3) Copies of all exhibits which are proposed to be offered shall be made available for viewing by opposing counsel upon request made no less than five (5) calendar days prior to the date of the hearing.~~
- ~~(4) Either the employer/employer's attorney, insurer/insurer's attorney, or a staff attorney from the Department may request a pre-hearing conference by telephone or in person with the Commissioner. A request for a pre-hearing conference shall be made at least seven (7) calendar days prior to the date of hearing. The Commissioner may, in his or her discretion, grant or decline to grant a request for a pre-hearing conference, limit or expand the matters to be discussed at a pre-hearing conference, or otherwise discuss how to facilitate the orderly process of the hearing. The party requesting the conference shall be responsible for arranging the conference and coordinating the conference with opposing counsel. All discussions with the Commissioner at the pre-hearing conference shall include both the employer/employer's attorney, or the insurer/insurer's attorney and a staff attorney from the Department. The Commissioner may, on his or her own initiative, schedule a pre-hearing conference by telephone or in person with the employer/employer's attorney, or the insurer/insurer's attorney, and the staff attorney from the Department.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-208, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

#### ~~0800-02-13-.11 ORDER OF PROCEEDINGS AT THE HEARING.~~

- ~~(1) The agency shall admit and give probative effect to evidence admissible in a Court and may also admit evidence which preserves probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and shall exclude evidence which in its judgment is irrelevant, immaterial, or unduly repetitious.~~
- ~~(2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency.~~
- ~~(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.~~

(Rule 0800-02-13-.11, continued)

- ~~(4) — Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

#### ~~0800-02-13-.12 — SCOPE OF EXAMINATION AND RULES OF EVIDENCE.~~

- ~~(1) — In any hearing before the Commissioner, witnesses may be examined regarding any matter, not privileged, which is relevant and material to the issues to be determined at such hearing. The rules of evidence applicable at such hearing shall be as provided for in T.C.A. Section 4-5-313.~~
- ~~(2) — The Commissioner may rule on and decide any question concerning the admissibility of evidence or procedural questions of law.~~
- ~~(a) — It shall not be grounds for objection that testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence;~~
- ~~(b) — It shall not be grounds for objection that hearsay testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.~~
- ~~(3) — If an objection to proffered evidence is sustained by the Commissioner, the examining party or attorney may make a specific offer of what the examining party or attorney expects to prove by that evidence.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

#### ~~0800-02-13-.13 — BURDEN OF PROOF.~~

- ~~(1) — The burden of proof at the hearing shall be on the employer or insurer, to prove, by a preponderance of the evidence, that the employer and/or insurer is either not subject to the Workers' Compensation laws or has timely paid all workers' compensation benefits due to an employee.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

#### ~~0800-02-13-.14 — DETERMINATIONS PURSUANT TO THE HEARING.~~

- ~~(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 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 Order that all civil penalties assessed against the employer or insurer are void.~~

(Rule 0800-02-13-.14, continued)

- ~~(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 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, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

#### ~~0800-02-13-.15 REVIEW OF INITIAL ORDER.~~

- ~~(1) The employer or insurer shall have the right to file a petition for the Commissioner to review the Initial Order, pursuant to the Tennessee Uniform Administrative Procedures Act.~~
- ~~(2) Any petition to review the Initial Order must be filed in writing within fifteen (15) calendar days of the date of entry of the Initial Order. Failure to file a petition to review the Initial Order within fifteen (15) calendar days of the date of entry of the Initial Order shall result in the Initial Order becoming a Final Order not subject to further review.~~
- ~~(3) Any petition to review the Initial Order must state its basis and clearly identify the issue(s) to be reviewed.~~
- ~~(4) The Commissioner shall conduct said review by considering the parties' review briefs, the contested hearing transcript, and the record as a whole. The Commissioner will not hear oral argument unless specifically requested by the Commissioner. A party may submit new evidence only if such new evidence did not exist or was not available at the time of the contested hearing.~~
- ~~(5) If no action is taken by the Commissioner within twenty (20) calendar days of filing of the petition for review, the petition is deemed denied and the Initial Order shall become the Final Order. Otherwise, the Commissioner shall consider the petition for review of the Initial Order and enter a Final Order or remand the matter for further proceedings at the contested hearing level with instruction.~~

