



Tennessee Administrative Law Manual

Uniform Administrative Procedures Act
Tennessee Code Annotated
Title 4, Chapter 5

Rules For Filing Rulemaking Documents
Chapter 1360-01-01
Chapter 1360-01-02
Chapter 1360-01-03

Uniform Rules of Procedures For Hearing Contested
Cases Before State Administrative Agencies
Chapter 1360-04-01

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Part 1 - General Provisions

4-5-101. Short title. —

This chapter may be cited as the “Uniform Administrative Procedures Act.”

[Acts 1974, ch. 725, § 1; T.C.A., § 4-507.]

4-5-102. Chapter definitions. —

As used in this chapter, unless the context otherwise requires:

(1) “Administrative judge” means an agency member, agency employee or employee or official of the office of the secretary of state, licensed to practice law and authorized by law to conduct contested case proceedings pursuant to § 4-5-301;

(2) “Agency” means each state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases;

(3) “Contested case” means a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing. Such proceeding may include rate making; price fixing; granting of certificates of convenience and necessity; the making, review or equalization of tax assessments; the granting or denial of licenses, permits or franchises where the licensing board is not required to grant the licenses, permits or franchises upon the payment of a fee or the finding of certain clearly defined criteria; and suspensions of, revocations of, and refusals to renew licenses. An agency may commence a contested case at any time with respect to a matter within the agency’s jurisdiction;

(4) “Hearing officer” means an agency member, agency employee or employee or official of the office of the secretary of state, not licensed to practice law, and authorized by law to conduct a contested case proceeding pursuant to § 4-5-301;

(5) “License” includes the whole or part of any agency, permit, certificate, approval, registration, charter or similar form of permission required by law;

(6) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, withdrawal or amendment of a license;

(7) “Order” means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of a specific person or persons;

(8) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(9) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, including another agency;

(10) “Policy” means a set of decisions, procedures and practices pertaining to the internal operation or actions of an agency;

(11) “Publication” means a posting of materials on the appropriate web site by the secretary of state that have been submitted in accordance with this chapter or any other information for which the secretary of state is responsible;

(12) “Rule” means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. “Rule” includes the amend-

ment or repeal of a prior rule, but does not include:

(A) Statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public;

(B) Declaratory orders issued pursuant to § 4-5-223;

(C) Intra-agency memoranda;

(D) General policy statements that are substantially repetitious of existing law;

(E) Agency statements that:

(i) Relate to the use of the highways and are made known to the public by means of signs or signals; or

(ii) Relate to the curriculum of individual state supported institutions of postsecondary education or to the admission or graduation of students of such individual institutions but not to the discipline or housing of students;

(F) Rate filings pursuant to title 56, chapters 5 and 6; or

(G) Statements concerning inmates of a correctional or detention facility; and

(13) "Small business" means a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees.

[Acts 1974, ch. 725, § 2; 1975, ch. 370, § 1; 1976, ch. 388, § 1; 1976, ch. 573, § 1; T.C.A., § 4-508; Acts 1982, ch. 874, § 1; 1984, ch. 728, §§ 9, 10; 1998, ch. 740, § 1; 2007, ch. 464, § 1; 2009, ch. 566, § 1.]

4-5-103. Construction of chapter. —

(a) This chapter shall not be construed as in derogation of the common law, but as remedial legislation designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination; and this chapter shall be given a liberal construction and any doubt as to the existence or the extent of a power conferred shall be resolved in favor of the existence of the power.

(b) This chapter does not repeal § 65-2-110, and where there is a conflict between the provisions of this chapter and that section, that section shall control. In any other case of conflict between this chapter and any statute, whether general or specific, this chapter shall control; however, compliance with the procedures prescribed by this chapter does not obviate the necessity of complying with procedures prescribed by other provisions of this code.

(c) Nothing in this chapter shall be held to modify or repeal the statutes with respect to payment of taxes under protest and suits for the recovery thereof.

[Acts 1974, ch. 725, § 19; 1975, ch. 370, § 15; 1978, ch. 938, §§ 14, 15; T.C.A., §§ 4-525, 4-5-119; Acts 1982, ch. 874, §§ 2, 25, 26.]

4-5-104. Suspension of provisions when necessary to avoid loss of federal funds. —

(a) The governor may exempt an agency from complying with any provision of this chapter where necessary to conform to any provisions of federal law or rules and regulations as a condition to the receipt of federal granted funds provided that:

(1) The governor determines that, because of a conflict between the provisions of this chapter and federal law or rules and regulations, receipt of federal funds either authorized, anticipated, or appropriated is placed in jeopardy;

(2) The governor determines that the alternative procedure necessary to satisfy federal funding requirements does not abrogate basic fairness;

(3) The governor exempts that agency from only those provisions of the chapter compliance with which would jeopardize federal funding;

(4) The governor states in detail and in writing the governor's findings under subdivisions (a)(1) and (a)(2), the extent of the agency's exemption under subdivision (a)(3), and the alternative procedures to replace those procedures from which the agency is exempted under this section;

(5) The governor files a copy of such written statement with the secretary of state;

(6) The effectiveness of the exemption shall in no case be extended beyond thirty (30) days after the date of adjournment of the next session of the general assembly lasting ten (10) legislative days or longer; and that if the general assembly fails to act within such legislative session to make by law such exemption permanent, then the governor may not at a later time reinstitute the same exemption; and

(7) The governor may at any time determine that the federal funding is no longer jeopardized and at such time revoke the governor's exemption of an agency from any particular provision of the chapter, which revocation shall be effective upon the governor filing a written statement to that effect with the secretary of state.

(b) Such administrative latitude is intended to facilitate the operation of state government and cooperation between the state of Tennessee and the United States government and shall not be used to create job positions that are intended to exist beyond the federal funding, nor to create any program requiring the expenditure of state funds not specifically directed by the general assembly, or that are intended to exist beyond the federal funding.

[Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-510; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981, ch. 140, § 1; T.C.A., § 4-5-123(d); Acts 1982, ch. 874, §§ 3, 15, 21, 25, 26.]

4-5-105. Informal settlements. —

Except to the extent precluded by another provision of law, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies may establish specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter pursuant to informal procedures.

[Acts 1982, ch. 874, § 4.]

4-5-106. Application. —

(a) The provisions of this chapter shall not apply to the military, the governor, the general assembly, the state building commission, the state funding board or the courts, nor shall they apply to county and municipal boards, commissions, committees, departments or officers.

(b) Disciplinary and job termination proceedings for inmates under the supervision of the department of correction or juveniles under the supervision of the department of children's services shall not be considered "contested cases" as defined by § 4-5-102.

(c) The provisions of §§ 4-5-105, 4-5-219, 4-5-223, 4-5-225 and 4-5-301 — 4-5-323 shall not apply to the board of claims, the state election commission or the board of probation and parole.

(d) The rulemaking and publication provisions of this chapter shall not apply to proclamations promulgated under the provisions of title 70, and the promulgation, filing and publication provisions of such title shall control, except that the secretary of state shall publish on the administrative register web site current and effective proclamations in the same manner that rules and other notices are published under § 4-5-220. The text of proclamations shall be published on the administrative register web site under the proclamation section and shall have the same weight and effect prescribed in § 4-5-221(c), for the text of rules so published. The wildlife resources agency shall keep an original copy of all proclamations from

which the effective dates of all proclamations can be determined.

(e) The provisions of §§ 4-5-303, 4-5-309, 4-5-311(a), (b) and (c), 4-5-312(c), 4-5-314(b), 4-5-315 — 4-5-318, 4-5-322 and 4-5-323, shall not apply to the department administering the Employment Security Law under title 50, chapter 7.

(f) The provisions of this chapter shall not apply to revenue rulings and letter rulings issued by the commissioner of revenue.

[Acts 1975, ch. 370, § 2; 1976, ch. 685, § 1; 1977, ch. 467, § 1; 1978, ch. 938, § 17; T.C.A., §§ 4-529, 4-5-123; Acts 1982, ch. 874, § 5; 1983, ch. 103, § 1; 1988, ch. 562, § 2; 1989, ch. 278, § 21; 1989, ch. 454, § 3; 1996, ch. 1079, § 16; 1998, ch. 1049, § 1; 1999, ch. 520, § 26; 2000, ch. 864, § 1; 2007, ch. 183, § 1; 2009, ch. 566, §§ 2, 3.]

4-5-107. Majority needed to determine rules or contested cases — Exceptions. —

Unless otherwise provided by statute, no state board, commission or department composed of two (2) or more members or commissioners shall make any rule or declaratory rulings or finally determine any contested case, as the terms “rule” and “contested case” are defined in this chapter, unless a majority of the members or commissioners is present.

[Acts 1975, ch. 97, § 1; T.C.A., §§ 4-528, 4-5-122(a); Acts 1982, ch. 874, § 6.]

4-5-108. Legislative proposals affecting administrative procedure — Prior study. —

(a) Any legislation that, in whole or in part, amends or repeals any provision of this chapter, or any legislation that reestablishes, restructures or otherwise delegates any type of rulemaking authority to any new or pre-existing governmental entity to which this chapter applies, shall be referred to the government operations committee according to the rules of the senate and the rules of the house of representatives. The government operations committee of each house shall then review the legislation and shall recommend that the legislation be considered for passage or shall recommend against passage to the appropriate standing committee.

(b) Except when the government operations committee is designated as the appropriate standing committee, nothing contained in this section shall be construed to authorize the government operations committee to delay or prevent consideration of such legislation by the appropriate house by withholding its recommendation.

(c) Nothing contained within this chapter shall be construed to prevent the government operations committee from being considered as an appropriate standing committee to consider legislation that amends or repeals any provision of this chapter.

[Acts 1980, ch. 454, § 1; T.C.A., § 4-5-131; Acts 1982, ch. 874, §§ 7, 42; 1983, ch. 479, § 1; 2009, ch. 566, § 4.]

4-5-109 — 4-5-133. [Transferred or repealed.]

Part 2 - Rulemaking and Publications

4-5-201. Petitions for or against rules. —

(a) Except where the right to petition for a rule is restricted by statute to a designated group or except where the form of procedure for such petition is otherwise prescribed by statute, any municipality, corporation or any five (5) or more persons having an interest in a rule may petition an agency requesting the adoption, amendment or repeal of such rule.

(b) Such petition shall state clearly and concisely:

- (1) The substance or nature of the rulemaking that is requested;
- (2) The reasons for the request and the petitioner’s interest in the request; and

(3) Reference to the authority of the agency to take the action that is requested.

(c) After submission of a petition, the agency shall, as promptly as is consistent with the orderly dispatch of its business, deny the request or grant the same or provide for some modified form of the proposed rule. If the agency denies the petition, it shall promptly give notice thereof to the person who filed the petition. If the agency grants the petition in whole or in part, it shall proceed to meet the rulemaking requirements set out in this chapter.

[Acts 1974, ch. 725, § 5; 1975, ch. 370, § 9; T.C.A., §§ 4-511, 4-5-105; Acts 1982, ch. 874, § 9.]

4-5-202. When hearings required. —

(a) An agency shall precede all its rulemaking with notice and a public hearing unless:

(1) The rule is adopted as an emergency rule; or

(2) The proposed rule is posted to the administrative register web site within the secretary of state's web site within five (5) business days of receipt, together with a statement that the agency will adopt the proposed rule without a public hearing unless within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the secretary of state a petition for a public hearing on the proposed rule is filed by twenty-five (25) persons who will be affected by the rule, an association of twenty-five (25) or more members, a municipality or by a majority vote of any standing committee of the general assembly. If an agency receives such a petition, it shall not proceed with the proposed rulemaking until it has given notice and held a hearing as provided in this section. The agency shall forward the petition to the secretary of state. The secretary of state shall not be required to compile all filings of the preceding month into one (1) document.

(b) Subdivision (a)(2) does not apply if another statute specifically requires the agency to hold a hearing prior to adoption of the rule under consideration.

(c) The secretary of state shall prescribe rules governing the manner and form in which proposed rules shall be prepared by the agencies for submission for publication under subdivision (a)(2). The secretary of state may refuse to accept for publication any proposed rule that does not conform to such requirements.

[Acts 1975, ch. 370, § 8; 1978, ch. 938, § 3; T.C.A., § 4-530; Acts 1980, ch. 729, § 1; T.C.A., § 4-5-124; Acts 1982, ch. 874, § 10; 2009, ch. 566, § 5.]

4-5-203. Notice of hearing. —

(a) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall:

(1) Transmit written notice of the hearings to the secretary of state for publication in the notice section of the administrative register web site and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration require some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register web site. Such notice of a hearing shall remain on the web site until the date of such hearing;

(2) Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rulemaking.

(b) Except as otherwise permitted by § 4-5-204(e), notice through publication on the administrative register web site 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 five (5) business days from the date notice was transmitted to the secretary of state for such publication.

