

Rulemaking Guidelines

Pursuant to
Tennessee Code Annotated
Title 4, Chapter 5
and Rule Chapters 1360-01-01 through 1360-01-03



**Tennessee Secretary of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243
Phone: 615-741-2650
E-mail: publications.information@tn.gov**

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INTRODUCTION

This booklet is intended to serve as a guide to the filing of notices of rulemaking hearings, proposed rules, rulemaking hearing rules, emergency rules, stays of rules, and withdrawals submitted to the Tennessee Secretary of State's Division of Publications. The Division of Publications has simplified the rule filing process for state agencies with rulemaking authority by incorporating a series of online forms that shall be completed by the agency and submitted to the Secretary of State's Division of Publications. Agencies new to the rulemaking process must contact the Division of Publications to be assigned a control number for use in promulgating rules.

The forms are online at the Secretary of State's website: sos.tn.gov/division-publications/rules-and-regulations. Pursuant to Tennessee Code Annotated (T.C.A.) Title 4, Chapter 5, the Secretary of State's Division of Publications publishes the following rule documents:

- Notices of Rulemaking Hearing
- Proposed Rules
- Rulemaking Hearing Rules
- Emergency Rules
- Stays of Effective Date of Rules
- Withdrawals
- Announcements
- Wildlife Proclamations

Provided below are descriptions of each document type:

Notices of Rulemaking Hearing - This document is required to be submitted whenever an agency is required by law to hold a public hearing as part of its rulemaking process. Pursuant to T.C.A. § 4-5-203(a)(1), the agency or department is required to transmit a notice of such hearing to the Secretary of State for publication on the Tennessee Administrative Register website: <http://tnsos.org/rules/RulemakingHearings.php>. Hearings can be held forty-five (45) days from the date of filing. Notice through publication on the administrative register website shall be given at least forty-five (45) days prior to the date set for the hearing and shall be deemed to have been given seven (7) days from the date the notice was transmitted to the Secretary of State for such publication.

Proposed Rules - In lieu of a rulemaking hearing, agencies and departments may submit proposed rules pursuant to T.C.A. § 4-5-202. In this case, the intent is for the agency to promulgate the proposed rules without a hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. Pursuant to T.C.A. § 4-5-207, the rules become effective ninety (90) days after date of filing. Prior to being filed with the Secretary of State, the proposed rules must be examined and approved as to legality by the Attorney General and Reporter of the State of Tennessee.

Rulemaking Hearing Rules - Rulemaking hearing rules are filed as a result of a public hearing pursuant to T.C.A. § 4-5-202. They become effective ninety (90) days from the date of filing. Prior to being filed with the Secretary of State, the rulemaking hearing rules must be examined and approved as to legality by the Attorney General and Reporter of the State of Tennessee.

Emergency Rules - An agency may, upon stating its reasons in writing for making such findings, proceed without prior notice or hearing to adopt an emergency rule pursuant to T.C.A. § 4-5-208, if the agency finds that:

- An immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by the chapter would not adequately protect the public;
- The rule only delays the effective date of another rule that is not yet effective;

- The file must include capitalization and lowercase text. No all caps.
- Font size shall be Arial 10 point.
- No bold, underlined, or italic fonts.
- No automatic numbering on paragraphs within the rule text.
- No hard return at the end of lines within a paragraph. Use only at the end of a paragraph.
- Use the enter key to put space between paragraphs.
- Do not use multiple tabs within the paragraph to achieve indenting of text within that same paragraph.
- Do not use paragraph formatting to add space before or after paragraphs to create space as this function doesn't translate to the Division of Publications' style palettes.
- Use T.C.A. for Tennessee Code Annotated.
- Use hyphens on keyboard with no space between the rule numbers (Example: 1240-03-06-.04).
- No single digits on rule and chapter numbers: (Example: 0800-02-06 **not** 0800-2-6).
- No unnecessary punctuation (For example: no comma between rule number and rule title.

A digital version of the filing form must be transmitted in MS Word on a CD, which is labeled to include the file name; chapter and rule number; and the name, address, telephone number, and e-mail address of the technical contact who created the file, or emailed to the Publications Division at publications.information@tn.gov prior to filing.

On the disc, include only those files required by the Secretary of State.

The Secretary of State reserves the right to reject any filing not in compliance with the rules pertaining to rule filing.

FILING NOTICES FOR RULEMAKING HEARING

The current form (SS-7037) is available for completion at sos.tn.gov/division-publications/rules-and-regulations. Once completed, it shall be printed for submission to the Secretary of State. The Division of Publications requires three (3) completed documents with original signatures and notarization.

The notice must contain the following information:

- Agency (Division or Board if applicable)
- Legal Contact
- ADA Contact
- Hearing Location
- Date of Hearing
- Time of Hearing
- Notice Rule Content
- Statutory Authority

FILING RULES

The term "rules" shall mean rulemaking hearing rules, proposed rules, and emergency rules. Each term is applicable to its own form available for completion at sos.tn.gov/division-publications/rules-and-regulations.

These forms are inclusive for the specific information required by statute.

- For Rulemaking Hearing Rules, Form SS-7039 applies.
- For Proposed Rules, Form SS-7038 applies.
- For Emergency Rules, Form SS-7040 applies.