~~**Authority:** T.C.A. §§ 4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed March 25, 2013; effective June 23, 2013.~~

#### ~~0800-02-13-.16 JUDICIAL REVIEW.~~

- ~~(1) The employer or insurer has sixty (60) calendar days to file notice of appeal in the Davidson County Chancery Court for judicial review of a Final Order issued by the Commissioner.~~

~~**Authority:** T.C.A. §§ 4-5-322, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005.~~

#### ~~0800-02-13-.17 PROCEDURE IN OTHER DIVISIONAL PENALTY ASSESSMENTS.~~

- ~~(1) The procedures contained in these Rules are applicable to other civil penalty assessments provided for in Title 50, Chapter 6 and the General Rules of the Workers' Compensation Division of Tennessee. These procedures include, but are not limited to, notice to the alleged violator of the alleged violation and the potential civil penalty(s), right to a contested case~~

(Rule 0800-02-13-.17, continued)

~~hearing, right to petition to review an Initial Order, and the appeal of a Final Order to Davidson County Chancery Court.~~

- ~~(2) Whenever the Division is assessing a civil penalty, the Division has the authority to hear any dispute as to the assessment of the civil penalty as a contested case and the authority to issue Agency Decisions, Initial Orders, and Final Orders assessing civil penalties and/or deciding reviews or appeals of the assessment of civil penalties.~~
- ~~(3) Whenever the Division is assessing a civil penalty pursuant to the Workers' Compensation statutes or General Rules of the Workers' Compensation Division of Tennessee, the potential violator shall have the burden of proving by a preponderance of the evidence that the civil penalty should not have been assessed.~~
- ~~(4) When assessing civil penalties pursuant to, but not limited to, T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, and 50-6-244 and any penalties provided for in the General Rules of the Workers' Compensation Division of Tennessee, the Division may follow the procedures outlined in paragraph (1), has the authority outlined in paragraph (2), and the violator has the burden of proof outlined in paragraph (3).~~

**Authority:** ~~T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).~~ **Administrative History:** ~~Original rule filed October 13, 2004; effective February 28, 2005.~~

**RULES  
OF  
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 0800-02-15  
UNINSURED EMPLOYERS FUND**

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~~0800-02-15-.01 DEFINITIONS. The following definitions are for the purposes of this chapter only:~~

- ~~(1) "Administrator" means the Administrator of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.~~
- ~~(2) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.~~
- ~~(3) "Department" means the Tennessee Department of Labor and Workforce Development.~~
- ~~(4) "Designee" means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.~~
- ~~(5) "Employer" shall have the same meaning as set forth in TCA Section 50-6-102 and additionally shall include an individual, firm, business, corporation, partnership, limited liability company, association, or any other entity which an employee of the Department reasonably believes may be an Employer as defined in TCA Section 50-6-102.~~
- ~~(6) "Fund" means the Uninsured Employers Fund.~~
- ~~(7) "Inspection" means any inspection of an Employer's factory, plant, establishment, construction site or other area, workplace, or environment where work is performed by at least one person who is or may be an employee of an employer.~~
- ~~(8) "Investigation" means reasonable efforts made by a Department employee to find out relevant information or information reasonably calculated to lead to the discovery of relevant information necessary to determine whether an employer is subject to the Workers' Compensation Law, to determine whether an employer has secured payment of compensation pursuant to the Workers' Compensation Law, or to determine the amount of any monetary penalty which may be assessed against an employer for failure to secure payment of compensation pursuant to the Workers' Compensation Law. The reasonable efforts used may include the use of a computer, sending and receiving electronic mail, making and reviewing records, both computer generated and on paper, including reviewing other records of the Department, from other governmental entities and agencies, or from any other lawful source, making and receiving telephone calls, sending and receiving facsimile transmissions, writing and receiving correspondence, completing written reports, filling out~~

(Rule 0800-02-15-.01, continued)

~~and receiving forms, serving subpoenas and reviewing items identified by subpoenas, and making inspections, re-inspections, or follow-up inspections.~~