(c) The notice that this section requires an agency to give shall include:

(1) A statement of the time and place at which the hearing is to be held;

(2) (A) The express terms of the rule being proposed; provided, that an informative summary reasonably calculated to give notice to interested parties may be substituted for the express terms of the proposed rule if:

(i) The express terms of the rule being proposed are filed with the secretary of state;

(ii) The secretary of state determines that publication of the entire text of the proposed rule would be impractical; and

(iii) The complete text of the express terms of the proposed rule is made available by the secretary of state or the agency for public inspection and copying;

(B) Nothing in this section shall be construed to preclude an agency from making changes in the rule being proposed after the public hearing, so long as the changes are within the scope of the rulemaking notice filed with the secretary of state;

(3) Insofar as practicable, a reference to the statutory authority pursuant to which the agency proposed to adopt the rule; and

(4) Any additional matter that may be prescribed by statute applicable to the specific rule or class of rules under consideration.

(d) Failure of any person to receive notice of a hearing on proposed rulemaking is not grounds for invalidating the resulting rule if notice of the hearing was published as provided in subdivision (a)(1).

(e) The secretary of state shall prescribe rules governing the manner and form in which written notice of hearings shall be transmitted by the agencies to the secretary of state for publication in the notice section of the administrative register web site. The secretary of state may refuse to accept for publication any notice of hearing transmitted that does not conform to such requirements, in which case transmission of notice shall be deemed not to have been satisfied under the provisions of subdivision (a)(1) and subsection (b).

[Acts 1975, ch. 370, § 8; T.C.A., §§ 4-531, 4-5-125; Acts 1982, ch. 874, § 11; 1986, ch. 738, § 6; 1991, ch. 346, §§ 1, 2; 2009, ch. 566, §§ 6, 7.]

4-5-204. Conduct of hearings. —

(a) (1) The agency shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration.

(2) The presiding officer may limit oral presentations if the presiding officer feels that the length of the hearing otherwise would be unduly increased by reason of repetition.

(3) The agency shall afford each interested person opportunity to present facts, views or arguments in writing, whether or not such person had an opportunity to present them orally.

(4) At the beginning of each hearing, if the agency has made a proposal, the agency shall present a summary of the factual information on which its proposal is based, including any information obtained through the use of advisory committees or as a result of informal conferences or consultation.

(b) (1) The person authorized by the agency to conduct the hearing may administer oaths or affirmations and may continue or postpone the hearing to such time and place as it determines.

(2) The agency shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible.

(c) (1) If the officer or a quorum of the board or commission charged by law with ultimate responsibility for rulemaking is not present at the hearing, a person who appears at the hearing shall be given an opportunity to present the person's arguments to such officer or quorum of such board or commission prior to

adoption of the proposed rule if, at the hearing, the person makes a request for such opportunity in writing to the person presiding at the hearing.

(2) Such officer, board or commission may in its discretion require such arguments to be presented in writing.

(3) If a record of the hearing has been made, argument shall be limited to the record.

(4) Where oral argument is accorded, such officer, board or commission may impose reasonable limitations on the length and number of appearances in order to conserve time and preclude undue repetition.

(d) The procedures prescribed by this section are supplemental to procedures prescribed by any statute relating to the specific agency or to the rule or class of rules under consideration. However, in any case of conflict between this section and another procedural administrative statute, this section shall control.

(e) Prior to holding the public hearing as required by subsection (a), the agency may solicit comments from the public on a subject matter of possible rulemaking under active consideration within the agency, significant aspects of which remain undeveloped, by causing notice of the hearing to be published in accordance with the requirements of § 4-5-203. At such hearing notice of the time and place of the public hearing required by subsection (a) shall be announced; and the agency shall take other appropriate actions to comply with the provisions of § 4-5-203 and title 8, chapter 44, part 1. The hearing procedures set forth in this subsection (e) are in addition to, and not a substitution for, the requirements of § 4-5-203. When the agency has determined the specifics of the proposal, it must comply with the normal hearing and notice requirement of rulemaking.

[Acts 1975, ch. 370, § 8; T.C.A., §§ 4-532, 4-5-126; Acts 1982, ch. 874, § 12; 1986, ch. 738, § 6; 1991, ch. 346, § 3.]

4-5-205. Consideration of arguments — Reasons given for agency action — Advisory committees.

—

(a) The agency shall consider fully all written and oral submissions respecting proposed rules.

(b) Upon adoption of a rule, the agency, if requested to do so by an interested person prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for its action.

(c) An agency is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of such committees shall be advisory only. The agency may at its election compensate the members of such advisory committees for their services.

[Acts 1974, ch. 725, § 3; 1975, ch. 370, § 7; 1978, ch. 712, § 1; 1978, ch. 938, § 1; T.C.A., §§ 4-509, 4-5-103(c); Acts 1982, ch. 874, § 13.]

4-5-206. Filing of rules. —

(a) It is the duty of the secretary of state to file the rules of each agency in a convenient and accessible manner. Each copy of a rule filed shall contain a citation of the authority pursuant to which it was adopted, and if an amendment, it shall clearly identify the original rule by rule number and title.

(b) The secretary of state shall endorse on each copy of a rule or rules filed the time and date of filing and shall maintain a file of such rules for public inspection.

(c) No rule shall be filed under this chapter unless it complies with § 4-5-211.

(d) The secretary of state shall prescribe rules governing the manner and form in which regulations shall be prepared for filing. The secretary of state may refuse to accept for filing any rule that does not conform to such requirements.

[Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-510; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981, ch. 140, § 1; T.C.A., § 4-5-104(e)(2), (e)(3), (f); Acts 1982, ch. 874, § 14; 2009, ch. 566, §§ 8, 9.]

4-5-207. Effective dates of rules. —

No rule shall become effective unless it complies with §§ 4-5-206 and 4-5-211. No rule, unless filed as an emergency rule pursuant § 4-5-208, shall become effective until ninety (90) days after the filing of such rule in the office of the secretary of state.

[Acts 1982, ch. 874, § 16; 1986, ch. 738, § 8; 1993, ch. 316, § 1; 2009, ch. 566, § 10.]

4-5-208. Emergency rules. —

(a) An agency may, upon stating its reasons in writing for making such findings, proceed without prior notice or hearing to adopt an emergency rule, if the agency finds that:

(1) 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 this chapter would not adequately protect the public;

(2) The rule only delays the effective date of another rule that is not yet effective;

(3) It is required by the constitution or court order;

(4) It is required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedures described in this chapter might jeopardize the loss of a federal program or funds; or

(5) 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.

(b) The emergency rule shall become effective immediately, unless otherwise stated in the rule, upon a copy of the rule and a copy of the written statement of the reasons for the rule being filed with the secretary of state. The emergency rule may be effective for a period of not longer than one hundred eighty (180) days. An agency shall not adopt the same or a substantially similar emergency rule within one (1) calendar year from its first adoption, unless the agency clearly establishes that it could not reasonably be foreseen during the initial one hundred eighty-day period that the emergency would continue or would likely recur during the next nine (9) months. The adoption of the same or substantially similar rule through ordinary rulemaking procedures authorized by this chapter shall not be precluded by this section.

(c) The agency shall take steps to make emergency rules known to persons who will be affected by the rules. The secretary of state shall post the emergency rule filing to the administrative register web site within two (2) business days of filing. An emergency rule filing shall remain on the administrative register website until the filing expires. The secretary of state shall update relevant rules to reflect the filing and the expiration of emergency rules.

(d) In any action contesting a rule adopted in reliance upon this section, the burden of persuasion shall be upon the agency to demonstrate that the rule meets the criteria established by this section.

(e) An agency's finding of an emergency pursuant to this section shall not be based upon the agency's failure to timely process and file rules through the normal rulemaking process.

[Acts 1982, ch. 874, § 17; 1991, ch. 346, § 4; 1993, ch. 316, §§ 4, 5; 2009, ch. 566, § 11.]

4-5-209. Reference to public necessity rules deemed references to emergency rules. —

Any reference in this code to public necessity rules shall be deemed to be a reference to emergency

rules as provided in § 4-5-208. The Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced. The Tennessee code commission is directed to compile a list of all public necessity rules that are subject to this section and provide such list by January 1 of each year to each member of the government operations committees of the house of representatives and the senate.

[Acts 1981, ch. 47, § 3; T.C.A., § 4-5-133; Acts 1982, ch. 874, § 18; 1986, ch. 738, § 7; 1993, ch. 316, § 6; 2009, ch. 566, § 12.]

4-5-210. [Reserved.]

4-5-211. Approval of rules by attorney general and reporter. —

No rule shall be filed in the office of the secretary of state until such rule has been filed with the office of the attorney general and reporter. The office of the attorney general and reporter shall review the legality and constitutionality of every rule filed pursuant to this section and shall approve or disapprove of rules based upon the attorney general's determination of the legality of such rules. The attorney general and reporter shall not disapprove an emergency rule filed pursuant to § 4-5-208 solely on the basis of failure to meet the statutory criteria for adoption of the rule contained in this chapter, unless the attorney general and reporter determines and states in writing that the attorney general and reporter could not defend the legality of the rule on the basis of failure to meet the statutory criteria for adoption of the rule contained in this chapter, in any action contesting the legal validity of the rule.

[Acts 1982, ch. 874, § 20; 2009, ch. 566, § 13.]

4-5-212, 4-5-213. [Reserved.]

4-5-214. Withdrawal of rules. —

(a) A rule may be withdrawn by the agency proposing such rule at any point prior to the effective date of the rule. Such withdrawal shall become effective upon delivery of 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 such rule.

(b) If, pursuant to this chapter, an agency withdraws a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

[Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-5-10; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981, ch. 140, § 1; T.C.A., § 4-5-104(i); Acts 1982, ch. 874, § 23; 2009, ch. 566, § 21.]

4-5-215. Stay of effective date of rules. —

(a) 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.

(b) Prior to the effective date of a rule, the house or senate government operations committee may stay the running of the seventy-five-day period required by § 4-5-207 for a period of time not to exceed sixty (60) days. Such stay shall become effective at such time as the committee files written notice with the secretary of state and shall specify the length of effectiveness of the stay. Prior to the expiration date of the stay, such stay may be withdrawn by the committee. Withdrawal or expiration of the stay shall reactivate the running of the balance of the seventy-five-day period that remained upon the date the stay was filed.

[Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-510; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981, ch. 140, § 1; T.C.A., § 4-5-104(j); Acts 1982, ch. 874, § 24; 1991, ch. 266, § 1; 1993, ch. 316, § 2; 1995, ch. 546, § 2; 2009, ch. 566, § 14.]

4-5-216. Invalidity of improperly adopted rules. —

Any agency rule not adopted in compliance with the provisions of this chapter shall be void and of no effect and shall not be effective against any person or party nor shall it be invoked by the agency for any purpose.

[Acts 1982, ch. 874, § 25.]

4-5-217. Rules of practice required. —

In addition to other rulemaking requirements imposed by law, each agency shall adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including, where practical, a description of all forms and instructions used by the agency.

[Acts 1982, ch. 874, § 27.]

4-5-218. Public inspection and copying of agency rules, final orders and decisions. —

(a) Each agency shall make available for inspection and copying:

(1) Agency rules, final orders and decisions;

(2) Written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;

(3) Opinions of the attorney general and reporter rendered to the agency; and

(4) A description of its current organization stating the general course and method of its operation and the methods whereby the public may obtain information or make submissions or requests.

(b) The agency may charge reasonable compensatory fees for providing any documents specified in this section to requesting persons.

(c) Nothing in this section shall be construed to limit access to public documents under any other provision of law.

(d) The segregable portion of any document or other agency record specified in this section shall be provided to any person requesting such document or record after deletion of the portions that are confidential under any provision of law and payment of reasonable compensatory fees to the agency.

(e) [Deleted by 2009 amendment.]

[Acts 1982, ch. 874, § 28; 1986, ch. 738, § 10; 1994, ch. 903, § 1; 2009, ch. 566, § 22.]

4-5-219. Model rules of procedure. —

(a) The secretary of state, from time to time, shall adopt, in accordance with the rulemaking requirements of this chapter, model rules of procedure appropriate for use by as many agencies as possible.

(b) The model rules shall deal with all general functions and duties performed in common by several agencies.

(c) Each agency shall adopt as much of the model rules as is practicable. To the extent an agency adopts the model rules, it shall do so in accordance with the rulemaking requirements of this chapter.

(d) Any rule or procedure adopted by an agency that differs from the model rules shall be accompanied by a finding stating the reasons why the relevant portions of the model rules were impracticable for such agency.

[Acts 1982, ch. 874, § 29.]

