

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

**CHAPTER 0800-01-04
OCCUPATIONAL SAFETY AND HEALTH
INSPECTIONS, CITATIONS AND PROPOSED PENALTIES**

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0800-01-04-.01 PURPOSE AND SCOPE.

- (1) The Occupational Safety and Health Act of 1972 (Act), as amended, T.C.A. §50-3-101 et seq. requires, in part, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct.
- (2) The Act authorizes the Commissioner of Labor and Workforce Development (Commissioner) to conduct inspections and to issue citations and proposed penalties for alleged violations. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations and review of proposed penalties by the Tennessee Occupational Safety and Health Review Commission (TOSHR), if contested by an employer or by an employee or authorized representative of employees and for judicial review.
- (3) The purpose of this chapter is to prescribe rules and to set forth general policies for enforcement of the inspection, citation and proposed penalty provisions of the Act. In situations where this chapter sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Commissioner or his designee determines that an alternative course of action would better serve the objectives of the Act.

Authority: T.C.A. §§4-3-1411, 50-3-101, 50-3-105, 50-3-106, 50-3-301, 50-3-402 through 50-3-408, 50-3-802 and 50-3-806. **Administrative History:** Original rule filed June 10, 1974. Amendment filed January 14, 1978; effective February 13, 1978. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.02 DEFINITIONS.

- (1) The definitions and interpretations contained in T.C.A. §50-3-103 shall be applicable to such terms when used in this chapter except that the word "Commissioner" as used in Rules 0800-

(Rule 0800-01-04-.02, continued)

01-04-.07, 0800-01-04-.13, 0800-01-04-.15, 0800-01-04-.16, 0800-01-04-.18, 0800-01-04-.19 and 0800-01-04-.20 shall mean only the Administrator or in the Administrator's absence shall mean the Assistant Administrator or Manager of Safety or Health Compliance, assigned in the Division of Occupational Safety and Health (TOSHA), Department of Labor and Workforce Development.

- (2) In computing twenty (20) days, the day of receipt of any notice shall not be included, and the last day of the twenty (20) calendar days shall be included, except if it falls on a Saturday, Sunday or national holiday; then the next day not a Saturday, Sunday or national holiday shall be the last day.
- (3) "Compliance Officer" means a person authorized by the Commissioner to conduct inspections.
- (4) "Inspection" means any inspection of an employer's factory, plant, establishment, construction site or other area, workplace or environment where work is performed by an employee of an employer and includes any inspection conducted pursuant to a complaint, any reinspection, follow-up inspection, accident investigation or other investigation conducted under T.C.A. §50-3-301.

Authority: T.C.A. §§4-3-1411, 50-3-103 and 50-3-301. **Administrative History:** Original rule filed June 10, 1974. Amendment filed July 15, 1977; effective August 15, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.03 POSTING OF NOTICE, AVAILABILITY OF ACT, REGULATION AND APPLICABLE STANDARDS.

- (1) Each employer shall post and keep posted a notice or notices, to be furnished by the Department of Labor and Workforce Development, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor and Workforce Development, TOSHA Division. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced or covered by other material.
- (2) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Department of Labor and Workforce Development. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications and electric, gas and sanitary services, the notice or notices required by this rule shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (1) of this rule.

(Rule 0800-01-04-.03, continued)

- (3) Copies of the Act, all regulations published in Chapters 0800-1-1 through 0800-1-11 and all applicable standards will be available at all area offices of the Tennessee Department of Labor and Workforce Development, TOSHA Division. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.
- (4) Any employer failing to comply with the provisions of this rule shall be subject to a citation of violations and the imposition of penalties in accordance with the provisions of T.C.A. §§50-3-307 and 50-3-407.

Authority: T.C.A. §§4-3-1411, 50-3-307, and 50-3-407. **Administrative History:** Original rule filed June 10, 1974. Amendment filed January 3, 1975; effective February 2, 1975. Amendment filed July 15, 1977; effective August 15, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.04 AUTHORITY FOR INSPECTION.

- (1) Compliance officers are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner operator, agent or employee; and to review records required by the Act and regulations published in Chapters 0800-1-1 through 0800-1-11, and other records which are directly related to the purpose of the inspection.
- (2) Prior to inspecting areas containing information which is classified by an agency of the United States government in the interest of national security, compliance officers shall have obtained the appropriate security clearance.

Authority: T.C.A. §§4-3-1411 and 50-3-301. **Administrative History:** Original rule filed June 10, 1974. Amendment filed July 15, 1977; effective August 15, 1977. Amendment filed November 24, 1998; effective March 30, 1999. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.05 OBJECTION TO INSPECTION.