- ~~(9) "Investigator" or "Workers' Compensation Investigator" means a person authorized by the Commissioner to conduct investigations.~~
- ~~(10) "Records of the Department" or "Department Records" means any data, including electronic, computer-generated, telephonic, or on paper, used in the business of the Department and obtained by any employee of the Department:~~
- ~~(a) from within the Department;~~
  - ~~(b) from other governmental entities or agencies;~~
  - ~~(c) through an investigation; or~~
  - ~~(d) from any other lawful source.~~
- ~~(11) "Secure payment of compensation" shall mean complete compliance with all coverage requirements of Tenn. Code Ann. § 50-6-405 at all times required by the Workers' Compensation Law.~~
- ~~(12) "Worker" means an employee or injured worker.~~
- ~~(13) "Workers' Compensation Law" means the Workers' Compensation Act as currently enacted by the Tennessee General Assembly.~~

~~**Authority:** T.C.A. §§ 4-5-202, 50-6-102, 50-6-118, 50-6-233, 50-6-405 and 50-6-412. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002. Amendment filed May 21, 2007; effective September 28, 2007.~~

#### ~~0800-02-15-.02 INVESTIGATION OF NON-COMPLIANCE.~~

- ~~(1) Investigators may conduct an investigation or inquire into instances where an employer:~~
- ~~(a) reasonably appears to be subject to the Workers' Compensation Law; and~~
  - ~~(b) has or may have failed to secure payment of compensation as required by the Workers' Compensation Law~~
- ~~(2) When the records of the Department reasonably indicate, or when the Department's investigation of an Employer reasonably indicates, that an employer is subject to the Workers' Compensation Law and has failed to secure payment of compensation as required by the Workers' Compensation Law, the Department shall notify the employer by certified letter, return receipt requested.~~
- ~~(3) The certified letter shall:~~
- ~~(a) advise the employer of the monetary penalties which may be assessed against the employer if it is determined by the Commissioner or Commissioner's designee that the employer has failed to secure payment of compensation as required by the Workers' Compensation Law; and~~
  - ~~(b) advise the employer of the criminal penalties to which the employer may be subject for failure to secure payment of compensation as required by the Workers' Compensation Law.~~

(Rule 0800-02-15-.02, continued)

- ~~(4) — The employer shall have ten (10) days, excluding Saturdays, Sundays and holidays, from the receipt of the certified letter to respond to and to provide to the Department:~~
- ~~(a) — documented proof that the employer has secured, prior to the receipt of the certified letter, payment of compensation as required by the Workers' Compensation Law; or~~
  - ~~(b) — a verifiable sworn affidavit, with supporting documentation, that the employer is exempt from the Workers' Compensation Law.~~
- ~~(5) — Investigators may conduct an investigation to verify the accuracy of the statements made or the facts set forth:~~
- ~~(a) — in an affidavit provided by an employer;~~
  - ~~(b) — in documentation supporting an affidavit provided by an employer; or~~
  - ~~(c) — in any other method of proof provided by an employer.~~

~~Authority: — T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. — Administrative History: — Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.03 — DEPARTMENTAL ACTIONS.~~

- ~~(1) — The Commissioner or Commissioner's designee shall:~~
- ~~(a) — issue no monetary penalty if the Commissioner or Commissioner's designee determines either:~~
    - ~~1. — that the employer had at all relevant times secured payment of compensation as required by the Workers' Compensation Law before receiving the certified letter; or~~
    - ~~2. — that the employer is exempt from the Workers' Compensation Law and has been exempt from the Workers' Compensation Law at all relevant times;~~
  - ~~(b) — issue a monetary penalty to the employer equal to one and one-half times the average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), if the Commissioner or Commissioner's designee determines:~~
    - ~~1. — that the employer is subject to the Workers' Compensation Law;~~
    - ~~2. — that the employer has failed for any relevant period of time to secure payment of compensation as required by the Workers' Compensation Law; and~~
    - ~~3. — that the employer has secured payment of compensation since the date of receipt of the certified letter described in Rule 0800-02-15-.02; or~~
  - ~~(c) — issue a "Show Cause Order and Notice of Hearing" if either:~~
    - ~~1. — the employer does not timely respond to the certified letter; or~~
    - ~~2. — investigators or employees of the Department cannot verify the accuracy of the statements made or the facts set forth in the sworn affidavit provided by the~~

(Rule 0800-02-15-.03, continued)

~~employer, in documentation supporting an affidavit provided by an employer, or in any other method of proof provided by an employer.~~