4-5-220. Publication of rules on the secretary of state's web site — Contents of web site. —

(a) After a rule is filed, the secretary of state shall, within five (5) business days of its acceptance, add the filed rule to the appropriate location within the portion of the secretary of state's web site devoted to this chapter. The secretary of state's web site shall contain the following:

(1) The text of all pending rules, notices of rulemaking hearings, withdrawal of rules, stays of effective dates, withdrawal of stays of effective dates, emergency rules, announcements and proclamations. The text shall remain on the web site until the filing becomes effective as provided by this chapter. After the effective date of the rule, the filing shall be archived on the web site;

(2) A table listing the citations of all rules filed that have pending effective dates, hearing dates or some other action required by this chapter;

(3) A table listing all emergency rules in effect; and

(4) Any other notices or documents designated by law or by the secretary of state.

(b) The secretary of state shall compile on the secretary of state's web site an official compilation of all the effective rules and regulations of each agency. The secretary of state shall update agency rules on the effective date of any new amendment to existing rules or of any new rules. The secretary of state shall incorporate emergency rules within the appropriate agency's rules within two (2) business days of their filing. The secretary of state shall revise the official compilation of rules upon the expiration of an emergency rule.

(c) The secretary of state may, in the secretary of state's discretion, omit from the register or the compilation rules, which, if published, would be unduly cumbersome, expensive or otherwise inexpedient, if such rules are made available in printed, electronic or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies of the rules may be obtained.

(d) The secretary of state shall make the register web site and the official rules and regulation web site available through the Internet without charge to the user.

[Acts 1982, ch. 874, § 30; 1996, ch. 779, §§ 1, 2, 4; 2009, ch. 566, § 15.]

4-5-221. Powers of secretary of state regarding publication — Certification of rules — Web site and its contents prima facie evidence of regulatory law — Delegation of duties and powers. —

(a) With respect to the publication of the administrative code to be cited as the rules and regulations of the state of Tennessee, and with regard to the publication of the monthly administrative register to be cited as the Tennessee administrative register, the secretary of state shall have the powers set out in subdivision (a)(1); provided, that the requirements of subdivision (a)(2) are met:

(1) In preparing the administrative code and administrative register the secretary of state shall not alter the sense, meaning or effect of any rule promulgated by an agency, but shall copy the exact language of the text of a rule filed with the secretary of state's office, except that the secretary of state is authorized to rearrange, regroup, and renumber the divisions, chapters, rules, and parts of rules for publication in the administrative code and monthly register and to change reference numbers to agree with any renumbered chapter or rule, to change the wording of and prepare new rule headings and symbols; to substitute the proper rule or chapter reference where the terms "these rules" or "this regulation" or similar expressions are used in the rules; to correct manifest misspelling and typographical errors and to change capitalization and spelling for the purpose of uniformity; to change references to governmental agencies, when

part or all of the powers, rights or duties of such agencies have, by act of the general assembly or of the governor, been transferred to other agencies; and to omit preambles, captions and statements declaring authority and rulemaking intent. Where the application or effect of a rule, by its terms, depends on the time when the rule took effect, the secretary of state may substitute the actual effective date for the various forms of expression that mean that date, such as “when this rule (or chapter) takes effect” or “after (or before) the effective date of this rule (or chapter).” No such change shall be deemed an alteration or departure from the rule as filed.

(2) Every agency filing rules for publication in the administrative code and administrative register shall assure the accuracy of its submission and that the submission meets the requirements of the rules and regulations promulgated by the secretary of state pursuant to this chapter, when they are filed with the secretary of state.

(b) The secretary of state shall prepare a written certificate of approval for each web site that certifies approval of the web site and its contents and that the text of each rule was compared with the original filing with the secretary of state, and that, with the exception of changes in form permitted by subsection (a), the rules are accurately and correctly copied.

(c) The web site of the administrative register and administrative code and its contents that contain the secretary of state’s certificate of approval shall constitute prima facie evidence of the regulatory law of the state of Tennessee and be received, recognized, referred to and used in all courts, agencies, departments, offices of and proceedings in Tennessee and the official compilation of rules and regulations of Tennessee.

(d) The secretary of state is authorized to delegate any or all duties and powers set out in this section and chapter to the director of the publications division or any other members of the secretary of state’s staff.

[Acts 1975, ch. 370, § 11; T.C.A., §§ 4-533, 4-5-127; Acts 1982, ch. 874, § 31; 1996, ch. 779, § 3; 2009, ch. 566, § 16.]

4-5-222. Record of voting on policy or rule adoption. —

(a) (1) Notwithstanding any provision of the law to the contrary, in addition to other rulemaking requirements imposed by law, each agency shall maintain the following written records on each rule adopted by such agency:

(A) The rule, in writing, signed by the person proposing such rule;

(B) A roll call vote on adoption by “aye” or “no” of each person voting; and

(C) 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. A transcript of the rulemaking hearing shall not suffice as the response to comments required by this section.

(2) 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.

(b) Whenever policies that affect the rules and procedures of any agency are decided by vote of the agency, a record on such policies shall be maintained in accordance with this section and made available to the public in the same manner as is required for a rule.

[Acts 1977, ch. 187, § 1; T.C.A., §§ 4-536, 4-5-130; Acts 1982, ch. 874, § 32; 1991, ch. 346, § 5; 1993, ch. 458, § 1.]

4-5-223. Declaratory orders. —

(a) Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:

(1) Convene a contested case hearing pursuant to the provisions of this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or

(2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225.

(b) A declaratory order shall be binding between the agency and parties on the state of facts alleged in the petition unless it is altered or set aside by the agency or a court in a proper proceeding.

(c) If an agency has not set a petition for a declaratory order for a contested case hearing within sixty (60) days after receipt of the petition, the agency shall be deemed to have denied the petition and to have refused to issue a declaratory order.

(d) Each agency shall prescribe by rule the form of such petitions and the procedure for their submission, consideration and disposition.

[Acts 1982, ch. 874, § 34.]

4-5-224. Declaratory order request — Notices. —

(a) Whenever an agency is petitioned for a declaratory order, that agency shall:

(1) Submit electronically to the secretary of state the notice of hearing for publication in the notice section of the administrative register web site and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register web site; and

(2) Take such other steps as it deems necessary to convey effective notice to other agencies and professional associations that are likely to have an interest in the declaratory order proceedings.

(b) Such notices shall include specific information relating to the declaratory order request, including, but not limited to:

(1) Name of petitioner and an explanation of whom such person or entity purports to represent;

(2) A summary of the relief requested, including the specific nature of the requested order, and the conclusion or conclusions the petitioner requests that the agency reach following the declaratory proceeding; and

(3) A detailed outline and summary of the statutes or regulations that the agency is called upon to interpret or upon which it is to rule.

(c) Notwithstanding the provisions of § 4-5-223(a)-(c), except in the case of an emergency proceeding that meets the conditions of § 4-5-208, no declaratory order proceeding that calls for a title 63 agency to rule on the meaning of any provision of a licensee's professional licensing act may be set until at least forty-five (45) days after the notice required by this section has been filed with the secretary of state.

[Acts 1997, ch. 162, § 1; 2009, ch. 566, §§ 17, 18.]

4-5-225. Declaratory judgments. —

(a) The legal validity or applicability of a statute, rule or order of an agency to specified circumstances may be determined in a suit for a declaratory judgment in the chancery court of Davidson County, unless

otherwise specifically provided by statute, if the court finds that the statute, rule or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant. The agency shall be made a party to the suit.

(b) A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

(c) In passing on the legal validity of a rule or order, the court shall declare the rule or order invalid only if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, was adopted without compliance with the rulemaking procedures provided for in this chapter or otherwise violates state or federal law.

[Acts 1982, ch. 874, § 35; 1997, ch. 162, § 1; T.C.A., § 4-5-224.]

4-5-226. Expiration of rules. —

(a) Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or indefinitely, any permanent rule filed in the office of the secretary of state shall expire on June 30 of the year following the year of its filing.

(b) (1) Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or to a date indefinitely beyond the date upon which an agency terminates, each permanent rule that does not expire under subsection (a), shall expire on the day provided in chapter 29, part 2 of this title for termination of the agency that promulgated such rule; provided, that if such agency continues in existence pursuant to § 4-29-112, such agency rule shall expire upon completion of such wind-up period.

(2) All rules and regulations issued or promulgated by any department or agency of state government whose functions, duties, or responsibilities have been transferred to another department or agency shall remain in full force and effect, and shall thereafter be administered and enforced by the agency or department assuming responsibility for those functions, duties, or responsibilities as rules of that agency or department, and all proposed rules pending with the attorney general and reporter or secretary of state, unless withdrawn, shall continue that status as proposed rules until becoming effective as rules of the agency assuming the functions, duties, or responsibilities. The agency or department assuming responsibility for such functions, duties, or responsibilities shall have the authority to promulgate new rules and regulations pursuant to this chapter to effectuate its duties and responsibilities. To this end, the department or agency shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions transferred.

(c) Rules promulgated pursuant to this chapter may be reviewed by the government operations committees of the senate and the house of representatives meeting jointly or separately; or, alternatively, at the discretion of the chair of either of such committees, such rule may be reviewed by a subcommittee of the government operations committees. Members of the government operations committees of the senate and the house of representatives shall serve as members of such committees until their successors are duly appointed; provided, that such members remain members of the general assembly. Any member of either government operations committee who ceases to be a member of the general assembly shall cease to be a member of the government operations committee on the same date such member's membership in the general assembly ceases, as provided in the Constitution of Tennessee. In the event a majority of the membership of either government operations committee shall cease to be members of the general assembly, the speaker of the senate or the speaker of the house of representatives, as the case may be, may designate an appropriate number of members to serve interim appointments until the government operations committee is reconstituted. The house and senate government operations committees shall strive to hear rules within ninety (90) days of such rules being filed in the office of the secretary of state.

(d) In conducting the review required by subsection (c), the committees or subcommittees shall hold at least one (1) public hearing to receive testimony from the public and from the administrative head of the

agency. At such hearing, the agency shall have the burden of demonstrating that consideration of the factors enumerated in subsection (e) justifies the continued existence of an agency rule. Notice of the time and place of the public hearing shall be on the general assembly web site prior to the hearing. To the extent reasonably practicable, the committees or subcommittees shall conduct hearings on newly filed rules, other than emergency rules, during the ninety-day period immediately following the filing of the original of such rule in the office of the secretary of state.

(e) In conducting the review of agency rules, the committees or subcommittees shall consider the following factors:

- (1) Authority;
- (2) Clarity;
- (3) Consistency;
- (4) Justification;
- (5) Necessity, which shall include the need for a regulation where no regulations presently apply; and
- (6) Reference.

(f) As used in subsection (e):

(1) "Authority" means provisions of law that permit or obligate the agency to adopt, amend or repeal a regulation;

(2) "Clarity" means the grammatical and structural soundness of a rule that tends to ensure that the rule will be easily understood by those persons directly affected by such rule;

(3) "Consistency" means the quality of being in harmony with, and not in conflict with or contradictory to, existing provisions of laws;

(4) "Justification" refers to the diligent, knowledgeable, zealous and timely efforts of the agency proposing continuation of a rule to produce all pertinent and relevant documents, records, written and verbal comments, and other items of information needed to justify continuation of the rule to the committee;

(5) "Necessity" means the need for and usefulness of a regulation as dictated by public policy considerations; and

(6) "Reference" means the statute, court decision or other provision of law that the agency implements, interprets or makes specific by adopting, amending or repealing a regulation.

(g) Nothing contained in this chapter shall be construed to prohibit the general assembly by legislative enactment from directly or indirectly repealing or amending any rule.

(h) The committees or subcommittees have the authority to hold hearings, subpoena records, documents and persons, and to exercise all powers otherwise vested upon committees of the general assembly by title 3, chapter 3, and by the rules of the appropriate house.

(i) (1) All agencies, upon filing a rule in the office of the secretary of state, shall also submit the following information:

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

(C) Identification of persons, organizations, corporations or governmental entities most directly af-

ected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

(H) Office address, e-mail address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

(2) (A) All amendments to existing executive agency rules to be reviewed by the committees or subcommittees pursuant to this part shall be filed with the secretary of state. One (1) copy of the amendments shall be filed in redline form for review by the committees or subcommittees.

(B) As used in subdivision (i)(2)(A), "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.

(3) Failure to comply with the provisions of this subsection (i) may be considered as evidence of the failure by an agency to meet its burden of proof required by subsection (d).

(4) The secretary of state shall refuse to accept the filing of any rule that fails to comply with this subsection (i).

(j) (1) The committee may express its disapproval of a rule that fails to satisfy any or all of the factors enumerated in subsection (e), by voting to allow such rule to expire upon its established expiration date or by voting to request the agency to repeal, amend or withdraw this rule before such established expiration date. Notice of the committee's disapproval of a rule whether by vote to allow the rule to expire or by vote to request the agency to repeal, amend or withdraw a rule shall be posted on the administrative register web site as soon as possible after the committee meeting in which such action was taken.

