



TOSHA INSTRUCTION

TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY & HEALTH

DIRECTIVE NUMBER: ADM-TN 03-00-001
(ADM-TN 1-8.1A)

EFFECTIVE DATE: March 31, 1998

SUBJECT: Safeguarding Confidential OSHA Rulemaking Documents

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TO: TOSHA Personnel
Affected Persons

FROM: Chief, Standards & Procedures

THRU: Director

- A.** PURPOSE: This instruction sets forth policy and procedures for safe-guarding confidential rulemaking documents of the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), which may be in the possession of the Tennessee Department of Labor for information and/or comment. This includes the documents themselves and any comments or other working paper 's generated pursuant thereto.
- B.** DOCUMENTS REFERENCED:
1. OSHA Instruction STP 2-1.164; dated August 12, 1991; Subject: Involving State Plan States in the Development of Federal Standards.
 2. Tennessee Code Annotated, Title 10, Chapter 7, Section 504, paragraph (a)(5)(A)(iii).
- C.** DOCUMENT AFFECTED: TOSHA Instruction ADM 1-8.1; dated October 15, 1991 is hereby superseded.
- D.** BACKGROUND: Section 18 of the Occupational Safety and Health Act of 1970 creates a unique relationship which establishes the basis for the States to assume a role, somewhat different from that of the general public, with OSHA in the development and enforcement of occupational safety and health standards. OSHA presently provides each State the opportunity to participate in the development of Federal standards on an ad hoc basis by means of commenting on draft standards (proposed and final), when such drafts are shared with any outside group, and participating in the Federal standards promulgation process by commenting on proposed standards and testifying at hearings. OSHA Instruction STP 2-1.164 establishes a new policy in this regard. It provides an opportunity for early and substantive involvement of each State, in which it can also share information with OSHA, in the course of OSHA 's internal deliberations to develop new standards. The new policy is intended to provide for and protect the full and frank exchange of views and

experiences between an individual State and OSHA officials during the decision-making process and to prevent predecisional disclosure of incipient policies or decisions that could disrupt agency procedures. Under the new policy any confidential OSHA rulemaking documents transmitted to State Plan States are transmitted as limited inter-agency/intra-agency disclosure, made as part of OSHA's internal decision-making process, for the purpose of involving the individual States, who administer Federally approved safety and health plans, in the standards process. All such confidential rulemaking documents are protected from disclosure under the Freedom of Information Act (FOIA) as deliberative predecisional material. In order to assure the confidentiality of the rulemaking documents, each State must have procedures to ensure the rulemaking documents are not disclosed to authorized persons. The State of Tennessee has an "Open Records Law" which would normally provide access to any document in TOSHA's possession to any person who requests it. There is, however, a provision of state law (see B.2.) under which certain documents are not open for public inspection. This instruction sets forth policy and procedures which shall be followed to assure protection of confidential OSHA rulemaking documents under that provision of State law.

E. POLICY: All OSHA rulemaking documents received by this agency under the provisions of OSHA Instruction STP 2-1.164, either directly or through the Commissioner's Office, are documents under the control of the General Counsel for the Department of Labor.

F. PROCEDURES:

1. Any person who receives an OSHA rulemaking document which is identified as a draft, a working paper, an advance copy of standards' Federal Register notice, or is otherwise identified as CONFIDENTIAL or not for release to the general public or other interested persons, shall immediately take such document to the TDOL Legal Section and have it stamped as "received" by that section. That will assure the document is under the control of the General Counsel for the Department of Labor.
2. No person shall release any information from any OSHA rulemaking document to persons not employed by the Division of Occupational Safety and Health or the Department of Labor.
3. Any person who has an OSHA rulemaking document in his/her possession shall assure such document is not left unattended and shall assure it is kept under lock when not in use or the office is not occupied.

G. ACTION: The Director and Branch Chiefs shall assure that the procedures set forth in this instruction are followed for the protection of confidential OSHA rulemaking documents which may be in the possession of this agency.

H. EFFECTIVE DATE: This instruction is effective upon receipt and shall remain in effect until canceled or superseded.