- ~~(2) If the Commissioner or Commissioner's designee issues a "Show Cause Order and Notice of Hearing", the Commissioner or Commissioner's designee shall:~~
- ~~(a) assess against the employer a first monetary penalty equal to one and one half times the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3); and~~
  - ~~(b) assess against the employer a second monetary penalty equal to the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3).~~

~~**Authority:** T.C.A. §§50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.04 MONETARY PENALTIES.~~

- ~~(1) All monetary penalties assessed against an employer by the Commissioner or Commissioner's designee which are based on the average yearly workers' compensation premium shall be calculated by utilizing the appropriate assigned risk plan advisory prospective loss cost and multiplier for an employer in the business in which the employer is employed as of the date as determined by the Commissioner or Commissioner's designee when the employer is or has been subject to the Workers' Compensation Law and has failed to secure payment of compensation for any period of time required by the Workers' Compensation Law.~~
- ~~(2) If the Commissioner or Commissioner's designee determines the period of noncompliance with the Workers' Compensation Law is less than one (1) year, any assessed monetary penalty shall be prorated.~~
- ~~(3) Any prorated monetary penalty assessed against an employer by the Commissioner or Commissioner's designee shall not be less than an amount equal to one (1) month's premium of the average yearly workers' compensation premium for such an employer based on the appropriate assigned risk plan advisory prospective loss cost and multiplier.~~
- ~~(4) If any monetary penalty assessed against an employer is held in abeyance, the period of abeyance shall be two (2) years.~~
  - ~~(a) Any abated penalty becomes void upon the expiration of the two (2) year period, provided the employer remained subject to the Workers' Compensation Law during the two (2) year period and continuously secured payment of compensation as required by law.~~
  - ~~(b) Any abated penalty becomes voidable, if within the two (2) year period, the employer provides notice to the Commissioner that the employer is no longer subject to the Workers' Compensation Law. Upon concurrence of the Commissioner or the Commissioner's designee that the employer is no longer subject to the Workers' Compensation Law, the abated penalty shall become void.~~
  - ~~(c) Any abated penalty shall become due and payable immediately if, within the two (2) year period, the employer:~~
    - ~~1. continues to be subject to the Workers' Compensation Law; and~~

(Rule 0800-02-15-.04, continued)

- ~~2. — fails to secure payment of compensation for any period of time as required by the Workers' Compensation Law.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** —Original rule filed March 11, 2002; effective July 29, 2002.~~

~~**0800-02-15-.05 — NOTICE OF HEARING.**~~

- ~~(1) — The "Show Cause Order and Notice of Hearing" shall specify:~~
- ~~(a) — the time, place, and nature of the hearing;~~
  - ~~(b) — the right of the parties to be represented by counsel;~~
  - ~~(c) — the legal authority and jurisdiction under which the hearing is to be held;~~
  - ~~(d) — all monetary penalties which have been assessed against the employer;~~
  - ~~(e) — the criminal penalties to which the employer may be subject; and~~
  - ~~(f) — a short and plain statement of the matters asserted~~
- ~~(2) — The "Show Cause Order and Notice of Hearing" shall be sent to the employer by certified mail, return receipt requested, to the employer's last known address, according to department records.~~
- ~~(3) — The Department shall schedule the show cause hearing in a timely manner, not to exceed sixty (60) days from the date of the employer's receipt of the first certified letter pursuant to Rule 0800-02-15-.02(2).~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** —Original rule filed March 11, 2002; effective July 29, 2002.~~

~~**0800-02-15-.06 — DISCOVERY.**~~

- ~~(1) — Prior to the scheduled date and time of the show cause hearing before the Commissioner or the Commissioner's designee, interested parties of record to such hearing, or their attorneys, may make written application for, and shall then be supplied with, information from the records of the Department of Labor and Workforce Development which is not privileged and which is directly related to the issues therein contested at such hearing, subject to the provisions of the Workers' Compensation Law and the laws of the State of Tennessee.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** —Original rule filed March 11, 2002; effective July 29, 2002.~~

~~**0800-02-15-.07 — ISSUANCE OF SUBPOENAS.**~~

- ~~(1) — The Commissioner or Commissioner's designee may, where necessary, issue subpoenas to compel the production of books, records, papers, documents or other tangible things which may be relevant to or reasonably calculated to lead to the discovery of relevant information necessary to determine:~~
- ~~(a) — whether an employer is subject to the Workers' Compensation Law;~~
  - ~~(b) — whether an employer has secured payment of compensation pursuant to the Workers' Compensation Law; or~~