(2) In the event an agency fails to comply with the committee's request to repeal, amend or withdraw a rule within a reasonable time and before the established expiration date, the committee may vote to request the general assembly to suspend any or all of such agency's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment.

(k) [Deleted by 2009 amendment.]

(l) In addition to the grounds stated in subdivision (j) it shall also be grounds for the government operations committee to recommend to the general assembly to terminate a rule promulgated under authority of any provision of title 68, chapters 201—221, or title 69, chapter 3, that imposes environmental requirements or restrictions on municipalities or counties that are more stringent than federal statutes or rules on the same subject, and that result in increased expenditure requirements on municipalities or counties beyond those required to meet the federal requirements, unless the general assembly has appropriated funds to the affected local government or governments to cover the increased expenditures, in addition to

those they receive pursuant to other laws; provided, a timely comment was addressed to the promulgating authority pursuant to § 4-5-204, raising this issue and specifying the level of increased expenditure mandated by the rule.

(m) If, pursuant to this section, the general assembly terminates a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

(n) If, pursuant to this chapter, an agency withdraws a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

[Acts 1982, ch. 874, § 67; 1983, ch. 479, §§ 2-5; 1984, ch. 707, § 1; 1984, ch. 969, §§ 3, 4; 1985, ch. 440, § 3; 1986, ch. 575, §§ 3, 4; 1986, ch. 738, §§ 8, 9; 1988, ch. 700, § 3; 1990, ch. 838, § 1; 1991, ch. 206, § 1; 1992, ch. 703, § 1; 1993, ch. 316, § 3; 1994, ch. 878, § 1; 1995, ch. 546, §§ 1, 3; 1996, ch. 844, § 1; 1997, ch. 162, § 1; T.C.A., § 4-5-225; Acts 1999, ch. 381, § 1; 2008, ch. 741, § 1; 2009, ch. 566, § 19.]

4-5-227. Designation of date for automatic termination of rule. —

Upon filing a rule with the secretary of state, an agency may designate a date on which the effectiveness of such rule will automatically terminate. Such a designation shall be made either within the substantive language of the rule or on a form provided for such purpose by the secretary of state and shall result, at the appropriate time, in the repeal and removal of such rule from the Official Compilation of Rules and Regulations of the State of Tennessee, published by the secretary of state, without any further rulemaking activity by the agency. Any rule that automatically expires under § 4-5-226, shall so expire pursuant to that section, notwithstanding the fact that the rulemaking agency may have designated a later date for the automatic termination of such rule under this section. This section shall not apply to emergency rules.

[Acts 1986, ch. 738, § 5; 1997, ch. 162, § 1; T.C.A., § 4-5-226; Acts 2009, ch. 566, § 20.]

Part 3 - Contested Cases

4-5-301. Conduct of contested cases. —

(a) In the hearing of any contested case, the proceedings or any part thereof shall be conducted:

(1) In the presence of the requisite number of members of the agency as prescribed by law and in the presence of an administrative judge or hearing officer; or

(2) By an administrative judge or hearing officer sitting alone.

(b) It is the duty of the administrative judge or hearing officer to preside at the hearing, rule on questions of the admissibility of evidence, swear witnesses, advise the agency members as to the law of the case, and ensure that the proceedings are carried out in accordance with the provisions of this chapter, other applicable law and the rules of the respective agency. At no time shall the administrative judge or hearing officer hearing a case with agency members under subsection (a) take part in the determination of a question of fact, unless the administrative judge or hearing officer is an agency member. An administrative judge or hearing officer shall, upon the judge's or the officer's own motion, or timely motion of a party, decide any procedural question of law.

(c) The agency shall determine whether a contested case shall be conducted by an administrative judge or hearing officer sitting alone or in the presence of members of the agency; provided, that administrative judges or hearing officers employed in the office of the secretary of state shall not be required to conduct a contested case sitting alone in the absence of agreement between the agency and the secretary of state.

(d) Contested cases under this section may be conducted by administrative judges or hearing officers employed in the office of the secretary of state upon the request of the agency being presented to the secretary of state and the request being granted.

(e) Any agency not authorized by law to have a contested case conducted by an administrative judge, hearing officer or similar officer from the agency shall direct that the proceedings or any part thereof be conducted by an administrative judge or hearing officer employed in the office of the secretary of state.

[Acts 1982, ch. 874, § 37; 1984, ch. 728, § 11.]

4-5-302. Disqualification of judge, hearing officer, etc. — Substitutions. —

(a) Any administrative judge, hearing officer or agency member shall be subject to disqualification for bias, prejudice, interest or any other cause provided in this chapter or for any cause for which a judge may be disqualified.

(b) Any party may petition for the disqualification of an administrative judge, hearing officer or agency member promptly after receipt of notice indicating that the individual will serve or, if later, promptly upon discovering facts establishing grounds for disqualification.

(c) A party petitioning for the disqualification of an agency member shall not be allowed to question the agency member concerning the grounds for disqualification at the hearing or by deposition unless ordered by the administrative judge or hearing officer conducting the hearing and agreed to by the agency member.

(d) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute shall be appointed, unless otherwise provided by law by:

(1) The governor, if the unavailable individual is a cabinet member or elected official, except that the speakers of the senate and house of representatives shall appoint a substitute for individuals elected by the general assembly; or

(2) The appointing authority, if the unavailable individual is an appointed official.

(f) Any action taken by a duly appointed substitute for an unavailable individual shall be as effective as if taken by the unavailable individual.

[Acts 1982, ch. 874, § 38.]

4-5-303. Separation of functions. —

(a) A person who has served as an investigator, prosecutor or advocate in a contested case may not serve as an administrative judge or hearing officer or assist or advise an administrative judge or hearing officer in the same proceeding.

(b) A person who is subject to the authority, direction or discretion of one who has served as investigator, prosecutor or advocate in a contested case may not serve as an administrative judge or hearing officer or assist or advise an administrative judge or hearing officer in the same proceeding.

(c) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may not serve as an administrative judge or hearing officer or assist or advise an administrative judge or hearing officer in the same proceeding.

(d) A person may serve as an administrative judge or hearing officer at successive stages of the same contested case, unless a party demonstrates grounds for disqualification in accordance with § 4-5-302.

(e) A person who has participated in a determination of probable cause or other equivalent preliminary determination or participated in or made a decision that is on administrative appeal in a contested case may serve as an agency member in the contested case where authorized by law and not subject to disqualification or other cause provided in this chapter.

[Acts 1982, ch. 874, § 39.]

4-5-304. Ex parte communications. —

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge, hearing officer or agency member serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(b) Notwithstanding subsection (a), an administrative judge, hearing officer or agency member may communicate with agency members regarding a matter pending before the agency or may receive aid from staff assistants, members of the staff of the attorney general and reporter, or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative judge, hearing officer or agency members would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative judge, hearing officer or agency member without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as an administrative judge, hearing officer or agency member in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

(f) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section may be disqualified if necessary to eliminate the effect of the communication.

(g) The agency shall, and any party may, report any willful violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section.

[Acts 1982, ch. 874, § 41.]

4-5-305. Representation. —

(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by any provision of law, other representative.

[Acts 1982, ch. 874, § 43.]

4-5-306. Pre-hearing conferences. —

(a) (1) In any action set for hearing, the administrative judge or hearing officer assigned to hear the case, upon the administrative judge's or the hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative judge or hearing officer for a conference to consider:

- (A) The simplification of issues;
- (B) The necessity or desirability of amendments to the pleadings;
- (C) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (D) The limitation of the number of expert witnesses; and
- (E) Such other matters as may aid in the disposition of the action.

(2) The administrative judge or hearing officer shall make an order that recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties, and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(b) Upon reasonable notice to all parties, the administrative judge or hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the administrative judge or hearing officer sitting alone, to consider argument or evidence, or both, on any question of law. The administrative judge or hearing officer may render an initial order, as otherwise provided by this chapter, on the question of law.

(c) In the discretion of the administrative judge or hearing officer, all or part of the pre-hearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(d) If a pre-hearing conference is not held, the administrative judge or hearing officer for the hearing may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

[Acts 1974, ch. 725, § 8; 1975, ch. 370, §§ 3, 12; 1978, ch. 938, §§ 4, 5; T.C.A., §§ 4-514, 4-5-108(d); Acts 1982, ch. 874, §§ 44, 54.]

4-5-307. Notice of hearing. —

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) In all proceedings the notice shall include:

(1) A statement of the time, place, nature of the hearing, and the right to be represented by counsel;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) days prior to the time set for the hearing.

[Acts 1974, ch. 725, § 8; 1975, ch. 370, §§ 3, 12; 1978, ch. 938, §§ 4, 5; T.C.A., §§ 4-514, 4-5-108(a), (b); Acts 1982, ch. 874, §§ 45, 54.]

4-5-308. Filing pleadings, briefs, motions, etc. — Service. —

(a) The administrative judge or hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections and offers of settlement.

(b) The administrative judge or hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial

or final orders.

(c) A party shall serve copies of any filed item on all parties, by mail or any other means prescribed by agency rule.

[Acts 1982, ch. 874, § 46.]

4-5-309. Default. —

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone, or agency, sitting with the administrative judge or hearing officer, may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(b) If the proceedings are conducted without the participation of the party in default, the administrative judge or hearing officer, hearing the case alone, shall include in the initial order a written notice of default, otherwise, the agency, sitting with the administrative judge or hearing officer, shall include such written notice of default in the final order. If the proceedings are adjourned and not conducted, the administrative judge or hearing officer, hearing the case alone, may render an initial default order, otherwise, the agency, sitting with the administrative judge or hearing officer, may render a final default order. All default orders and notices of default in default orders shall include a written statement of the grounds for the default.

(c) A party may petition to have a default set aside by filing a timely petition for reconsideration as provided in § 4-5-317.

(d) If a party fails to file a timely petition for reconsideration or the petition is not granted, the administrative judge or hearing officer, sitting alone, or agency, sitting with the administrative judge or hearing officer, shall conduct any further proceedings necessary to complete the contested case without the participation of the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

[Acts 1982, ch. 874, § 47.]

4-5-310. Intervention. —

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the administrative judge or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limiting the intervenor's use of discovery, cross-examination and other procedures so as to pro-

mote the orderly and prompt conduct of the proceedings; and

(3) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings.

(d) The administrative judge, hearing officer or agency, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative judge, hearing officer or agency may modify the order at any time, stating the reasons for the modification. The administrative judge, hearing officer or agency shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties.

[Acts 1982, ch. 874, § 48.]

4-5-311. Discovery — Subpoenas — Protective orders. —

(a) The administrative judge or hearing officer, at the request of any party, shall issue subpoenas, effect discovery, and issue protective orders, in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. The administrative judge or hearing officer shall decide any objection relating to discovery under this chapter or the Tennessee Rules of Civil Procedure. Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(b) In case of disobedience to any subpoena issued and served under this section or to any lawful agency requirement for information, or of the refusal of any person to testify in any matter regarding which such person may be interrogated lawfully in a proceeding before an agency, the agency may apply to the circuit or chancery court of the county of such person's residence, or to any judge or chancellor thereof, for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith, the court shall cite the respondent to appear and shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unlawful, the court shall enter an order requiring compliance. Disobedience of such order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

(c) The agency may promulgate rules to further prevent abuse and oppression in discovery.

(d) Any party to a contested case shall have the right to inspect the files of the agency with respect to the matter and to copy therefrom, except that records, the confidentiality of which is protected by law, may not be inspected.

[Acts 1974, ch. 725, §§ 10, 11; 1975, ch. 370, § 4; 1978, ch. 938, §§ 9, 10, 11; T.C.A., §§ 4-516, 4-517, 4-5-110(b), 4-5-111(c); Acts 1982, ch. 874, §§ 49, 50.]

4-5-312. Procedure at hearing. —

(a) The administrative judge or hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order if any.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the administrative judge or hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

(c) In the discretion of the administrative judge or hearing officer and agency members and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(d) The hearing shall be open to public observation pursuant to the provisions of title 8, chapter 44, un-

less otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript obtained by the agency, except as otherwise provided by § 50-7-701.

[Acts 1982, ch. 874, § 51.]