- (1) Upon a refusal to permit a compliance officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent or employee in accordance with Rule 0800-01-04-.04, or to permit a representative of employees to accompany the compliance officer during the physical walkaround of any workplace in accordance with Rule 0800-01-04-.09, the compliance officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised. The compliance officer shall endeavor to ascertain the reason for such refusal and he shall immediately report the refusal and the reason therefore to the Manager of Safety or Health Standards Enforcement, as appropriate, the Assistant Administrator and/or the Administrator, Division of Occupational Safety and Health. The Manager of Safety or Health Standards Enforcement, as appropriate, the Assistant Administrator and/or the Administrator shall consult with the Department of Labor and Workforce Development Staff Attorney, who shall promptly take appropriate action, including compulsory process, if deemed necessary.

(Rule 0800-01-04-.05, continued)

- (2) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Manager of Safety or Health Standards Enforcement, the Assistant Administrator or the Administrator and the Department of Labor and Workforce Development Staff Attorney, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):
 - (a) When the employer's past practice either implicitly or explicitly puts the Commissioner on notice that a warrantless inspection will not be allowed;
 - (b) When an inspection is scheduled far from the area office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;
 - (c) When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.
- (3) Authority to request compulsory process is delegated to the Department of Labor and Workforce Development Staff Attorney and the Administrator, Division of Occupational Safety and Health and, with the specific approval (written or oral) of the Staff Attorney and Administrator, to the Assistant Administrator, Manager of Health Standards Enforcement, Manager of Safety Standards Enforcement, or Area Supervisor of either the Safety or Health Standards Enforcement Branches, Division of Occupational Safety and Health.
- (4) For purposes of this rule, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an administrative inspection warrant. Ex parte administrative inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.

Authority: T.C.A. §§4-3-1411, 50-3-301 and 50-4-101 through 50-4-108. **Administrative History:** Original rule filed June 10, 1974. Amendment filed July 15, 1977; effective August 15, 1977. Amendment filed November 17, 1981; effective March 1, 1982. Amendment filed January 22, 1986; effective April 15, 1986. Amendment filed November 24, 1989; effective March 30, 1999. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.06 ENTRY NOT A WAIVER.

Any permission to enter, inspect, review records or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation or penalty under the Act. Compliance officers are not authorized to grant any such waiver.

Authority: T.C.A. §§4-3-1411 and 50-3-105. **Administrative History:** Original rule filed June 10, 1974. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.07 ADVANCE NOTICE OF INSPECTION.

- (1) Advance notice of inspections may not be given, except in the following situations:

(Rule 0800-01-04-.07, continued)

- (a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
 - (b) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
 - (c) Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and
 - (d) In other circumstances where the Commissioner determines that the giving of advance notice could enhance the probability of an effective and thorough inspection.
- (2) In the situations described in paragraph (1) of the rule, advance notice of inspections may be given only if authorized by the Commissioner or his designee. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. [See Rule 0800-01-04-.09(2) as to situations where there is no authorized representative of employees]. Upon the request of the employer, the compliance officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the compliance officer promptly to inform such representative of the inspection, may be subject to citation and penalty. Advance notice in any of the situations described in paragraph (1) of this rule shall not be given more than twenty-four (24) hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.
- (3) The Act provides that any person who gives advance notice of any inspection to be conducted under the Act, without authority from the Commissioner or his designees, commits a Class C misdemeanor.

Authority: T.C.A. §§4-3-1411, 50-3-402 and 50-3-501. **Administrative History:** Original rule filed June 10, 1974. Amendment filed January 3, 1974; effective February 2, 1974. Amendment filed July 15, 1977; effective August 15, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Amendment filed November 24, 1989; effective March 30, 1999. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.08 CONDUCT OF INSPECTIONS.

- (1) Subject to the provisions of Rule 0800-01-04-.04, inspections shall take place at such times and in such places of employment as the Commissioner or the compliance officer may direct. At the beginning of an inspection, compliance officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in Rule 0800-01-04-.04 which they wish to review. However, such designation of records shall not preclude access to additional records specified in Rule 0800-01-04-.04.
- (2) Compliance officers shall have authority to take environmental samples and to take or obtain photographs related to the purposes of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator or agent or employee of an establishment. (See Rule 0800-01-04-.10 on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of

(Rule 0800-01-04-.08, continued)

devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

- (3) In taking photographs and samples, compliance officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
- (4) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.
- (5) At the conclusion of an inspection, the compliance officer shall confer with the employer or his representative and informally advise him of any apparent or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the compliance officer any pertinent information regarding conditions in the workplace.
- (6) Inspections shall be conducted in accordance with the requirements of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-301. **Administrative History:** Original rule filed June 10, 1974. Amendment filed March 31, 1983; effective June 15, 1983. Amendment filed January 22, 1986; effective April 15, 1986. Amendment filed November 24, 1989; effective March 30, 1999. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.09 REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES.