(Rule 0800-02-15-.07, continued)

- ~~(c) — the amount of any monetary penalty which is required to be assessed against an employer for failure to secure payment of compensation pursuant to the Workers' Compensation Law.~~
- ~~(2) — Such subpoenas may be served in person or by certified mail, return receipt requested, or in any manner prescribed by law for the service of subpoenas in a civil action.~~
- ~~(3) — In case of non-compliance with any subpoena issued and served under this section, the Commissioner or Commissioner's designee may apply to the Chancery Court of Davidson County, Tennessee, for an order to compel compliance with the subpoena and to request any appropriate sanctions deemed reasonable by the Court.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.08 CONTINUANCES.~~

- ~~(1) — Continuances of show cause hearings shall be strongly discouraged by the Commissioner or Commissioner's designee.~~
- ~~(2) — All requests for continuances shall be made in writing as soon as reasonably and practicably possible prior to the scheduled date of the show cause hearing. Such requests may be granted at the discretion of the Commissioner or Commissioner's designee. In addition, the Commissioner or Commissioner's designee may grant a continuance during the course of a hearing in order to secure all of the evidence which the Commissioner or Commissioner's designee deems necessary for a fair hearing to all parties of interest or at any time for other good cause shown.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.09 EFFECT OF EMPLOYER'S FAILURE TO APPEAR AT HEARING.~~

- ~~(1) — Failure of an employer to appear at a scheduled show cause hearing before the Commissioner or Commissioner's designee after due notice thereof may result in a decision being automatically rendered against such employer.~~
- ~~(2) — If a party fails or refuses to appear at the time a hearing is scheduled after due notice thereof, or within fifteen (15) minutes thereafter, the Commissioner or Commissioner's designee shall proceed with the show cause hearing.~~
- ~~(3) — In such cases as described in subparagraph (2), the Commissioner or Commissioner's designee shall render a decision on the basis of whatever evidence is properly before the Commissioner or Commissioner's designee.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.10 REPRESENTATION AT SHOW CAUSE HEARING.~~

- ~~(1) — Representation at a show cause hearing shall be in accordance with the following:~~
- ~~(a) — Any individual receiving due notice to appear at a show cause hearing may appear at the hearing in his or her own behalf or may be represented at the hearing by an~~

~~(Rule 0800-02-15-.10, continued)~~

~~attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.~~

~~(b) Any general partnership receiving due notice to appear at a show cause hearing may appear at the hearing by any of its partners with written authority from all other partners or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.~~

~~(c) Any corporation, limited partnership, limited liability company, or any other business entity not specifically referenced in this rule 0800-02-15-.10 which receives due notice to appear at a show cause hearing shall appear at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.~~

~~(2) The Commissioner or Commissioner's designee, in his/her discretion, may refuse to allow any attorney or any other person to continue in the representation or assistance of another in any proceeding before the Commissioner or Commissioner's designee if the Commissioner or Commissioner's designee finds said attorney or other person guilty of disorderly, disruptive, or unethical conduct during the course of a show cause hearing.~~

~~(a) Any attorney seeking to appear for or to represent a party to any proceeding before the Commissioner or Commissioner's designee or any other person seeking to assist in the appearance of a party to such a proceeding shall cause to be filed, not later than the date of the hearing, a written notice of appearance. Such written notice of appearance should specify sufficient information necessary to identify the particular proceeding involved and which must include, at least:~~

- ~~1. the name and address of the employer; and~~
- ~~2. the name and address of the attorney or other person filing the notice of appearance.~~

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

~~Tennessee Department of Labor and Workforce Development  
Division of Workers' Compensation  
Uninsured Employers Fund  
220 French Landing Drive  
Nashville, TN 37243-1002~~

~~(4) Any notice of appearance received by the Commissioner or Commissioner's designee shall be deemed as having been filed for the purpose of any further proceeding in the same matter before the Commissioner or Commissioner's designee.~~

~~(a) After the expiration of three (3) days from the date of receipt of a notice of appearance, any notice of hearing or decision subsequently mailed to a party by the Commissioner or Commissioner's designee shall also be mailed to the attorney or other person who has on file a properly executed notice of appearance.~~