4-5-313. Rules of evidence — Affidavits — Official notice. —

In contested cases:

(1) The agency shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and to agency statutes protecting the confidentiality of certain records, and shall exclude evidence which in its judgment is irrelevant, immaterial or unduly repetitious;

(2) At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subdivision (4). Unless the opposing party, within seven (7) days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subdivision (2), the affidavit shall not be admitted into evidence. "Delivery" for purposes of this section means actual receipt;

(3) The officer assigned to conduct the hearing may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

(4) The notice referred to in subdivision (2) shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____
(here insert name of affiant) will be introduced as evidence at the hearing in _____
(here insert title of proceeding) • _____
(Here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____
(here insert name of proponent or proponent's attorney) at _____
(here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to of proponent or the proponent's attorney) _____
(here insert name) on or before or _____
(here insert a date seven (7) days after the date of mailing) delivering the affidavit to the opposing party.);

(5) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available; and

(6) (A) Official notice may be taken of:

(i) Any fact that could be judicially noticed in the courts of this state;

(ii) The record of other proceedings before the agency;

(iii) Technical or scientific matters within the agency's specialized knowledge; and

(iv) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(B) Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

[Acts 1974, ch. 725, § 9; 1978, ch. 938, §§ 6-8; T.C.A., §§ 4-515, 4-5-109; Acts 1982, ch. 874, § 52.]

4-5-314. Final order — Initial order. —

(a) An agency with statutory authority to decide a contested case shall render a final order.

(b) If an administrative judge or hearing officer hears a case alone under § 4-5-301(a)(2), the administrative judge or hearing officer shall render an initial order, which shall become a final order unless reviewed in accordance with § 4-5-315.

(c) A final order, initial order or decision under § 50-7-304 shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order, initial order or decision must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order. An initial order or decision shall include a statement of any circumstances under which the initial order or decision may, without further notice, become a final order.

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The agency member's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(e) If an individual serving or designated to serve as an administrative judge, hearing officer or agency member becomes unavailable, for any reason, before rendition of the final order or initial order or decision, a substitute shall be appointed as provided in § 4-5-302. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(f) The administrative judge or hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) A final order rendered pursuant to subsection (a) or initial order rendered pursuant to subsection (b) shall be rendered in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless such period is waived or extended with the written consent of all parties or for good cause shown.

(h) The agency shall cause copies of the final order under subsection (a) and the administrative judge or hearing officer shall cause copies of the initial order under subsection (b) to be delivered to each party.

[Acts 1982, ch. 874, § 54.]

4-5-315. Review of initial order. —

(a) The agency upon the agency's motion may, and where provided by federal law or upon appeal by any party shall, review an initial order, except to the extent that:

(1) A statute or rule of the agency precludes or limits agency review of the initial order; or

(2) The agency in the exercise of discretion conferred by statute or rule of the agency:

(A) Determines to review some but not all issues, or not to exercise any review;

(B) Delegates its authority to review the initial order to one (1) or more persons; or

(C) Authorizes one (1) or more persons to review the initial order, subject to further review by the agency.

(b) A petition for appeal from an initial order shall be filed with the agency, or with any person designated for such purpose by rule of the agency, within fifteen (15) days after entry of the initial order. If the agency on its own motion decides to review an initial order, the agency shall give written notice of its intention to review the initial order within fifteen (15) days after its entry. The fifteen-day period for a party to file a petition for appeal or for the agency to give notice of its intention to review an initial order on the agency's own motion shall be tolled by the submission of a timely petition for reconsideration of the initial order pursuant to § 4-5-317, and a new fifteen-day period shall start to run upon disposition of the petition for reconsideration. If an initial order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the agency on its own motion, the petition for reconsideration shall be disposed of first, unless the agency determines that action on the petition for reconsideration has been unreasonably delayed.

(c) The petition for appeal shall state its basis. If the agency on its own motion gives notice of its intent to review an initial order, the agency shall identify the issues that it intends to review.

(d) The person reviewing an initial order shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties.

(e) The agency shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.

(f) Before rendering a final order, the agency may cause a transcript to be prepared, at the agency's expense, of such portions of the proceeding under review as the agency considers necessary.

(g) The agency may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency may order such temporary relief as is authorized and appropriate.

(h) A final order or an order remanding the matter for further proceedings pursuant to this section shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.

(i) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between such order and the initial order, and shall include, or incorporate by express reference to the initial order, all the matters required by § 4-5-314(c).

(j) The agency shall cause copies of the final order or order remanding the matter for further proceedings to be delivered to each party and to the administrative judge or hearing officer who conducted the contested case.

[Acts 1982, ch. 874, § 55; 2000, ch. 594, §§ 1, 2.]

4-5-316. Stay. —

A party may submit to the agency a petition for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. The agency may take action on the petition for stay, either before or after the effective date of the initial or final order. [Acts 1982, ch. 874, § 56.]

4-5-317. Reconsideration. —

(a) Any party, within fifteen (15) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. However, the filing of the petition shall not be a prerequisite for seeking administrative or judicial review.

(b) The petition shall be disposed of by the same person or persons who rendered the initial or final

order, if available.

(c) The person or persons who rendered the initial or final order that is the subject of the petition, shall, within twenty (20) days of receiving the petition, enter a written order either denying the petition, granting the petition and setting the matter for further proceedings; or granting the petition and issuing a new order, initial or final, in accordance with § 4-5-314. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied.

(d) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record, and no new evidence shall be introduced unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding.

(e) The sixty-day period for a party to file a petition for review of a final order shall be tolled by granting the petition and setting the matter for further proceedings, and a new sixty-day period shall start to run upon disposition of the petition for reconsideration by issuance of a final order by the agency.

[Acts 1982, ch. 874, § 58; 2000, ch. 594, § 3.]

4-5-318. Effectiveness of new order. —

(a) Unless a later date is stated in an initial or final order, or a stay is granted, an initial or final order shall become effective upon entry of the initial or final order. All initial and final orders shall state when the order is entered and effective.

(b) If the agency has utilized an administrative judge from the administrative procedures division of the office of the secretary of state, the initial or final order shall not be deemed entered until the initial or final order has been filed with the administrative procedures division.

(c) The agency shall establish which agency members, officials or employees may sign final orders rendered by the agency.

(d) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

(e) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or unless the nonparty has actual knowledge of the final order.

(f) Unless a later date is stated in an initial order or a stay is granted, the time when an initial order becomes a final order in accordance with § 4-5-314 shall be as follows:

(1) When the initial order is entered, if administrative review is unavailable;

(2) When the agency enters an order stating, after a petition for appeal has been filed, that review will not be exercised, if discretion is available to make a determination to this effect; or

(3) Fifteen (15) days after entry of the initial order, if no party has filed a petition for appeal and the agency has not given written notice of its intention to exercise review.

(g) An initial order that becomes a final order in accordance with subsection (f) and § 4-5-314 shall be effective upon becoming a final order; provided, that:

(1) A party may not be required to comply with the final order unless the party has been served with or has actual knowledge of the initial order or of an order stating that review will not be exercised; and

(2) A nonparty may not be required to comply with the final order unless the agency has made the initial order available for public inspection and copying or the nonparty has actual knowledge of the initial order or of an order stating that review will not be exercised.

(h) This section shall not preclude an agency from taking immediate action to protect the public interest in accordance with § 4-5-320.

[Acts 1982, ch. 874, § 59; 2001, ch. 304, § 1.]

4-5-319. Agency record. —

(a) An agency shall maintain an official record of each contested case under this chapter. The record shall be maintained for a period of time not less than three (3) years; provided, that the department of labor and workforce development and board of review under title 50, chapter 7, shall be required to maintain the record for such period of time as shall be determined by the agency or otherwise required by law.

(b) The agency record shall consist solely of:

- (1) Notice of all proceedings;
- (2) Any pre-hearing order;
- (3) Any motions, pleadings, briefs, petitions, requests and intermediate rulings;
- (4) Evidence received or considered;
- (5) A statement of matters officially noticed;
- (6) Proffers of proof and objections and rulings thereon;
- (7) Proposed findings, requested orders, and exceptions;
- (8) The tape recording, stenographic notes or symbols, or transcript of the hearing;
- (9) Any final order, initial order, or order on reconsideration;
- (10) Staff memoranda or data submitted to the agency unless prepared and submitted by personal assistants and not inconsistent with § 4-5-304(b); and
- (11) Matters placed on the record after an ex parte communication.

(c) A record, which may consist of a tape or similar electronic recording, shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party at such party's expense or may be transcribed by the agency at its expense. If the agency elects to transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the agency of a reasonable compensatory fee.

(d) Except to the extent that this chapter or another statute provides otherwise, the agency record shall constitute the exclusive basis for agency action in adjudicative proceedings under this chapter, and for judicial review thereof.

[Acts 1974, ch. 725, § 8; 1975, ch. 370, §§ 3, 12; 1978, ch. 938, §§ 4, 5; T.C.A., §§ 4-5-14, 4-5-108(g); Acts 1982, ch. 874, § 60; 1999, ch. 520, § 27.]

4-5-320. Proceedings affecting licenses. —

(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct that warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

(d) (1) Notwithstanding the provisions of subsection (c), in issuing an order of summary suspension of a license the agency shall use one (1) of the following procedures:

(A) The agency shall issue a notice to the licensee providing an opportunity for a prompt informal hearing, review or conference before the agency prior to the issuance of an order of summary suspension; or

(B) The agency shall proceed with the summary suspension and notify the licensee of the opportunity for an informal hearing, review or conference before the agency within seven (7) business days of the issuance of the order of summary suspension.

(2) The notice provided to the licensee may be provided by any reasonable means and shall inform the licensee of the reasons for the action or intended action of the agency and of the opportunity for an informal hearing, review or conference before the agency. The informal hearing, review or conference described by this subsection (d) shall not be required to be held under the contested case provisions of this chapter. The hearing, review or conference is intended to provide an informal, reasonable opportunity for the licensee to present the licensee's version of the situation to the person or entity authorized by law to summarily suspend the license involved. Whether the informal hearing, review or conference is held before or after an order of summary suspension, the sole issue to be considered is whether the public health, safety or welfare imperatively required emergency action by the agency.

[Acts 1974, ch. 725, § 16; T.C.A., §§ 4-522, 4-5-116; Acts 1982, ch. 874, § 61; 1993, ch. 458, § 2.]

4-5-321. Administrative procedures division — Manual of policies and procedures — Code of conduct. —

(a) There is created in the office of the secretary of state a division to be known as the administrative procedures division. This division has the responsibility to:

(1) Investigate any conflicts or inequities that may develop between federal administrative procedures, and state administrative procedures and propose any amendments to this chapter to correct those inconsistencies and inequities as they develop;

(2) Establish and maintain in cooperation with the office of the attorney general and reporter a pool of administrative judges and hearing officers, who shall be learned in the law;

(3) Establish and maintain in cooperation with the office of the attorney general and reporter a pool of court reporters for agency administrative hearing proceedings before the licensing boards that are under the supervision of the departments of commerce and insurance and of health; and

(4) Perform any and all other functions assigned to the secretary of state under this chapter and delegated by the secretary of state to the administrative procedures division.

(b) The secretary of state shall adopt by rule, promulgated in accordance with the rulemaking requirements of this chapter, a manual of policies and procedures, including a code of conduct, to be followed by all administrative judges and hearing officers.

[Acts 1974, ch. 725, § 21; 1975, ch. 370, § 17; 1978, ch. 938, § 16; 1979, ch. 371, § 2; T.C.A., §§ 4-527, 4-5-121(a); Acts 1982, ch. 874, § 62; 1984, ch. 728, § 12; 1986, ch. 738, § 4.]

4-5-322. Judicial review. —

(a) (1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) A state agency is considered to be an aggrieved person for the purpose of judicial review when the order is from a board, commission or other entity independent of the aggrieved agency. In such instances, judicial review under this chapter is permitted upon the request of the agency head and the approval of the attorney general and reporter.

(b) (1) (A) Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute. Such petition shall be filed within sixty (60) days after the entry of the agency's final order thereon.

(B) (i) A person who is aggrieved by a final decision of the department of human services or the department of children's services in a contested case may file a petition for review in the chancery court located either in the county of the official residence of the appropriate commissioner or in the county in which any one (1) or more of the petitioners reside.

(ii) A person who is aggrieved by the final determination of a hearing officer or local board of education in a special education hearing conducted pursuant to § 49-10-601 may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the petitioner resides.

(iii) A person who is aggrieved by any final decision of the Tennessee regulatory authority, or by a final decision of the state board of equalization in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall file any petition for review with the middle division of the court of appeals.

(2) In a case in which a petition for judicial review is submitted within the sixty-day period but is filed with an inappropriate court, the case shall be transferred to the appropriate court. The time for filing a petition for review in a court as provided in this chapter shall not be extended because of the period of time allotted for filing with the agency a petition for reconsideration. Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process.

(c) The filing of the petition for review does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter; nor shall the reviewing court consider a stay unless the petitioner has previously sought a stay from the agency or demonstrates that an agency ruling on a stay application cannot be obtained within a reasonable time.

(d) Within forty-five (45) days after service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the agency, except as otherwise provided in this chapter. The agency that issued the decision to be reviewed is not required to file a responsive pleading.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) (A) Unsupported by evidence that is both substantial and material in the light of the entire record.