- (1) Compliance officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the compliance officer during the physical inspection of any workplace for the purpose of aiding such inspection. A compliance officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.
- (2) Compliance officers shall have authority to resolve all disputes as to whom is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the compliance officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
- (3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace such third party may accompany the compliance officer during the inspection.
- (4) Compliance officers are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of Rule

(Rule 0800-01-04-.09, continued)

0800-01-04-.10. With regard to information classified by an agency of the United States Government in the interest of national security, only persons authorized to have access to such information may accompany a compliance officer in areas containing such information.

Authority: T.C.A. §§4-3-1411 and 50-3-303. **Administrative History:** Original rule filed June 10, 1974. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.10 TRADE SECRETS.

- (1) T.C.A. §50-3-914 provides: "All information obtained by or reported to the commissioner pursuant to any section of this chapter which contains or might reveal a trade secret or is otherwise privileged shall be considered confidential for the purpose of that Section. Such information may be disclosed to other officers or employees concerned with carrying out the provisions of this chapter or when relevant in any proceeding under this chapter". Violations of this provision shall be prosecuted under T.C.A. §50-3-505.
- (2) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the compliance officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of T.C.A. §50-3-914.
- (3) Upon the request of an employer, any authorized representative of employees under Rule 0800-01-04-.09 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the compliance officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

Authority: T.C.A. §§4-3-1411, 50-3-505 and 50-3-914. **Administrative History:** Original rule filed June 10, 1974. Amendment filed January 3, 1975; effective February 2, 1975. Amendment filed July 15, 1977; effective August 15, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2007; effective January 28, 2005.

0800-01-04-.11 CONSULTATION WITH EMPLOYEES.

Compliance officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the compliance officer.

Authority: T.C.A. §§4-3-1411 and 50-3-303. **Administrative History:** Original rule filed June 10, 1974. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.12 COMPLAINTS BY EMPLOYEES.

- (1) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner or compliance officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided to the employer or his agent by the Commissioner or compliance officer no later than at the time of the inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall

(Rule 0800-01-04-.12, continued)

not appear in such copy or on any record published, released or made available by the Department of Labor and Workforce Development.

- (2) If upon receipt of such notification the Commissioner determines that the complaint meets the requirements set forth in paragraph (1) of this rule, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.
- (3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the compliance officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (1) of this rule.
- (4) T.C.A. §50-3-409 provides: "No person shall discharge or in any manner discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or because of the exercise by the employee on behalf of such employee or others of any rights afforded by this chapter."

Authority: T.C.A. §§4-3-1411, 50-3-304 and 50-3-409. **Administrative History:** Original rule filed June 10, 1974. Amendment filed July 15, 1977; effective August 15, 1977. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.13 INSPECTION NOT WARRANTED AND INFORMAL REVIEW.

- (1) If the Commissioner determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Rule 0800-01-04-.12, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Commissioner and, at the same time, provide the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Commissioner, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Commissioner shall affirm, modify or reverse the original determination and furnish the complaining party and the employer with written notification of his decision and the reasons therefore. The decision of the Commissioner shall be final and not subject to further review.
- (2) If the Commissioner determines that an inspection is not warranted because the requirements of Rule 0800-01-04-.12(1) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Rule 0800-01-04-.12 (1).

Authority: T.C.A. §§4-3-1411 and 50-3-304. **Administrative History:** Original rule filed June 10, 1974. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.14 IMMINENT DANGER.

Whenever and as soon as a compliance officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious

(Rule 0800-01-04-.14, continued)

physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employer(s) of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the compliance officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

Authority: T.C.A. §§4-3-1411 and 50-3-401. **Administrative History:** Original rule filed June 10, 1974. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.15 CITATIONS AND POLICY REGARDING EMPLOYEE RESCUE ACTIVITIES.

