

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

**CHAPTER 0800-02-13
PROCEDURES FOR PENALTY ASSESSMENTS AND HEARING CONTESTED CASES**

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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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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.
- (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.

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- (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.

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

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, 50-6-238, 50-6-244, 50-6-411, 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. Amendments filed March 29, 2017; effective June 27, 2017.

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, 50-6-238, 50-6-244, 50-6-411, 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. Amendments filed March 29, 2017; effective June 27, 2017.

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

(Rule 0800-02-13-.04, continued)

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, 50-6-238, 50-6-244, 50-6-411, 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. Amendments filed March 29, 2017; effective June 27, 2017.

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, 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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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

(Rule 0800-02-13-.06, continued)

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. §§ 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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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, 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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:**

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

Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed December 22, 2014; effective March 22, 2015. Amendments filed March 29, 2017; effective June 27, 2017.

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.

(Rule 0800-02-13-.10, continued)

- (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, 50-6-208, 50-6-233, 50-6-237, 50-6-244, 50-6-411, 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 March 29, 2017; effective June 27, 2017.

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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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.

(Rule 0800-02-13-.12, continued)

- (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, 50-6-801, and Public Chapter 962 (2004). Administrative History:* Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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)

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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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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, 50-6-801, and Public Chapter 962 (2004). **Administrative History:** Original rule filed October 13, 2004; effective February 28, 2005. Amendment filed December 22, 2014; effective March 22, 2015. Amendments filed March 29, 2017; effective June 27, 2017.

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, 4-5-317, 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, 50-6-801, 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. Repeal filed December 22, 2014; effective March 22, 2015. Amendments filed March 29, 2017; effective June 27, 2017.*

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;

(Rule 0800-02-13-.16, continued)

- (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, 4-5-322, 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, 50-6-801, and Public Chapter 962 (2004). Administrative History:* Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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, 50-6-801, and Public Chapter 962 (2004). Administrative History:* Original rule filed October 13, 2004; effective February 28, 2005. Amendments filed March 29, 2017; effective June 27, 2017.

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

(Rule 0800-02-13-.18, continued)

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:* New rule filed March 29, 2017; effective June 27, 2017.

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:* New rule filed March 29, 2017; effective June 27, 2017.

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:* New rule filed March 29, 2017; effective June 27, 2017.

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.

(Rule 0800-02-13-.21, continued)

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:** New rule filed March 29, 2017; effective June 27, 2017.