~~(5) Any requests for copies of other documents in any pending matter before the Commissioner or Commissioner's designee shall be subject to a reasonable copy fee.~~

~~**Authority:** T.C.A. §§ 50-6-118, 50-6-233, 50-6-412, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002. Amendment filed September 13, 2002; effective January 28, 2003. Amendment filed March 25, 2013; effective June 23, 2013~~

**0800-02-15-.11 PRE-HEARING MATTERS.**

- (1) ~~The names and addresses of all witnesses who may be called at a show cause hearing and a list of all proposed exhibits shall be both filed with the Commissioner or Commissioner's designee and served on opposing counsel at least seven (7) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing.~~
- (2) ~~Copies of affidavits which may be used at a show cause hearing shall be furnished to opposing party or its counsel at least ten (10) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing.~~
- (3) ~~Copies of all exhibits which are proposed to be offered shall be made available for viewing by opposing party or its counsel upon request made no less than five (5) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing.~~
- (4) ~~Either the employer/employer's attorney or the fund/fund's attorney may request a pre-hearing conference by telephone or in person with the Commissioner or Commissioner's designee. A request for a pre-hearing conference shall be made at least fifteen (15) days, excluding Saturdays, Sundays, and holidays, prior to the date of the show cause hearing. The Commissioner or Commissioner's designee may, in his/her discretion, grant or decline to grant a request for a pre-hearing conference, limit or expand the matters to be discussed at a pre-hearing conference, or otherwise discuss how to facilitate the orderly process of the show cause hearing. The party requesting the conference shall be responsible for arranging the conference and coordinating the conference with opposing party or its counsel. All discussions with the Commissioner or Commissioner's designee at the pre-hearing conference shall include both the employer/employer's attorney and the fund/fund's attorney. The Commissioner or Commissioner's designee may, on his/her own initiative, schedule a pre-hearing conference by telephone or in person with the employer/employer's attorney and the fund/fund's attorney.~~

*Authority:* ~~T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. *Administrative History:* Original rule filed March 11, 2002; effective July 29, 2002.~~

**0800-02-15-.12 ORDER OF PROCEEDINGS OF SHOW CAUSE HEARINGS.**

- (1) ~~In show cause hearings before the Commissioner or Commissioner's designee, the order of proceedings is as follows:~~
  - (a) ~~The Commissioner or Commissioner's designee may confer with the parties prior to a show cause hearing to explain the order of proceedings, admissibility of evidence, number and order of witnesses and other preliminary matters.~~
  - (b) ~~The Commissioner or Commissioner's designee calls the show cause hearing to order and turns on the mechanical recording device. Instead of using a mechanical recording device, the parties may employ the services of a court reporter to transcribe the proceedings.~~
- (2) ~~The Commissioner or Commissioner's designee introduces self and gives a very brief statement of the nature of the proceedings. This statement includes a statement that the hearing will be fair and impartial and that the Commissioner or Commissioner's designee will be the sole determiner of the facts.~~
- (3) ~~The Commissioner or Commissioner's designee then calls, respectively, on the staff attorney representing the fund and on the employer or the employer's attorney. If the employer is represented by counsel, the counsel is introduced and the counsel's presence noted for the~~

(Rule 0800-02-15.12, continued)