- (1) The Commissioner shall review the inspection report of the compliance officer. If, on the basis of the report the Commissioner believes that the employer has violated a requirement of T.C.A. §50-3-105; any standard, rule, or order promulgated pursuant to T.C.A. §§50-3-201, 50-3-601 or 50-3-605; or of any substantive rule published in Chapters 0800-1-1 through 0800-01-04 and Chapters 0800-1-6 through 0800-1-9, he shall issue to the employer a citation. An appropriate citation shall be issued even though after being informed of an alleged violation by the compliance officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation shall be issued with reasonable promptness and in no event later than six (6) months following the inspection.
- (2) Any inspection shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.
- (3) If a citation is issued for a violation alleged in a request for inspection under Rule 0800-01-04-.12(1) or a notification of violation under Rule 0800-01-04-.12(3), a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.
- (4) After an inspection, if the Commissioner determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under Rule 0800-01-04-.12(1) or a notification of violation under Rule 0800-01-04-.12(3), the informal review procedures prescribed in Rule 0800-01-04-.13(1) shall be applicable. After considering all views presented, the Commissioner shall affirm the original determination, order a reinspection or issue a citation if he believes that the inspection discloses a violation. The Commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefore. The determination of the Commissioner shall be final and not subject to review.
- (5) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the TOSHRC.
- (6) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:
 - (a) Designated/Assigned Employee.
 1. Such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations; and

(Rule 0800-01-04-.15, continued)

2. The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or
- (b) Directed Employee.
1. Such employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties; and
 2. The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or
- (c) Hazardous workplace.
1. Such employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations or perform construction over water; and
 2. Such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; and
 3. The employer has failed to instruct employees not designated/assigned or directed to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.
- (d) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.
- (7) Petitions for modification of abatement date.
- (a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.
- (b) A petition for modification of abatement date shall be in writing and shall include the following information:
1. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.
 2. The specific additional abatement time necessary in order to achieve compliance.
 3. The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(Rule 0800-01-04-.15, continued)

4. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
 5. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with item 1. of subparagraph (c) of paragraph (7) of this rule and a certification of the date upon which such posting and service was made.
- (c) A petition for modification of abatement date shall be filed with the TOSHA Administrator no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.
1. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of twenty (20) calendar days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.
 2. Affected employees or their representative(s) may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within twenty (20) calendar days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.
 3. The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to subparagraphs (b) and (c) of paragraph (7) of this rule. Such uncontested petitions shall become final orders pursuant to T.C.A. §50-3-307(a) and (b).
 4. The Commissioner or his authorized representative shall not exercise his approval power until the expiration of twenty (20) calendar days from the date the petition was posted or served pursuant to items 1. and 2. of subparagraph (c) of paragraph (7) of this rule by the employer.
- (d) When any such petition is objected to by the Commissioner or affected employees or their authorized representative(s), the petition, citation and any objections shall be forwarded to the TOSHRC within three (3) working days after the expiration of the twenty (20) day period set out in item 4. of subparagraph (c) of paragraph (7) of this rule.

Authority: T.C.A. §§4-3-1411, 50-3-105; 50-3-201; 50-3-307; 50-3-601 and 50-3-605. **Administrative History:** Original rule filed June 10, 1974. Amendment filed January 3, 1975; effective February 2, 1975. Amendment filed January 14, 1978; effective February 13, 1978. Amendment filed November 25, 1983; effective February 13, 1984. Amendment filed March 31, 1995; effective July 28, 1995. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.16 PROPOSED PENALTIES AND THE FAILURE TO PAY PENALTIES.

- (1) As used in this chapter the word "penalty" shall be defined as the monetary assessment levied against an employer as a result of a violation of the Tennessee Occupational Safety and Health Act of 1972 or a violation of the Tennessee Occupational Safety and Health standards or rules.

(Rule 0800-01-04-.16, continued)

- (2) In accordance with the provisions of T.C.A. §50-3-402, the Commissioner shall determine the amount of any proposed penalty giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the employer's history of previous violations,
- (3) Whenever the Commissioner has determined that such a penalty should be assessed against an employer, the Commissioner shall issue written notification to the employer stating the amount of the penalty to be assessed, the reason for the assessment which may be done by reference to citations issued prior to or simultaneously with such notification. Any notification of proposed penalty shall state that the proposed penalty shall be deemed to be a final order of the Commissioner and not subject to further review unless, within twenty (20) days from the date of receipt of such notice, the employer contests the penalty. See Rule 0800-01-04-.18.
- (4) Appropriate penalties may be proposed with respect to an alleged violation even if an employer immediately abates or initiates steps to abate the alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.
- (5) Uncontested penalties are due payable from the employer within thirty (30) days of the date of receipt of the original or amended Citation and Notification of Penalty.
 - (a) Payments shall be made by check or money order payable to "Treasurer, State of Tennessee" and may be delivered in person or mailed to the Department of Labor and Workforce Development, Division of Occupational Safety and Health.
 - (b) Payments should clearly identify the inspection number to which they apply.
 - (c) Payments shall be credited on the day of receipt if delivered in person or the postmarked date if remitted by mail.
- (6) Interest.
 - (a) Interest calculated at the rate established pursuant to T.C.A. § 67-1-801(a)(1) shall accrue against the penalty, or portion thereof, that remains unpaid after 30 days from the date of receipt of the Citation and Notification of Penalty.
 - (b) Interest shall be added in thirty (30) day increments until the full penalty payment is received.
- (7) Delinquent Fees.
 - (a) A delinquent fee of ten percent (10%) of the unpaid penalty, or portion thereof, that remains unpaid after thirty (30) days from the date of receipt by the employer, shall be added to the balance due.
 - (b) A delinquent fee of ten percent (10%) of the unpaid penalty, or portion thereof, that remains unpaid after sixty (60) days from the date of receipt by the employer, shall be added to the balance due.
 - (c) A delinquent fee of ten percent (10%) of the unpaid penalty, or portion thereof, that remains unpaid after ninety (90) days from the date of receipt by the employer, shall be added to the balance due.