(B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(i) No agency decision pursuant to a hearing in a contested case shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(j) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

[Acts 1974, ch. 725, § 17; 1975, ch. 370, § 6; 1978, ch. 815, § 1; 1978, ch. 938, § 13; T.C.A., § 4-523; Acts 1980, ch. 478, § 1; T.C.A., § 4-5-117; Acts 1982, ch. 874, § 63; 1986, ch. 738, § 2; 1995, ch. 305, § 68; 2002, ch. 610, § 1.]

4-5-323. Appeals to court of appeals. —

(a) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the court of appeals of Tennessee.

(b) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to § 4-5-322(g) shall become a part of the record.

(c) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

[Acts 1974, ch. 725, § 18; 1977, ch. 298, § 1; T.C.A., § 4-524; Acts 1981, ch. 449, § 2; T.C.A., § 4-5-118; Acts 1982, ch. 874, § 64.]

4-5-324. Training program for administrative judges or hearing officers. —

Each person employed to serve as an administrative judge or hearing officer shall, within the six-month period following the date of such employment, participate in a program of training for administrative judges and hearing officers conducted by the department of personnel, division of training. The department shall issue a certificate of participation to each judge or officer whose attendance is satisfactory.

[Acts 1986, ch. 738, § 4.]

4-5-325. Payment of costs to cited party. —

(a) When a state agency issues a citation to a person, local governmental entity, board or commission for the violation of a rule, regulation or statute and such citation results in a contested case hearing, at the conclusion of such hearing, the hearing officer or administrative law judge may order such agency to pay to the party issued a citation the amount of reasonable expenses incurred because of such citation, including a reasonable attorney's fee, if such officer or judge finds that the citation was issued:

(1) Even though, to the best of such agency's knowledge, information and belief formed after reasonable inquiry, the violation was not well grounded in fact and was not warranted by existing law, rule or regulation; or

(2) For an improper purpose such as to harass, to cause unnecessary delay or cause needless expense to the party cited.

(b) If a final decision in a contested case hearing results in the party issued a citation seeking judicial review pursuant to § 4-5-322, the judge, at the conclusion of the hearing, may make the same findings and enter the same order as permitted the hearing officer or administrative law judge pursuant to subsection (a).

[Acts 1994, ch. 869, § 1.]

Part 4 - Regulatory Flexibility Act of 2007

4-5-401. Short title. —

This part shall be known and may be cited as the "Regulatory Flexibility Act of 2007."

[Acts 2007, ch. 464, § 3.]

4-5-402. Analysis of impact on small business. —

(a) Prior to initiating the rulemaking process as described in §§ 4-5-202(a)(3) and 4-5-203(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(b) Each agency shall, after June 21, 2007, employ a regulatory flexibility analysis utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing any adverse impact on small business. The agency shall consider, but not be limited to, each of the following methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety, and well-being:

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules;

(2) Clarity, conciseness, and lack of ambiguity in the rule;

(3) The establishment of flexible compliance and reporting requirements for small businesses;

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses;

(5) The consolidation or simplification of compliance or reporting requirements for small businesses;

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

[Acts 2007, ch. 464, § 4; 2009, ch. 566, § 23.]

4-5-403. Preparation of economic impact 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, which shall be published in the Tennessee administrative register, filed with the secretary of state and made available to all interested parties, including the secretary of state, attorney general and reporter and the government operations committees of the senate and the house of representatives, and as described for rules in part 2 of this chapter. The statement shall include the following:

- (1) 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;
- (2) 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;
- (3) A statement of the probable effect on impacted small businesses and consumers;
- (4) 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;
- (5) A comparison of the proposed rule with any federal or state counterparts; and
- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

[Acts 2007, ch. 464, § 5.]

**RULES
OF
THE TENNESSEE DEPARTMENT OF STATE**

**CHAPTER 1360-01-01
NOTICE OF RULEMAKING**

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1360-01-01-.01 NOTICE TO SECRETARY OF STATE OF TENNESSEE.

- (1) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process and is required to transmit a notice of such rulemaking hearing to the Secretary of State for publication in the Tennessee Administrative Register, that notice shall be filed using form SS-7037 prescribed by this chapter and made available on the Secretary of State's web site. The general information required for all notices shall be added by the agency on the prescribed form.

Authority: T.C.A. §4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-01-.02 PAPER SIZE AND MARGINS.

- (1) All notices of rulemaking hearings filed with the Secretary of State must be on white, medium bond paper, size eight and one-half by eleven inches. The margins of this form will be preselected by the Secretary of State. After the form is completed it can be printed and copies made for submission to the Secretary of State.

Authority: T.C.A. §4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-01-.03 FORMS AND COMPLETION OF FORMS.

- (1) A Notice of Rulemaking Hearing filed with the Secretary of State will require the following:
 - (a) Three (3) original forms (SS-7037) documents with signatures
 1. The following guidelines apply to the document:
 - (i) The documents must be clean and legible copies.
 - (ii) Use of capitals and lower case in all text. No “all caps.”
 - (iii) No bold, underline or italic fonts.
 - (iv) No auto numbering on paragraphs in text of rule.
 - (v) Do not use the MS Word function “track changes.”
 - (vi) No unneeded punctuation. Example: No comma between rule number and rule title or apostrophe after agency name in main heading.
 - (vii) Use T.C.A. for Tennessee Code Annotated.
 - (viii) No hard return at the end of lines within a paragraph. Use only at end of paragraph.
 - (ix) Use the enter key to put space between paragraphs. Do not use paragraph formatting before or after the paragraph to create space. This function does not work with style pallets.
 - (x) Use hyphens on keyboard with no spaces between hyphen and rule numbers. Variations can cause search options to overlook target.
 - (xi) No single digits on rule and chapter numbers. Place “0” with single numbers. Example: 1200-5-5 = 1200-05-05.
 - (xii) Font style shall be Arial and point size 10.
 - (b) A digital version (diskette or CD) of the filing shall accompany the filing.
 1. The file must be transmitted to the Secretary of State in MS Word.
 2. The disk or CD shall be labeled to include the following information:
 - (i) File name.
 - (ii) Software program and version.
 - (iii) Chapter and rule number.
 - (iv) Name, address, telephone number and e-mail of the technical contact who created the medium file.
 - (v) Include only what is required on disk/CD. Label disk/CD with chapter number.
 - (vii) Files not required by the Secretary of State should not be included on the disk/CD accompanying the rule.
- (2) Page numbering – Page one of all filings will be on the prescribed form. All additional pages will be numbered sequentially at the bottom, middle of the page.

- (3) The substance of the proposed rules(s) shall be added to the form at the designated place. The text must be formatted according to the rules of the Secretary of State (see Rule 1360-01-02).
- (4) The Secretary reserves the right to reject any filing not in compliance with these rules or other rules pertaining to rulemaking.
- (5) A completed sample of form SS-7037 can be found at the Secretary of State's web site: www.state.tn.us/sos.

Authority: T.C.A. §§ 4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment filed April 16, 1990; effective July 29, 1990. Amendment filed June 12, 1995; effective October 27, 1995. Amendment filed August 17, 1998; effective December 29, 1998. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-01-.04 REPEALED.

Authority: T.C.A. §§4-5-203. **Administrative History:** Original rule filed June 12, 1995; effective October 27, 1995. Repeal filed July 29, 2008; effective November 28, 2008.

1360-01-01-.05 REPEALED.

Authority: T.C.A. §§4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment renumbering rule (formerly 1360-01-01-.04) filed June 12, 1995; effective October 27, 1995. Repeal filed July 29, 2008; effective November 28, 2008.

**RULES
OF
THE TENNESSEE DEPARTMENT OF STATE**

**CHAPTER 1360-01-02
FILING OF RULES**

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1360-01-02-.01 PURPOSE.

It is the intent of the Secretary of State to simplify the rulemaking process for state agencies with rulemaking authority by incorporating a series of forms that shall be completed by the agency and submitted to the Secretary. These forms are furnished at the Secretary of State web site: www.state.tn.us/sos. The agency is then to go to the Publications Division within the site and follow the instructions. These forms are to be completed by computer and printed for submission to the Secretary of State.

Authority: T.C.A. §§4-5-202 and 4-5-206. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-02-.02 DEFINITIONS OF RULES. The following are definitions of types of rules that can be filed with the Secretary of State pursuant to the Uniform Administrative Procedures Act.

- (1) The term "rules" shall mean rulemaking hearing rules, proposed rules, and emergency rules. Each term mentioned is applicable to its own form.

- (2) Form SS-7039 is applicable to “rulemaking hearing rules.” These are rules filed by an agency after a rulemaking hearing is conducted pursuant to T.C.A. §4-5-202.
- (3) Form SS-7038 is applicable to “proposed rules.” These are rules filed by an agency without a rulemaking hearing pursuant to T.C.A. §4-5-205.
- (4) Form SS-7040 is applicable to “emergency rules.” These are filed by an agency pursuant to T.C.A. 4-5-208 (a), where:
 - (a) 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 this chapter would not adequately protect the public; or
 - (b) the rule only delays the effective date of another rule that is not effective; or
 - (c) it is required by the constitution or court order; or
 - (d) 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; or
 - (e) 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.
- (5) Reserved

Authority: T.C.A. §§ 4-5-202, 4-5-206, 4-5-208, 4-5-209 and Public Chapter 566 of the 106th General Assembly. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1. 001.). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendments filed August 24, 2009; effective January 29, 2010.

1360-01-02-.03 PAPER SIZE, MARGINS AND NUMBERING OF RULES.

- (1) All notices of rulemaking hearings filed with the Secretary of State must be on white, medium bond paper, size eight and one-half by eleven inches. The margins of this form will be preselected by the Secretary of State. After the form is completed it can be printed and copies made for submission to the Secretary of State.
- (2) Control Number. A four-digit number has been assigned to each state agency authorized by law to make rules or determine contested cases. This control number will be used on all rules filed for publication with the Secretary of State pursuant to the Administrative Procedures Act, Tennessee Code Annotated Title 4, Chapter 5.
- (3) Numbering Rules
 - (a) Where the agency is small and its functions are limited to one particular area, the second number designating the major division of primary subject matter may be dispensed with.

 Example: 1200-06-01-.01

1200	06	01	.01
Control number	Division	Chapter	Rule
- (4) Rule Structure. All separate parts of a rule shall be designated by a letter or number. Rules shall be organized, numbered and referenced according to the following outline form:
 - (1) Paragraph
 - (a) subparagraph
 - 1. part
 - (i) subpart

- (l) item
 - I. subitem
 - A. section
 - (A) subsection

Authority: T.C.A. §§4-5-206, 4-5-220 and 4-5-221. **Administrative History:** (For history prior to June 22 1984 see pages 1-1.001. Repeal and new rule filed May 23, 1984; effective June 22, 1 984. Amendment filed June 12, 1995; effective October 27, 1995. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-02-.04 FORMS AND THE COMPLETION OF FORMS. The forms supplied by the Secretary of State through the web site (www.state.tn.us/sos) shall be completed by the rule filer and the following guidelines are to be followed:

- (1) A Proposed Rulemaking Form, Rulemaking Hearing Form and a Temporary Rule Filing Form shall require the following:
 - (a) Five (5) entire forms completed with original signatures.
 - 1. The following guidelines apply to the document:
 - (i) The documents must be clean and legible.
 - (ii) Use of capitals and lower case in all text. No “all caps.”
 - (iii) No bold, underline or italic fonts.
 - (iv) Do not use auto-numbering on paragraphs in the text of rule.
 - (v) Do not use the MS Word function “track changes.”
 - (vi) Do not use unneeded punctuation. Example: No comma between the rule number and rule title or apostrophe after agency name in main heading.
 - (vii) Use T.C.A. for Tennessee Code Annotated
 - (viii) No hard return at the end of lines within a paragraph. Use at the end of a paragraph.
 - (ix) Use the enter key to put space between paragraphs. Do not use paragraph formatting before or after the paragraph to create space. This function does not work well with style pallets.
 - (x) Use hyphens on keyboard with no space between hyphen and rule numbers. Variations can cause search options to overlook target.
 - (xi) No single digits on rule and chapter numbers. Place “0” with single numbers. Example: 1200-5-5 = 1200-05-05.
 - (xii) Responses to comments are not part of the Government Operations Committee statement. Compose responses on separate sheet of paper. If there were no comments to respond to, draft a memo stating that fact.
 - (xiii) Font style for all submissions shall be Arial and point size 10.
 - (b) Diskette or CD submission of the material is required. Other requests for transmission of data can be accommodated; however, the filing agency must contact the division before submission.
 - 1. The file must be in MS Word software. Contact the division if unsure about software requirements.