- ~~record. Witnesses for the fund and for the employer are introduced and their presence noted at this time.~~
- ~~(4) The Commissioner or Commissioner's designee identifies the issues as set out in the notice of hearing and gives references to the sections of the Workers' Compensation Law involved.~~
- ~~(5) If either the staff attorney representing the fund or the employer notes exceptions to the issues as outlined by the Commissioner or Commissioner's designee, appropriate time is allowed for discussion, and necessary changes may be made to the satisfaction of the parties.~~
- ~~(6) The Commissioner or Commissioner's designee swears all parties and witnesses that are to be called upon to testify at the hearing; however, a solemn affirmation may be accepted in lieu of oath.~~
- ~~(7) Upon request by either the fund or the employer, all witnesses who are not to testify immediately are excluded from the hearing room so that no witness may hear the other testimony. Sequestration shall be effective before opening statements if requested. No person shall disclose by any means to excluded witnesses any live hearing testimony or exhibits created in the hearing room by a witness. This rule does not authorize exclusion of the following:~~
- ~~(a) a party who is a natural person;~~
  - ~~(b) an officer or employee of a party which is not a natural person designated as its representative by its attorney; or~~
  - ~~(c) a person whose presence is shown by a party to be essential to the presentation of the party's cause.~~
- ~~(8) Any preliminary motions or stipulations are entertained. By agreement, the parties to the show cause hearing may stipulate the facts involved in writing. The Commissioner or Commissioner's designee may then:~~
- ~~(a) limit the parties to oral argument;~~
  - ~~(b) limit the parties to the filing of written argument within ten (10) days; or~~
  - ~~(c) in the discretion of the Commissioner or Commissioner's designee, may proceed with the show cause hearing and take such further evidence as the Commissioner or Commissioner's designee deems necessary to fully enable the Commissioner or Commissioner's designee to determine the issues.~~
- ~~(9) Opening statements are allowed by both the employer and the fund respectively.~~
- ~~(10) Employer calls the employer's witnesses and the questioning proceeds as follows:~~
- ~~(a) Employer questions.~~
  - ~~(b) Fund cross-examines.~~
  - ~~(c) The Commissioner or Commissioner's designee questions.~~
- ~~(11) The fund calls the fund's witnesses and the questioning proceeds as follows:~~
- ~~(a) Fund questions.~~

(Rule 0800-02-15-.12, continued)

- ~~(b) Employer cross-examines.~~
- ~~(c) The Commissioner or Commissioner's designee questions.~~
- ~~(12) The employer and the fund may call appropriate rebuttal and rejoinder witnesses after sufficient showing of the need therefor to the Commissioner or Commissioner's designee.~~
- ~~(13) Closing arguments are allowed by both the employer and the fund respectively.~~
- ~~(14) If at any time during the show cause hearing, a party fails or refuses to comply with any lawful order of the Commissioner or Commissioner's designee necessary to maintain the orderly conduct of such hearing, the Commissioner or Commissioner's designee may conclude the hearing. In such cases, the Commissioner or Commissioner's designee shall render a decision on the basis of whatever evidence is properly before the Commissioner or Commissioner's designee.~~
- ~~(15) The Commissioner or Commissioner's designee advises all parties of the procedures used in reaching a decision. The Commissioner or Commissioner's designee further advises that copies of such decision shall be mailed to all interested parties.~~
- ~~(16) Subparagraphs (1) through (15) of this rule are intended to be merely a general outline as to the conduct of a show cause hearing before the Commissioner or Commissioner's designee. A departure from the literal form or substance of this outline, in order to expedite or insure the fairness of proceedings, would not be in violation of this rule.~~

~~**Authority:** T.C.A. §§50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.13 SCOPE OF EXAMINATION AND RULES OF EVIDENCE.~~

- ~~(1) In any show cause hearing before the Commissioner or Commissioner's designee, witnesses may be examined regarding any matter, not privileged, which is relevant and material to the issues to be determined at such hearing. The rules of evidence applicable at such hearing shall be as provided for in T.C.A. Section 4-5-313.~~
- ~~(2) The Commissioner or Commissioner's designee may rule on and decide any question concerning the admissibility of evidence or procedural questions of law.~~
  - ~~(a) It shall not be ground for objection that testimony will be inadmissible at the show cause hearing if, in the discretion of the Commissioner or Commissioner's designee, the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.~~
- ~~(3) If an objection to proffered evidence is sustained by the Commissioner or Commissioner's designee, the examining party or attorney may make a specific offer of what the examining party or attorney expects to prove by that evidence.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.14 BURDEN OF PROOF.~~

- ~~(1) The burden of proof at a show cause hearing shall be on the employer to produce documentary evidence that the employer is not subject to the Workers' Compensation Law or~~

(Rule 0800-02-15-.14, continued)

~~that the employer was in compliance with the Workers' Compensation Law at all relevant times.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