(Rule 0800-01-04-.16, continued)

- (d) The total delinquent fee shall not exceed thirty percent (30%) of the original penalty assessment.
 - (e) The delinquent fee shall be considered part of the total assessment against the employer and shall be collectible in the same manner as the penalty.
- (8) Administrative Fee.
- (a) Any payment instrument that is returned by a financial institution due to insufficient funds or the issuance of a stop payment order shall have a thirty dollar (\$30.00) administrative fee added to the balance due.
 - (b) The administrative fee shall be considered part of the total assessment against the employer and shall be collected in the same manner as the penalty.
 - (c) A certified letter requesting payment in-full for the total unpaid balance including the original penalty amount, the administrative fee and any accrued interest and delinquent fees shall be sent to the employer with a return receipt request.
- (9) Payments.
- (a) All payments shall first be applied to the unpaid penalty.
 - (b) Payments made to an account that include interest and delinquent fees:
 - 1. If the payment amount is equal to the unpaid penalty, the full payment shall be applied to the unpaid penalty.
 - 2. If the payment amount is greater than the unpaid penalty, the payment shall first be applied to the unpaid penalty and the excess amount shall be applied to the interest and delinquent fee balance due.
 - 3. If the payment amount is less than the original penalty, the full amount of the payment shall be applied to the original penalty.
 - (c) If the payment amount is insufficient, the employer shall be notified of the outstanding balance due.

Authority: T.C.A. §§ 4-3-1411, 47-29-102, 50-3-107, 50-3-201, 50-3-402 through 50-3-408 and 67-1-801(a)(1). **Administrative History:** Original rule filed June 10, 1974. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005. Amendment filed February 20, 2007; effective June 28, 2007.

0800-01-04-.17 POSTING OF CITATIONS.

- (1) Upon receipt of any citation under the Act, the employer shall immediately post such citation or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of the alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed [see Rule 0800-01-04-.03(2)], the citation may be posted at the location to which employees report each day. Where employees do not

(Rule 0800-01-04-.17, continued)

primarily work at or report to a single location [see Rule 0800-01-04-.03(2)], the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to insure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

- (2) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three (3) working days, whichever is later. The filing by the employer of a notice of intention to contest under Rule 0800-01-04-.18 shall not affect his posting responsibility under this section unless and until the TOSHRC issues a final order vacating the citation.
- (3) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the TOSHRC, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.
- (4) Any employer failing to comply with the provisions of paragraphs (1) and (2) of this rule shall be subject to citation and penalty in accordance with the provisions of T.C.A. §§50-3-307 and 50-3-407.

Authority: T.C.A. §§4-3-1411, 50-3-201; 50-3-307, and 50-3-407. **Administrative History:** Original rule filed June 10, 1974. Amendment filed November 25, 1983; effective February 13, 1984. Amendment filed November 24, 1989; effective March 30, 1999. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-18 EMPLOYER AND EMPLOYEE CONTESTS.

- (1) Any employer to whom a citation or notice of proposed penalty has been issued may, under T.C.A. §§50-3-307(b) and 50-3-407, notify the Commissioner in writing that he intends to contest such citation or proposed penalty before the TOSHRC. Such notice of intention to contest shall be postmarked within twenty (20) days of the receipt by the employer of the citation or notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty or both. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.
- (2) Any employee or representative of employees of an employer to whom a citation has been issued may, under T.C.A. §50-3-407, file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions of the citation. Such notice shall be postmarked within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Authority: T.C.A. §§4-3-1411, 50-3-307, and 50-3-407. **Administrative History:** Original rule filed June 10, 1974. Amendment filed April 9, 1975; effective May 9, 1975. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-19 FAILURE TO CORRECT.

