



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
220 French Landing Drive
Nashville, TN 37243
(615) 741-6642

Bill Lee
GOVERNOR

Jeff McCord
COMMISSIONER

October 19, 2021

The Honorable John Ragan
Joint Government Operations Committee
425 Rep. John Lewis Way N.
Suite 614 Cordell Hull Building
Nashville, TN 37243

Chairman Ragan and Members of the Joint Government Operations Committee:

Thank you for your letter dated October 18, 2021. The statutory language regarding rules does not authorize the withdrawal or the stay of a rule once the rule has become effective as set forth in the following statutes:

T.C.A. § 4-5-214. Withdrawal of rules.

(a) A rule may be withdrawn by the agency proposing the rule at any point prior to the effective date of the rule. The withdrawal shall become effective upon delivery of a written notification of such withdrawal to the office of the secretary of state and shall result in the nullification of all procedures undertaken or performed in order to promulgate the rule. The secretary of state may require the online submission of the notification of withdrawal of rules filed pursuant to this part.

T.C.A. § 4-5-215. Stay of effective date of rules.

(a) Prior to the effective date of the rule, the agency proposing the rule may stay the running of the ninety-day period required by § 4-5-207 for a period of time not to exceed seventy-five (75) days. The stay shall become effective at such time as the agency files written notice with the secretary of state and shall specify the length of the effectiveness of the stay. The secretary of state may require the online submission of the notice of stay or related filings filed pursuant to this part. Prior to the expiration of the stay, the stay may be withdrawn by the agency. Withdrawal or expiration of the stay shall reactivate the running of the balance of the ninety-day period that remained upon the date the stay was filed.

The emergency temporary rule (ETR) for those in the healthcare industry became effective upon filing on August 24, 2021. We are not aware of statute or rule allowing for the withdrawal of the rule.

Additionally, at this time, as TN-OSHA navigates multiple federal OSHA efforts and initiatives it is increasingly important that TN-OSHA remain in full standing as a State Plan without inviting additional federal oversight, federal interpretation, and federal enforcement of safety and health standards in Tennessee. As a fully functioning State Plan, TN-OSHA is better positioned to effectively address more comprehensive federal efforts on behalf of Tennessee.

Accordingly, due to lack of authority to withdraw the rule and potential jeopardy to 29 USC § 667 Section 18(e) certification of the TN-OSHA plan, at this time TN-OSHA intends to maintain the ETR for healthcare employees while it remains in effect. We would be happy to discuss in further detail.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff McCord".

Jeff McCord, Commissioner