

# Rulemaking Guidelines

Pursuant to  
Tennessee Code Annotated  
Title 4, Chapter 5



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## INTRODUCTION

This booklet is intended to serve as a guide to the filing of notices, rules, stays of rules and withdrawals submitted to the Tennessee Secretary of State's Publications Division. The Publications Division 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 Publications Division.

The forms are online at the Secretary of State's web site: [http://state.tn.us/sos/rules/filing\\_rules.htm](http://state.tn.us/sos/rules/filing_rules.htm). Pursuant to Tennessee Code Annotated (T.C.A.) Title 4, Chapter 5, the Secretary of State's Publications Division publishes the following rule documents:

- Notice of Rulemaking Hearing
- Proposed Rules
- Rulemaking Hearing Rules
- Temporary Rules (Emergency Rules)
- Stays of Effective Date of Rules
- Withdrawals

Provided below are descriptions of each document type:

**Notices of Rule Making 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://www.tn.gov/sos/pub/tar/index.htm>. Hearings can be held 50 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 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 90 days after date of filing.

**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 90 days from the date of filing.

**Temporary 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 effective,
- it is required by the constitution or court order; or
- it is required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedure described in this chapter might jeopardize a federal program or funds,
- the agency is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules.

Emergency Rules are effective from the date of filing for a period up to 180 days.

**Stay of Effective Date of Rules** - Prior to the effective date of a 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. Prior to the expiration date 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. T.C.A. § 4-5-215.

**Withdrawal of Rules and Withdrawal of Stay of Effective Date** - An agency may, after filing, withdraw a rule before the rule becomes effective. The withdrawal shall take effect upon written notification to the Secretary of State.

Prior to its expiration, a stay may be withdrawn by the agency. Withdrawal or expiration of the stay shall reactivate the running of the balance of the ninety (90) day period that remained upon the date the stay was filed.

**Fees** - Pursuant to T.C.A § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following expiration of the ninety (90) days as provided in § 4-5-207. However, this section shall not apply to the following:

- (1) Rules that implement new fees or fee increases promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process.
- (2) State agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Example language for proposed rules relating to fees that take effect July 1:

Fees. The following fees are nonrefundable and apply to all applicants and certificate holders.

(1) Application Fee – before July 1, 20XX	\$100.00
after July 1, 20XX	\$200.00

## HOW TO FILE DOCUMENTS WITH THE SECRETARY OF STATE

All filings to the Secretary of State must be on white, medium bond paper sized eight and a half (8 1/2) by eleven (11) inches.

Margins are pre-selected by the Secretary of State on the appropriate form.

All forms must be clean and legible. In addition, the following are required:

- The file must include capitalization and lowercase text. No all caps.
- Font size shall be Arial 10 point.
- No bold, underline or italic fonts.
- No autonumbering 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 Publications Division's 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 unneeded 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; software program and version; chapter and rule number; and the name, address, telephone number and e-mail address of the technical contact who created the file.

On the disk, 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 rulefiling.

## **FILING NOTICES FOR RULE MAKING HEARING**

An online form (SS-7037) is available for completion at [http://tn.gov/sos/rules/filing\\_rules.htm](http://tn.gov/sos/rules/filing_rules.htm). Once completed, it can be printed and copies made for submission to the Secretary of State. The Publications Division requires three (3) completed documents with original signatures and notarization.

The notice must contain the following information:

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

## FILING RULES

The term "rules" shall mean rulemaking hearing rules, proposed rules, and emergency rules. Each term is applicable to its own online form available for completion at [http://tn.gov/sos/rules/filing\\_rules.htm](http://tn.gov/sos/rules/filing_rules.htm).

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.

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

**Authority:** §§ 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.

Once completed, print the online form. For each of the above rules, the Publications Division requires three (3) completed documents with original signatures and notarization.

## ADDITIONAL REQUIREMENTS

The following items are required when filing rulemaking hearing rules, proposed rules, and emergency rules:

- responses to public hearing comments (for rule making hearing rules only),
- regulatory flexibility statement (impact on small businesses),
- impact on local government statement,
- legislative oversight form for the government operations committee, and
- a redline version of the rule filing.

It is recommended 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 rule making hearing form for these responses. No letters of inquiry from parties questioning the rule will be accepted. Minutes or transcripts of the meeting will not be accepted. When no comments are received at the public hearing, the agency need only include a statement stating such in this section.

**Regulatory Flexibility Statement.** 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. §§ 4-5-220 and 4-5-228, “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 <http://tn.gov/sos/acts/106/pub/pc1070.pdf> of the 2010 Session of the General Assembly)

**Redline Version.** In addition to these requirements, departments and agencies must submit redline versions of their rule filings for the Government Operations Committee per Public Chapter Number 741 (2008). The Secretary of State’s office is a conduit to ensure the Government Operations Committee receives its required redline version of rule filings.

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.

## **FILING WITHDRAWALS OR STAYS**

Form SS-7041 applies for filing a Stay of Effective Rules, a Withdrawal, or a Withdrawal of a Stay. An online version of SS-7041 is available at [http://tn.gov/sos/rules/filing\\_rules.htm](http://tn.gov/sos/rules/filing_rules.htm).

Once completed, print the online form. Three (3) entire forms with original signatures with disk are required to be filed with the Publications Division for a Stay of Effective Rules, a Withdrawal, or a Withdrawal of a Stay.

## NUMBERING GUIDELINES

Each state agency has been assigned a four (4) digital 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
        - (I) Item
          - I. Subitem
            - A. Section
              - (A) Subsection

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

**Authority:** §§ 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 answer to questions, contact the Department of State, Division of Publications, phone: 615.741.2650 or e-mail: [publications.information@tn.gov](mailto:publications.information@tn.gov). Filings should be delivered to the division at 312 Rosa L. Parks Avenue, 8th Floor, Snodgrass/Tennessee Tower, Nashville, TN, 37243-1102.