For rulemaking hearing rules, proposed rules, and emergency rules, please be sure to include detailed explanations of the changes being made to the listed rule(s). Examples include:

Subparagraph (h) of paragraph (1) of [Rule Number] [Rule Title] is amended by deleting it in its entirety and substituting instead the following:

[Rule Number] [Rule Title], paragraph (1), subparagraph (g) is amended by replacing the word “determinations” with the word “assessments” so that, as amended, the subparagraph shall read:

[Rule Number] [Rule Title] is added as a new rule and shall read:

All filings must include the substantive statutory authority that governs the proposed changes. For example:

Authority: *T.C.A. §§ 4-5-201 et seq. and 4-5-202; 8 U.S.C. §§ 1611, 1612, 1613 and 1641; 42 C.F.R.435.831; PL 94-566 §503; and Acts 2010, ch. 802.*

Once completed, print the online form. For each of the above rules, the Division of Publications requires three (3) completed documents with original signatures and notarization. Prior to being filed in the Division of Publications, the rules must be examined and approved as to legality by the Attorney General and Reporter of the State of Tennessee.

ADDITIONAL REQUIREMENTS

The following items are required pursuant to T.C.A. § 4-5-222 when filing rulemaking hearing rules, proposed rules, and emergency rules:

- Record of voting on policy or rule adoption
- Responses to public hearing comments (for rulemaking hearing rules only)
- Regulatory flexibility statement (impact on small businesses)
- Impact on local governments statement
- Legislative oversight form for the Joint Government Operations Committee and
- A redline version of the rule filing

It is recommended that all filings use these sections of the forms for these requirements.

Responses to Public Hearing Comments. FOR RULEMAKING HEARING RULES ONLY, agencies shall include only their responses to public hearing comments which shall be summarized. Space is provided in the rulemaking hearing form for these responses. Pursuant to T.C.A. § 4-5-222, each agency shall maintain the written records on each rule adopted by such agency, including the responses of the agency to the comments submitted at any public hearing on the proposed rule. Each comment shall be addressed; provided, however, that similar comments may be grouped together and addressed in one (1) response. The response to specific comments shall include the reasons for agency adoption or rejection of any specific changes suggested by the comments. The record required by this section need not be published, but a copy shall be filed with the secretary of state, and the agency shall certify its compliance with this section to the Attorney General and Reporter prior to the approval of the rule. Failure to file such record at the time the rule is filed with the Secretary of State will make the rule void and of no effect. Such record shall be available to the public during normal office hours of the agency at its principal office or the office of the Secretary of State. When no comments are received at the public hearing, the agency need only include a statement stating such in this section.

Regulatory Flexibility Addendum (Statement of Impact on Small Businesses). As part of the rulemaking process for any proposed rule that may have an impact on small businesses, each agency shall prepare an economic impact statement as an addendum for each rule that is deemed to affect small businesses (T.C.A. § 4-5-403). The statement shall include the following:

- The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from, the proposed rule;
- The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;
- A statement of the probable effect on impacted small businesses and consumers;
- A description of any less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;
- A comparison of the proposed rule with any federal or state counterparts; and
- Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Impact on Local Governments Statement. Pursuant to T.C.A. § 4-5-228, on any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues. If the statement says that the rule or regulation has a financial impact on local governments, the General Assembly may request representatives of any affected local government to testify concerning its impact. The proposing agency shall submit a copy of the statement to the Secretary of State.

Redline Version. In addition to these requirements, departments and agencies must submit one (1) copy of the redline version of their rule filings for the Joint Government Operations Committee. Pursuant to T.C.A. § 4-5-226, redline form means to denote all amendments to an existing rule by placing a line through all language to be deleted and by including all language to be added in brackets or underlined or by another clearly recognizable method that indicates the changes made to the rule. The Secretary of State's office is a conduit to ensure the Joint Government Operations Committee receives its required redline version of rule filings.

FILING WITHDRAWALS OR STAYS

Form SS-7041 applies for filing a stay of effective date of rules, a withdrawal of a rule, or a withdrawal of a stay. The SS-7041 is available at sos.tn.gov/division-publications/rules-and-regulations.

Once completed, print the online form. Three (3) entire forms with original signatures and notarization in addition to an electronic copy with a disc are required to be filed with the Division of Publications for a stay of effective date of rules, a withdrawal of a rule, or a withdrawal of a stay.

NUMBERING GUIDELINES

Each state agency has been assigned a four (4) digit control number. Rules numbering requires that a control number, division number, chapter number, and rule number be present, except in cases where the agency is small. In the latter case, the division number may be omitted.

Example

1200	06	01	.01
Control number	Division	Chapter	Rule

For outlining, the following structure applies:

- (1) Paragraph
 - (a) Subparagraph
 - 1. Part
 - (i) Subpart
 - (l) Item
 - I. Subitem
 - A. Section
 - (A) Subsection

All filings must include the substantive statutory authority that governs the proposed changes. For example:

Authority: *T.C.A. §§ 4-5-201 et seq. and 4-5-202; 8 U.S.C. §§ 1611, 1612, 1613 and 1641; 42 C.F.R. 435.831; and PL 94-566 § 503.*

CONTACT INFORMATION

For answers to questions, contact the Department of State, Division of Publications, phone: 615-741-2650 or e-mail: publications.information@tn.gov. Filings should be delivered to the division at 312 Rosa L. Parks Avenue, 8th Floor, Nashville, TN, 37243.