~~**0800-02-15-.15 DETERMINATIONS PURSUANT TO SHOW CAUSE HEARING.**~~

- ~~(1) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing 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 or Commissioner's designee shall determine that all monetary penalties assessed against the employer shall be void.~~
- ~~(2) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer had secured payment of compensation at all relevant times prior to the date of receipt of the first certified letter and has continued to secure payment of compensation at all relevant times as required by the Workers' Compensation Law, then the Commissioner or Commissioner's designee shall determine that all monetary penalties assessed against the employer shall be void.~~
- ~~(3) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer had secured payment of compensation as required by the Workers' Compensation Law after the date of receipt of the first certified letter but before the date of the show cause hearing, then the Commissioner or Commissioner's designee shall order:
  - ~~(a) that the first monetary penalty assessed against the employer equal to one and one-half times the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be due; and~~
  - ~~(b) that the second monetary penalty assessed against the employer equal to the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be held in abeyance.~~~~
- ~~(4) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer has secured payment of compensation as required by the Workers' Compensation Law but failed at any relevant time to secure payment of compensation as required by the Workers' Compensation Law, then the Commissioner or Commissioner's designee shall order:
  - ~~(a) that the first monetary penalty assessed against the employer equal to one and one-half times the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be due; and~~
  - ~~(b) that the second monetary penalty assessed against the employer equal to the employer's average yearly workers' compensation insurance premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be held in abeyance.~~~~
- ~~(5) If the Commissioner or Commissioner's designee determines pursuant to a show cause hearing that the employer continues to fail to secure payment of compensation as required by the Workers' Compensation Law, then:~~

(Rule 0800-02-15-.15, continued)

- ~~(a) the Commissioner or Commissioner's designee shall issue an order against the employer ordering the employer:~~
- ~~1. to procure workers' compensation insurance coverage; and~~
  - ~~2. to provide to the Department proof of coverage, with supporting documentation, within five (5) days, excluding Saturdays, Sundays, and holidays, from the date of issuance of the order.~~
- ~~(b) If the employer obtains workers' compensation insurance coverage and provides the Department with proof of coverage as ordered by the Commissioner or Commissioner's designee, then:~~
- ~~1. the first monetary penalty assessed against the employer equal to one and one-half times the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be due; and~~
  - ~~2. the second monetary penalty assessed against the employer equal to the employer's average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be held in abeyance.~~
- ~~(c) If the employer fails to obtain workers' compensation insurance coverage as ordered by the Commissioner or Commissioner's designee within the required time period, then all monetary penalties, totaling two and one-half times the average yearly workers' compensation premium, or a prorated amount subject to the provisions of Rule 0800-02-15-.04(2) and (3), shall be immediately due and payable.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.16 COLLECTION OF PENALTIES.~~

- ~~(1) To collect from employers any unpaid monetary penalties which are due and have been ordered by the Commissioner or Commissioner's designee pursuant to a final order, the Commissioner or Commissioner's designee may seek monetary judgments in the Chancery Court of Davidson County, Tennessee.~~
- ~~(2) To collect from employers any unpaid monetary penalties which are due and have been ordered pursuant to a final monetary judgment of the Chancery Court of Davidson County, Tennessee, the Commissioner or Commissioner's designee may:~~
  - ~~(a) refer cases to the Attorney General; or~~
  - ~~(b) utilize the services of a collection agency.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

#### ~~0800-02-15-.17 INJUNCTIONS.~~

- ~~(1) The Commissioner or Commissioner's designee may seek an injunction in the Chancery Court of Davidson County, Tennessee to prohibit an employer from operating its business in~~

(Rule 0800-02-15-.17, continued)

~~any way until the employer has complied with an order by the Commissioner or Commissioner's designee to obtain workers' compensation insurance coverage.~~

- ~~(2) In the event an employer shall fail to comply with the requirements of the Workers' Compensation Law by failing to secure payment of compensation on a second or subsequent occasion, the Commissioner or Commissioner's designee may seek an injunction in the Chancery Court of Davidson County, Tennessee to prohibit the employer from operating its business in any way until the employer provides proof, with accompanying documentation, that it has complied with the Workers' Compensation Law by securing payment of compensation.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~

~~**0800-02-15-.18 APPEAL.**~~

- ~~(1) The employer shall have the right to appeal, pursuant to the Tennessee Administrative Procedures Act, any decision made by or order issued by the Commissioner or Commissioner's designee.~~

~~**Authority:** T.C.A. §§ 50-6-412, 50-6-118, 50-6-233, and 50-6-801. **Administrative History:** Original rule filed March 11, 2002; effective July 29, 2002.~~