- (1) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Commissioner shall notify the employer by certified mail or by personal service by the compliance officer of such failure and of the additional penalty proposed under T.C.A. §50-3-404 by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the TOSHRC in the case of any review

(Rule 0800-01-04-.19, continued)

proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

- (2) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under T.C.A. §50-3-407, notify the Commissioner in writing that he intends to contest such notification or proposed additional penalty before the TOSHRC. Such notice of intention to contest shall be postmarked within twenty (20) days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.
- (3) Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the TOSHRC and not subject to review by any court or agency unless, within twenty (20) days from the date of receipt of such notification, the employer notifies the Commissioner in writing that he intends to contest the notification or the proposed additional penalty before the TOSHRC.

Authority: T.C.A. §§4-3-1411, 50-3-307, and 50-3-407. **Administrative History:** Original rule filed June 10, 1974. Amendment filed November 25, 1983; effective February 13, 1984. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.20 INFORMAL CONFERENCES.

- (1) At the request of an affected employer, employee, or representative of employees, the Commissioner may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Commissioner. If the conference is requested by an affected employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Commissioner. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any twenty (20)-day period for filing a notice of intention to contest as prescribed in Rule 0800-01-04-.18.
- (2) The settlement of any issue at such conference may be accomplished by issuance of an amended citation and notice of proposed penalty provided that no notice of intention to contest has been filed as prescribed in Rule 0800-01-04-.18 and that the 20-day period for filing a notice of intention to contest has not expired. If a notice of intention to contest has been filed by the employer, an employer, an employee, or a representative of employees, or the 20-day period for filing such notice has expired, the settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the Occupational Safety and Health Review Commission.

Authority: T.C.A. §§4-3-1411, 50-3-307, 50-3-407, and 50-3-802. **Administrative History:** Original rule filed June 10, 1974. Amendment filed November 17, 1981; effective March 1, 1982. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.21 CHARGES FOR COPIES OF PUBLIC RECORDS.

- (1) Charges for copies of public records released by the Division of Occupational Safety and Health under the authority of the Commissioner of Labor and Workforce Development will be assessed in accordance with Department of Labor and Workforce Development Rule 0800-08-01 Charges for Copies of Public Records.

(Rule 0800-01-04-.21, continued)

Authority: T.C.A. §§4-3-1411, 4-5-218(b), 50-3-201, and 50-3-904(4). **Administrative History:** Original rule filed May 30, 1989; effective August 29, 1989. Amendment filed May 8, 1991; effective August 28, 1991. Amendment filed November 27, 1991; effective February 26, 1992. Amendment filed May 13, 1994; effective September 28, 1994. Amendment filed November 24, 1989; effective March 30, 1999. Amendment filed March 27, 2001; effective July 30, 2001. Repeal and rule filed September 7, 2004; effective January 28, 2005. Amendment to rule filed January 7, 2009; effective May 29, 2009.

0800-01-04-.22 EXEMPTIONS FROM GENERAL SCHEDULE INSPECTIONS.

- (1) Programmed inspection schedule.
 - (a) Employers who meet the requirements for participation in the Volunteer STAR Program as set forth in Rule 0800-1-11-.04 will have the names of their establishments removed from the programmed inspection schedule for an indefinite period so long as they continue to qualify for participation.
 - (b) Employers who meet the requirements for participation in the Tennessee SHARP as set forth in Rule 0800-1-11-.05 will have the names of their establishments removed from the programmed inspection schedule for a period of one (1) year. The one (1) year exemption period will extend from the date of issuance of the certificate of SHARP recognition by the TOSHA Administrator.
- (2) Inspections at Volunteer Star and Tennessee Sharp Sites. At STAR and SHARP sites, the Division of Occupational Safety and Health will continue to make inspections in the following categories:
 - (a) Imminent danger (as alleged in complaints from employees or referrals from other government agencies, the media or interested parties).
 - (b) Accident (as a result of a reported, by any means, fatality or in-patient hospitalization of three (3) or more employees from a single accident or incident).
 - (c) Formal complaints (filed and signed by a current employee or representative thereof) when evaluated as describing a hazard or hazards posing potentially serious violations of occupational safety and health standards or T.C.A. §50-3-105(1).
 - (d) Referrals from a safety compliance officer to a health compliance officer or from a health compliance officer to a safety compliance officer when evaluated as describing a hazard or hazards posing potentially serious violations of occupational safety and health standards or T.C.A. §50-3-105(1).
 - (e) Followup on previously cited violations.
 - (f) Non-formal complaints and referrals from other government agencies, the media or interested persons will be investigated in accordance with established compliance policy.