2. The disk or CD should be labeled and include the following information:
 - (i) software program and version.
 - (ii) chapter(s) and rule number(s).
 - (iii) name, address, telephone number and e-mail address of the person who made the disk file and is responsible for the contents.
 - (iv) include only what is required on disk/CD. Label disk/CD with chapter number. Files not required by the Secretary of State should not be included on the disk/CD accompanying the rule.
 - (v) Any electronic submission of forms shall not be encrypted. Any transmission of encrypted material to the Secretary of State pursuant to the Uniform Administrative Procedures Act will be rejected and returned to the agency as non compliant.
- (2) Page numbering – Page one of all filings will be on the prescribed form. All additional pages will be numbered sequentially at the bottom, middle of the page.
- (3) Each rule filed with the Secretary of State shall clearly show at the bottom of that rule the statutory authority (rulemaking as well as substantive) for each rule. Where a particular group of rules has the same statutory authority, then that authority need only be cited once at the end of that group of rules.
- (4) All rules filed with the Secretary of State shall be certified.
- (5) New rules and amendments may be filed together with the same set of signatures so long as they are grouped and separated by the headings “New Rules” and/or “Amendments.” When filing multiple amendments involving more than one rule and/or chapters within one document, the amendments must be in numeric order.

Authority: T.C.A. §4-5-202(c), 4-5-203(e), 4-5-206, 4-5-206(d), 4-5-208 and 4-5-209. **Administrative**

History: (For history prior to June 22, 1984 see pages 1 - 1. 001.). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment filed June 12, 1995; effective October 27, 1995. Amendment filed August 17, 1998; effective December 29, 1998. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendment filed August 24, 2009; effective January 29, 2010.

1360-01-02-.05 ADDITIONAL REQUIREMENTS.

- (1) Responses to comments
 - (a) When filing rulemaking hearing rules, a document containing responses to comments submitted at the rulemaking hearing must accompany the rule filing as prescribed in T.C.A. §4-5-222. One copy of the responses is required to be filed with the filing. This requirement states only agency responses to comments are required. Letters of inquiry from parties questioning the rule will not be accepted. These comments can be summarized.
 - (b) When no comments are received at the hearing then there will be no responses by the agency. In this case the agency should draft a memorandum stating such and send to the Secretary of State with the filing. Minutes of the meetings will not be accepted.
- (2) Joint Government Operations Committee Legislative Oversight
 - (a) The Secretary of State will forward the rule filings and the information submitted pursuant to T.C.A. §4-5-225 (i) (1) through (9) to the Government Operations Committee. This enables the required information to be received by the committee at the same time as the rule filings, thus facilitating the committee's review of the rule filings.
- (3) Regulatory Flexibility Act
 - (a) Pursuant to the Regulatory Flexibility Act all agencies shall submit a statement that will accompany the rule filing with relation to the impact on small businesses.

- (b) Requirements of this section can be found in Public Chapter 464 of the Acts of 2007.
 - (c) If applicable, the statement shall be added to the rule filing document after the signature of the Secretary for publication in the Tennessee Administrative Register by the Secretary of State.
- (4) "Redline" Copy of Rule Filing
- (a) Pursuant to Public Chapter 741 of the 105th General Assembly, all agencies shall submit a "redline" version of the rule filing in addition to the five (5) copies required by the Secretary of State. This copy will be forwarded to the General Assembly by the Secretary of State for review by the appropriate committees.
 - (b) "Redline" form is a copy of the filing that shall "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."
 - (c) Public Chapter 741 took effect July 1, 2008.

Authority: T.C.A. §§4-5-202, 4-5-206, 4-5-222, and Public Chapters 464 and 741 of the 105th General Assembly. **Administrative History:** Original rule filed June 12, 1995; effective October 27, 1995. Amendment filed August 17, 1998; effective December 29, 1998. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-02-.06 FORMS FOR RULEMAKING. The following forms are required for rulemaking. These forms can be found at the Secretary of State's web site: www.state.tn.us/sos.

- (1) Proposed rule form is SS-7038.
- (2) Rulemaking hearing rule form is SS-7039.
- (3) Temporary rule form (Emergency Rules) is SS-7040.

Authority: T.C.A. §4-5-206 and Public Chapter 566 of the 106th General Assembly. **Administrative History:** (For history prior to June 22, 1984 see pages 1- 1. 001.). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment renumbering rule (formerly 1360-01-02-.05) filed June 12, 1995; effective October 27, 1995. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendment filed August 24, 2009; effective January 29, 2010.

1360-01-02-.07 RESERVATION OF RIGHT OF REJECTION BY THE SECRETARY OF STATE.

The Secretary of State reserves the right to reject agency submittals for noncompliance with these rules.

Authority: T.C.A. §§4-5-202 and 4-5-206. **Administrative History:** Original rule filed July 29, 2008; effective November 28, 2008.

**RULES
OF
THE TENNESSEE DEPARTMENT OF STATE OF TENNESSEE**

**CHAPTER 1360-01-03
WITHDRAWAL OF RULES, STAYS OF EFFECTIVE DATES,
AND WITHDRAWAL OF STAY OF EFFECTIVE DATE**

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1360-01-03-.01 DEFINITIONS.

- (1) Withdrawal of Rules – An agency may, after filing, withdraw a rule prior to the effective date of the rule. The rule withdrawal shall take effect upon delivery of written notification of such withdrawal to the Department of State.
- (2) 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 (90) day period for a duration not to exceed seventy (75) days. Such stay shall become effective at such time as the agency files written notice with the Secretary of State and shall specify the effective length of the stay.
- (3) Withdrawal of Stay of Effective Date – Prior to its expiration, the 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.

Authority: T.C.A. §§4-5-206, 4-5-214, 4-5-215 and Public Chapter 566 of the 106th General Assembly.
Administrative History: (For history prior to June 22, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendments filed August 24, 2009; effective January 29, 2010.

1360-01-03-.02 FORMS AND THE COMPLETION OF FORMS. The forms supplied by the Secretary of State through the web site (www.state.tn.us/sos) shall be completed by the rule filer and the following guidelines are to be followed.

- (1) A Notice of Withdrawal of Rules, Notice of Stay of Effective Dates, or Notice of Withdrawal of Stay of Effective Date (Form number 7041) shall require the following:
 - (a) Five (5) entire forms completed with original signatures.
 1. The following guidelines apply to the document:
 - (i) The documents must be clean and legible.
 - (ii) Use of capitals and lower case in all text. No “all caps.”
 - (iii) No bold, underline or italic fonts.
 - (iv) Do not use auto-numbering on paragraphs in the text of rule.
 - (v) Do not use the MS Word function “track changes.”
 - (vi) Do not use unneeded punctuation: Example: No comma between the rule number and rule title or apostrophe after agency name in main heading.
 - (vii) Use T.C.A. for Tennessee Code Annotated.
 - (viii) No hard return at the end of lines within a paragraph. Use at the end of a paragraph.
 - (ix) Use the enter key to put space between paragraphs. Do not use paragraph formatting to add space before or after the paragraph. This function does not work well with style pallets.
 - (x) Use hyphens on keyboard with no space between hyphen and rule numbers. Variations can cause search options to overlook target.
 - (xi) No single digits on rule and chapter numbers. Place “0” with single numbers. Example: 1200-5-5 = 1200-05-05.
 - (xii) Font style for all submissions shall be Arial and point size 10.
 - (b) Diskette or CD submission of the material is required. Other requests for transmission of data can be accommodated; however, the filing agency must contact the division before submission.

1. The file must be in MS Word software. Contact the division if unsure about software requirements.
2. The disk or CD should be labeled and include the following information:
 - (i) software program and version.
 - (ii) chapter(s) and rule number(s).
 - (iii) name, address, e-mail address and telephone number of person who made the disk file and is responsible for the contents.
 - (iv) Include only what is required on disk/CD. Files not required by the Secretary of State should not be included on the disk/CD accompanying the rule.
- (2) Page numbering – Page one of all filings will be on the prescribed form. All additional pages will be numbered sequentially at the bottom, middle of the page.
- (3) Each filing with the Secretary of State shall clearly show at the bottom of that rule the statutory authority (rulemaking as well as substantive) for each rule. The only exception is when a particular group of rules has the same statutory authority, then that authority need only be cited once at the end of that group of rules.
- (4) All rules filed with the Secretary of State shall be notarized.

Authority: T.C.A. §§4-5-202, 4-5-206, 4-5-214 and 4-5-215. **Administrative History:** (For history prior to June 12, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984 effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-03-.03 RESERVATION OF RIGHT OF REJECTION BY THE SECRETARY OF STATE

The Secretary of State reserves the right to reject agency submittals for noncompliance with these rules.

Authority: T.C.A. §4-5-202 and 4-5-206. **Administrative History:** (For history prior to June 22, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment filed April 16, 1990; effective July 29, 1990. New rule filed June 12, 1995; effective October 27, 1995. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

1360-01-03-.04 REPEALED.

Authority: T.C.A. §4-5-202 and 4-5-206. **Administrative History:** (For history prior to June 22, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal filed July 29, 2008; effective November 28, 2008.

RULES OF TENNESSEE DEPARTMENT OF STATE ADMINISTRATIVE PROCEDURES DIVISION

CHAPTER 1360-04-01 UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES

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1360-04-01-.01 SCOPE.

- (1) Subject to any superseding federal or state law, these rules shall govern contested case proceedings before all agencies that have adopted these rules, and will be relied upon by administrative judges in all contested cases utilizing administrative judges from the Administrative Procedures Division of the Office of the Secretary of State (whether sitting alone or with the agency), except where an agency has lawfully adopted a rule pursuant to *T.C.A. §4-5-219 (d)* that is contrary to any provision to these rules. However, rule 1360-04-01-.20 applies to all administrative judges and hearing officers of the state of Tennessee.
- (2) Any provision of these rules may be suspended where 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.
- (4) Agencies are encouraged to adopt their own rules of procedure to address specific topics that are unique to the type of cases conducted by an agency, to whatever extent these rules do not address such topics.

Authority: *T.C.A. §§4-5-219 and 4-5-321. Administrative History:* Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.02 DEFINITIONS.

- (1) 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, a "Notice of Hearing and Charges", "Petition for 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.
- (2) Filing - Unless otherwise provided by law or by these rules, "filing" means actual receipt by the entity designated to receive the required materials.
- (3) Petitioner - The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof and will therefore present his or her proof first at the hearing. In some cases, however, the party who initiated the proceedings will not be the party with the burden of proof on all issues. In such cases, the administrative judge will determine the order of proceedings, taking into account the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand. The "petitioner" is usually a state agency or department.
- (4) Respondent - The "respondent" in a contested case proceeding is the party who is responding to the charges or other action brought by the "petitioner".
- (5) 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.
- (6) Administrative Procedures Division - The Administrative Procedures Division of the Office of the Secretary of State, 312 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243; Telephone (615) 741-7008.
- (7) Burden of Proof - The "burden of proof" discussed in the definition of "petitioner" above refers to the duty of a party to present evidence on and 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.

Authority: T.C.A. §§4-5-219, 4-5-301(b), and 4-5-312; Cross reference T.C.A §4-5-102. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.03 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings, petitions for review, and any other materials required to be filed with an agency or the Administrative Procedures Division by a time certain 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 Procedures Division or the agency within the required time period.
- (2) Once the Administrative Procedures Division 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 filed with the Administrative Procedures Division, where they will be stamped with the date and hour of their receipt. Petitions for agency review of an initial order and for agency reconsideration or stay of a final order may be filed with either the agency or the Administrative Procedures Division and should preferably be filed with both. Whenever an agency or the Administrative Procedures Division receives any such petition, it shall forward a copy to the other.
- (3) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1360-04-01-.11 (3).
- (4) Copies of any and all materials filed with the agency or Administrative Procedures Division 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.

Authority: T.C.A. §4-5-219. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.04 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 in regard to petitions for review under T.C.A. §§4-5-315, 4-5-317, and 4-5-322, or where otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the agency or the administrative judge may, at any time, (a) with or without motion or notice 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. Nothing in this section shall be construed to allow any ex parte communications concerning any issue in the proceeding that would be prohibited by T.C.A. §4-5-304.

Authority: T.C.A. §4-5-219. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.

1360-04-01-.05 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

- (1) Commencement of Action. A contested case proceeding may be commenced by original

agency or public action, by appeal of a person from an agency action, by request for hearing by an affected person, or by any other lawful procedure.