Authority: T.C.A. §§4-3-1411, 50-3-301, 50-3-304 and 50-3-904. **Administrative History:** Original rule filed March 15, 1996; effective July 29, 1996. Repeal and rule filed September 7, 2004; effective January 28, 2005.

0800-01-04-.23 ABATEMENT VERIFICATION.

- (1) Purpose. TOSHA inspections are intended to result in the abatement of violations of the Tennessee Occupational Safety and Health Act of 1972 (Act) as amended (T.C.A. §§50-3-101 - 50-3-919). This rule sets forth the procedures TOSHA will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.
- (2) Scope and Application. This rule applies to employers who receive a citation for one or more violations of the Act.
- (3) Definitions.
 - (a) "Abatement" means action by an employer to comply with a cited provision of the Act or a standard or regulation promulgated pursuant to the Act or to eliminate a recognized hazard identified by TOSHA during an inspection.
 - (b) "Abatement date" means:
 1. For an uncontested citation item, the later of:
 - (i) The date in the citation for abatement of the violation; or
 - (ii) The date approved by TOSHA or established in litigation as a result of a petition for modification of abatement date (PMA).
 2. For a contested citation item for which the Tennessee Occupational Safety and Health Review Commission (TOSHRC) has issued a final order affirming the violation, the later of:
 - (i) The date identified in the final order for abatement; or
 - (ii) The date computed by adding the period allowed in the citation for abatement to the final order date; or
 - (iii) The date established by a formal settlement agreement.
 - (c) "Affected employees" means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.
 - (d) "Final order" means an order of the TOSHRC which affirms, modifies, or revokes a citation or monetary penalty issued by TOSHA, or an order affirming a formal settlement agreement entered into by an employer and TOSHA.
 - (e) "Final order date" means:
 1. For an uncontested citation item, the twentieth calendar day after the employer's receipt of the citation;
 2. For a contested citation item:
 - (i) The thirtieth day after the date on which a decision or order of an administrative law judge or the commission en banc is issued;

(Rule 0800-01-04-.23, continued)

- (ii) The thirtieth day after the date on which a decision or order of a Chancery Court or Court of Appeals is issued if the TOSHRC decision or order is appealed; or
 - (iii) The date on which the Tennessee Supreme Court issues a decision or order if the decision of a Court of Appeals decision or order is appealed.
- (f) "Movable equipment" means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.
- (4) Abatement Certification.
 - (a) Within ten (10) calendar days after the abatement date, the employer must certify to TOSHA that each cited violation has been abated, except as provided in subparagraph (b) of this rule.
 - (b) The employer is not required to certify abatement if the TOSHA compliance officer, during the on-site portion of the inspection:
 - 1. Observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and
 - 2. Notes in the citation that abatement has occurred.
 - (c) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by paragraph (9) of this rule, the date and method of abatement and a statement that the affected employees and their representatives have been informed of the abatement. Appendix A to this rule contains a sample Abatement Certification Letter.
- (5) Abatement Documentation.
 - (a) The employer must submit to TOSHA, along with the information on abatement certification required by subparagraph (c) of paragraph (4) of this rule, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which TOSHA indicates in the citation that such abatement documentation is required.
 - (b) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.
- (6) Abatement Plans.
 - (a) TOSHA may require an employer to submit an abatement plan for each cited violation (except an other-than-serious/non-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citation must so indicate.
 - (b) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where

(Rule 0800-01-04-.23, continued)

necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete. Appendix B to this rule contains a Sample Abatement Plan form.

(7) Progress Reports.

- (a) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:
 - 1. That periodic progress reports are required and the citation items for which they are required;
 - 2. The date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;
 - 3. Whether additional progress reports are required; and
 - 4. The date(s) on which additional progress reports must be submitted.
- (b) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. Appendix "B" to this rule contains a Sample Progress Report form.

(8) Employee Notification.

- (a) The employer must inform affected employees and their representative(s) about abatement activities covered by this rule by posting a copy of each document submitted to TOSHA or a summary of the document near the place where the violation occurred.
- (b) Where such posting does not effectively inform employees and their representative(s) about abatement activities (for example, for employers who have mobile work operations), the employer must:
 - 1. Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representative(s); or
 - 2. Take other steps to communicate fully to affected employees and their representative(s) about abatement activities.
- (c) The employer must inform employees and their representative(s) of their right to examine and copy all abatement documents submitted to TOSHA.
 - 1. An employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.
 - 2. The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.
- (d) The employer must ensure that notice to employees and employee representative(s) is provided at the same time or before the information is provided to TOSHA and that abatement documents are:

(Rule 0800-01-04-.23, continued)

1. Not altered, defaced, or covered by other material; and
2. Remain posted for three (3) working days after submission to TOSHA.