- (2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the agency, which notice shall comply with *T.C.A. §4-5-307 (b)*.
- (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. In certain cases, such as those brought before the Civil Service Commission, some requirements of this subsection may be satisfied during the course of prehearing conferences.
- (4) Filing of Documents. When a contested case is commenced in which an administrative judge from the Administrative Procedures Division will be conducting the proceedings, the agency shall provide the Administrative Procedures Division with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency. Legible copies may be filed in lieu of originals.
- (5) Answer. The party may respond to the charges set out in the notice or other original pleading by filing a written answer with the Agency in which the party may:
 - (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Agency 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.
 - (d) Object on the basis of insufficiency of the notice.
 - (e) Object on the basis of insufficiency of service of the notice.
 - (f) Object on the basis of failure to join an indispensable party.
 - (g) Generally deny all the allegations contained in the notice or state that he is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges.
 - (h) Admit in part or deny in part allegations in the notice 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 notice 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 and may continue the hearing until at least ten (10) days after a more definite statement is provided.
- (7) Amendment to Notice. The petitioner may amend the notice or other original pleading within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows to the administrative judge that undue prejudice will result from this amendment. Otherwise the petitioner may only amend the notice or other original pleading by written consent of the respondent 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, and 4-5-313. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.06 SERVICE OF NOTICE OF HEARING.

- (1) In any case in which a party has requested a hearing from an agency and provided the agency 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, personal service, or service by the methods set forth in paragraphs (2) and (3) of this rule.
- (2) In any case in which an agency is initiating proceedings against a party by bringing charges, by attempting to take action against a license, or by other similar action, a copy of the notice of hearing shall be served upon the party to be affected no later than 30 days prior to the hearing date. Except as provided in paragraph (3) below, service in such a case shall be by personal service, return receipt mail or equivalent carrier with a return receipt; a person making personal service on a party shall return a statement indicating the time and place of service, and a return receipt must be signed by the party to be affected. However, if 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 proceedings.
- (3) Where the law governing an agency includes a statute allowing for service of the notice by mail, without specifying the necessity for a return receipt, and a statute requiring a person to keep the agency 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, to the last known address of such person. However, in the event of a motion for default where there is not 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 agency 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 only to the initial notice of hearing required to be filed pursuant to rule 1360-04-01-.05 (2) which is intended by the filing agency to memorialize the commencement of a contested case proceeding as described by rule 1360-04-01-.05 (1). All other documents including, but not limited to, supplemented notice pursuant to rule 1360-04-01-.05 (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.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-301, and 4-5-307. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendment filed February 27, 2004; effective June 28, 2004.

1360-04-01-.07 DECLARATORY ORDERS.

- (1) Any affected person may petition an agency for a declaratory order as to the validity or the applicability of a statute, rule or order within the primary jurisdiction of the agency.
- (2) The petition seeking a declaratory order shall be filed in writing with the agency.
- (3) The form of such petitions shall be substantially as follows:

(a) Petition for Declaratory Order Before the (Division) of the (Agency).

1. Name of Petitioner

2. Address of Petitioner

3. Agency rule, order, or statutory provision on which declaratory order is sought

4. Statement of the facts of the controversy and description of how this rule, order or statute affects or should affect the Petitioner.

5. Description of requested ruling _____

Signature of Petitioner

Address

Date

- (4) In the event the agency convenes a contested case hearing pursuant to this rule and *T.C.A. §4-5-223*, then the Administrative Procedures Division shall be notified immediately and shall be provided originals or legible copies of all pleadings, motions, objections, etc.

Authority: *T.C.A. §§4-5-219 and 4-5-223. Administrative History: Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.*

1360-04-01-.08 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.
- (2) Any party to a contested case may represent himself or herself 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.
- (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 State 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 to the agency and the Administrative Procedures Division.
- (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 director of the Administrative Procedures Division, with a copy to the administrative judge presiding in the matter in which counsel wishes to appear.

Authority: *T.C.A. §§4-5-219, 4-5-301(b), 4-5-305, and 4-5-312. Administrative History:* Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.09 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 by an agency under this rule. 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, if an administrative judge is conducting the contested case, by filing the motion with the Administrative Procedures Division, Office of the Secretary of State. 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) 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.
- (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 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.
- (7) Interlocutory Review Prior to Hearing - Any party who wishes to seek interlocutory agency review of an administrative judge's decision on a preliminary matter shall make application to the administrative judge for permission to seek such review. If the administrative judge determines that interlocutory review is appropriate, an order may be entered specifying the procedures for obtaining such review. The administrative judge may in such order set a specific time period, at the conclusion of which the requested review shall be deemed to have been denied by the agency if no action has been taken by the agency to decide the matter or extend the time for action. If no specific time period is set, the matter may be set for consideration by the agency at a time certain or at the agency's next business meeting. Nothing in this rule shall preclude the right to seek interlocutory judicial review under T.C.A. §4-5-322(a). It is the intent of this rule that interlocutory agency review not be granted where to do so would significantly delay the resolution of the proceedings, unless the administrative judge deems the issue to be one on which agency determination is particularly appropriate for policy or other reasons.

Authority: T.C.A. §§4-5-219, 4-5-301(b), 4-5-306, 4-5-308, and 4-5-312. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.10 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 agency or administrative judge as soon as practicable.
- (2) Any case may be continued by mutual consent of the parties when approved by the agency or administrative judge.

Authority: T.C.A. §§4-5-219, 4-5-301, and 4-5-308. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.

1360-04-01-.11 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 1360-04-01-.09.

- (5) Other than as provided in subsection (3) above, discovery materials need not be filed with either the agency or the Administrative Procedures Division.

Authority: T.C.A. §§4-5-219 and 4-5-311. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.

1360-04-01-.12 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;
 - (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 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, and 4-5-312. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.13 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 serve their own subpoenas.

Authority: T.C.A. §§4-5-219 and 4-5-311. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.

1360-04-01-.14 ORDER OF PROCEEDINGS.

- (1) Order of proceedings for the hearing of contested cases when an administrative judge is hearing a case with an agency:
 - (a) Administrative judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) Hearing is called to order by the administrative judge.
 - (c) Administrative judge introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the administrative judge's role of making legal

rulings.

- (d) Administrative judge introduces the members of the agency and states that the final decision in the proceedings will be made by the agency alone, after being charged on the law by the administrative judge.
- (e) Administrative judge then calls on the respondent to ask if the respondent is represented by counsel, and if so, counsel is introduced. The administrative judge then introduces the petitioner's counsel and any other officials who may be present at the hearing.
- (f) The administrative judge states what documents the record contains.
- (g) In appropriate cases, the petitioner reads the charges as set out in the notice with regard to the respondent, while giving references to the appropriate statutes and rules.
- (h) In appropriate cases, the respondent is asked how he or she pleads to the charges; if he or she admits the charges, no further proof may be necessary, other than introduction of evidence pertaining to the proper penalty, if appropriate. If he or she denies the charges or fails to admit them, the hearing proceeds.
- (i) The administrative judge swears the witnesses.
- (j) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room, and the state or any other party that is a corporation or other artificial person may have one appropriate individual, who may also be a witness, act as its party representative.
- (k) Any preliminary motions, stipulations, or agreed orders are entertained.
- (l) Opening statements are allowed by both the petitioner and the respondent.
- (m) Moving party (usually the petitioner) calls witnesses and questioning proceeds as follows:
 - 1. (Petitioner) moving party questions.
 - 2. (Respondent) other party cross-examines.
 - 3. (Petitioner) moving party redirects.
 - 4. (Respondent) other party re-cross-examines.
 - 5. Agency questions.
 - 6. Further questions by petitioner and respondent.(Questioning proceeds as long as is necessary to provide all pertinent testimony.)
- (n) Other party (usually the Respondent) calls witnesses and questioning proceeds as follows:
 - 1. (Respondent) other party questions.
 - 2. (Petitioner) moving party cross-examines.
 - 3. (Respondent) other party redirects.
 - 4. (Petitioner) moving party re-cross-examines.
 - 5. Agency questions.
 - 6. Further questions by respondent and petitioner.(Questioning proceeds as long as is necessary to provide all pertinent testimony.)

- (o) Petitioner and respondent allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
 - (p) Closing arguments are allowed to be presented by the petitioner and by the respondent.
 - (q) The administrative judge prepares to turn proceedings over to the agency by charging the agency as to the applicable law, requisites of the final order, voting procedure, and other pertinent matters. The administrative judge will take no part in any finding of fact or conclusion of law, although the administrative judge may advise as to the legal sufficiency of the agency decision and other questions of law.
 - (r) The administrative judge then turns the proceedings over to the chair of the agency for deliberation and the decision.
 - (s) The agency deliberates in public and reaches a decision which is communicated to the parties or takes the case under advisement and schedules public deliberations for a later time.
- (2) The order of proceedings for the hearing of contested cases when an administrative judge is hearing the case alone is identical to the procedure outlined in paragraph (1) with the exception that the agency is not present to participate. The parties are informed that an Initial Order will be written and sent to the parties and that the Initial Order will inform the parties of their appeal rights.
- (3) Subparagraphs (1) and (2) of this rule are intended to be merely a general outline as to the conduct of a contested case proceeding and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

Authority: T.C.A. §§4-5-219, 4-5-301(b), and 4-5-312. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.15 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 or agency, 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) The administrative judge, when sitting with an agency, advises the agency whether the service of notice is sufficient as a matter of law, according to rule 1360-04-01-.06.
 - (d) If the notice is held to be adequate, the agency, or administrative judge hearing a case alone, shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1360-04-01-.06, subsections (2) (a) through (2) (d), 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.
 - (e) The agency or 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 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 agency or 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 charges shall be dismissed 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 establishing its allegations by a preponderance of the evidence presented.

Authority: T.C.A. §§4-5-219 and 4-5-309. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.

1360-04-01-.16 EVIDENCE IN HEARINGS.

In all agency hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the agency, 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, and 4-5-313. Administrative History:* Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.

1360-04-01-.17 CLERICAL MISTAKES. Prior to any appeal 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, if sitting alone, or by the agency, if the matter was heard before them, at any time on the initiative of either the administrative judge or the agency or on motion of any party and after such notice, if any, as the administrative judge may require. The entering of a corrected order will not effect the dates of the original appeal time period.

Authority: *T.C.A. §4-5-219. Administrative History:* Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.

1360-04-01-.18 PETITIONS FOR RECONSIDERATION AND STAYS TO MULTI-MEMBER AGENCIES.

- (1) Petitions for Reconsideration
 - (a) Any petition for reconsideration to a multi-member agency must include the specific grounds upon which relief is requested and, if the petitioner seeks to present new evidence, a statement of the cause for the failure to introduce the proposed new evidence in the original proceeding and a detailed description of any such new evidence proposed to be introduced, including copies of documents sought to be introduced, identities of proposed witnesses, and summaries of any testimony sought to be presented. However, documents that are unavailable to the person seeking reconsideration at the time of filing the petition may be described in as much detail as is possible and may be provided at a later time, should reconsideration be granted, but not later than three (3) working days prior to any reconsideration hearing.
 - (b) A multi-member agency may authorize the chair or any other of its members to grant or deny petitions for reconsideration of final orders under *T.C.A. §4-5-317*, to the following extent:
 1. Any such petition must be granted within the 20-day time period set at *§4-5-317(c)* or it shall be deemed denied;
 2. If a petition is granted by such an authorized member, such member shall set the matter for hearing at the agency's earliest convenience and notify the parties by

written order of the decision to grant the petition;

3. The order shall state that, at the hearing to reconsider, the parties shall be allowed to make oral argument on the merits of the petition, the party seeking reconsideration may be allowed to present new evidence only if the party shows to the satisfaction of the agency that good cause existed for the failure to introduce the new evidence in the original hearing, and the opposing party shall be allowed to present rebuttal proof if the party seeking reconsideration is allowed to present new evidence; and
 4. Any new evidence allowed to be introduced by the party seeking reconsideration shall be limited to that described in the petition for reconsideration as required in subparagraph (1)(a) of this rule.
- (2) Petitions for Stays - Any member of a multi-member agency may in his or her discretion schedule a hearing on a petition for a stay under *T.C.A. §4-5-316* by gathering a quorum of the agency; such hearing may be conducted by telephone conference call under the requirements of *T.C.A. §4-5-312*.

Authority: *T.C.A. §§4-5-219, 4-5-312, 4-5-316, and 4-5-317. Administrative History: Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990.*

1360-04-01-.19 FILING OF FINAL ORDERS.

After an agency has made a decision in a contested case hearing, whichever party is assigned the responsibility for drafting the final order shall, after the order is signed by the chair of the agency on behalf of the agency or by the agency members who were present at the hearing, file the order with the Administrative Procedures Division, leaving the original or a copy of the order with the Division. The order shall state that it is deemed entered upon the date that it is filed with the Administrative Procedures Division. The person responsible for drafting and filing the final order with the Administrative Procedures Division shall assure that a copy of the final order with its filing/entry date filled in by the Administrative Procedures Division is mailed to the opposing party, or if such party is represented by counsel, to counsel for the opposing party on the date of filing. All final orders shall contain a clear and concise statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

Authority: *T.C.A. §§4-5-219 and 4-5-312. Administrative History: Original rule filed May 31, 1990; effective July 15, 1990.*

1360-04-01-.20 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.

Authority: *T.C.A. §4-5-321. Administrative History: Original rule filed May 31, 1990; effective July 15, 1990.*



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