(9) Transmitting Abatement Documents.

- (a) The employer must include, in each submission required by this rule, the following information:
 1. The employer's name and address;
 2. The inspection number to which the submission relates;
 3. The citation and item numbers to which the submission relates;
 4. A statement that the information is accurate; and
 5. The signature of the employer or the employer's authorized representative.
- (b) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date TOSHA receives the document is the date of submission.

(10) Movable Equipment.

- (a) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.

Note: Attaching a copy of the citation to the equipment is deemed by TOSHA to meet the tagging requirements of subparagraph (a) of paragraph (10) of this rule as well as the posting requirements of Rule 0800-01-04-.17.

- (b) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. Appendix C to this rule contains a sample tag that employers may use to meet this requirement.
- (c) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:
 1. For hand-held equipment, immediately after the employer receives the citation; or
 2. For non-hand-held equipment, prior to moving the equipment within or between worksites.
- (d) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by TOSHA to meet the requirements of this rule when the information required by subparagraph (b) of this paragraph is included on the tag.
- (e) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(Rule 0800-01-04-.23, continued)

- (f) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:
 - 1. The violation has been abated and all abatement verification documents required by this rule have been submitted to TOSHA;
 - 2. The cited equipment has been permanently removed from service or is no longer within the employer's control; or
 - 3. The TOSHRC issues a final order vacating the citation.
- (11) The following Appendices A through C provide information and nonmandatory guidelines to assist employers and employees in complying with the appropriate requirements of this rule:
 - (a) Appendix A - Sample Abatement Certification Letter (Nonmandatory)
 - (b) Appendix B - Sample Abatement Plan or Progress Report (Nonmandatory)
 - (c) Appendix C - Sample Warning Tag (Nonmandatory)

Authority: T.C.A. §§4-3-1411, 50-3-105, 50-3-201, 50-3-307 and 50-3-802. **Administrative History:** Original rule filed November 24, 1998; effective March 30, 1999. Repeal and rule filed September 7, 2004; effective January 28, 2005.

APPENDIX A

Sample Abatement Certification Letter (Nonmandatory)

Date

Chattanooga/Jackson/Kingsport/Knoxville/Memphis/Nashville Area (Health/Safety) Supervisor
Department of Labor and Workforce Development - TOSHA
Address of the Area Office (on the citation cover letter)

(Company Name) (If company's letterhead is not used.)
(Company Address) (If company's letterhead is not used.)

The hazard referenced in Inspection Number (insert 9 digit number) for violation identified as:

Citation (insert number) and item (insert number) was corrected on (insert date) by:

—

Citation (insert number) and item (insert number) was corrected on (insert date) by:

—

Citation (insert number) and item (insert number) was corrected on (insert date) by:

—

(Repeat as many times as necessary.)

I attest that the information contained in this document is accurate.

Signature of Authorized Person

Typed or printed name

APPENDIX B

Sample Abatement Plan or Progress Report (Nonmandatory)

Area Supervisor's Name
Department of Labor and Workforce Development - TOSHA
Address of Area Office (on the citation cover letter)

(Company Name) (If company's letterhead is not used.)
(Company Address) (If company's letterhead is not used.)

Check one: Abatement Plan [] Progress Report []

Inspection Number (Insert 9-digit number) Page ____ of ____

Citation
Number(s) _____

Item
Number(s) _____

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1. _____ _____ _____ _____	_____ _____ _____ _____	_____ _____ _____ _____
2. _____ _____ _____ _____	_____ _____ _____ _____	_____ _____ _____ _____
3. _____ _____ _____ _____	_____ _____ _____ _____	_____ _____ _____ _____
4. _____ _____ _____ _____	_____ _____ _____ _____	_____ _____ _____ _____
5. _____ _____ _____ _____	_____ _____ _____ _____	_____ _____ _____ _____

(Appendix B; continued)

6. _____

7. _____

Date required for final
abatement: _____

I attest that the information contained in this document is accurate.

(Signature)

(Typed or Printed Name)

Name of primary point of contact for questions: (optional) _____

Telephone Number: _____

Abatement plans or progress report for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

APPENDIX C

Sample Warning Tag (Nonmandatory)

<p style="text-align: center;">WARNING</p> <p style="text-align: center;">EQUIPMENT HAZARD CITED BY TOSHA</p> <p>EQUIPMENT CITED:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>HAZARD CITED:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">FOR DETAILED INFORMATION SEE TOSHA CITATION POSTED AT:</p> <p>_____</p> <p>_____</p>
<p style="text-align: center;">BACKGROUND COLOR - ORANGE MESSAGE COLOR - BLACK</p>