

Rulemaking Process

By: Shanell L. Tyler, Esq.

Types of Rules



EMERGENCY RULES



PROPOSED RULES



RULEMAKING HEARING
RULES

Emergency Rules

When are They Appropriate?

T.C.A. §4-5-208

- Immediate danger to the public health, safety or welfare exists, and rulemaking process would not adequately protect the public
- Rule only delays the effective date of another rule that is not yet effective
- Required by constitution or court
- Required by agencies of the federal government under certain conditions
- Required by general assembly to implement rules within a prescribed time that precludes rulemaking process

Information

- Rulemaking without prior notice or hearing
- Effective Immediately upon proper filing with Secretary of State, unless otherwise stated in rule
- Effective for not longer than 180 days
- Agency prohibited from adopting the same rule or substantially similar rule within one calendar year from its adoption, unless agency can meet statutory exception

Proposed Rules

When are They Appropriate?

T.C.A. § 4-5-202(a)(2)

- Routine matters
- May not proceed with this process if an agency receives a petition as set forth in this section. In that case, notice and a hearing must occur

Information

- Posted to Secretary of State's website with a statement that the agency will adopt the proposed rule without a public hearing
- Within ninety days of filing of the proposed rule, the following may petition for a public hearing:
 - Ten or more affected persons
 - An association of ten or more members
 - A municipality
 - A majority vote of any standing committee of the general assembly

Rulemaking Hearing Rules

When are They Appropriate?

T.C.A. § 4-5-202

- Most common
- Agency required to precede all its rulemaking with notice and a public hearing unless exception applies

Information

- Must give notice and hold a public hearing
- Notice
- Public hearing is a time for interested persons or their representatives to present facts, views or arguments relative to rule
- Effective ninety days after filing in the Secretary of State's Office
- T.C.A. §§ 4-5-203 and 4-5-204

Rulemaking Timeline

April Dates

- April 14, 2020
 - Rules Committee meeting to approve rule language to recommend to Commission for approval and authorize rulemaking hearing
- April 16, 2020
 - Staff file rulemaking hearing notice with SOS office for hearing on appeals rules to be conducted on June 9, 2020 (52 days' notice)
 - Rulemaking hearing notice and agenda posted on Commission website
- April 22, 2020
 - Public records and appeals rules on first reading; appeals policies on first reading at Commission meeting; public records policy on first and final reading at the Commission meeting

June and July Dates

- June 9, 2020
 - Rulemaking hearing on appeals rules
- June 10 - June 17, 2020
 - Additional edits to appeals rules as needed by staff
- June 24, 2020
 - Appeals rules on final reading at the Commission meeting
- July 1, 2020
 - Appeals rules filing forms sent to AG's office for review

Rulemaking Timeline (cont.)

August Dates

- August 1, 2020
 - Appeals rules filing forms approved by AG and submitted for signature (*Note: These dates are approximate*)
- August 17, 2020
 - Appeals rules filing forms signed by AG, received by Commission staff and sent by staff to SOS office for signature (*Note: These dates are approximate*)
- August 18, 2020
 - Appeals rules filing forms received by SOS office and assigned effective date 90 days later (*Note: These dates are approximate*)
- August 26-27, 2020
 - Appeals policies on final reading at Commission meeting

November through January 2021

- November 16, 2020
 - Effective date of appeals rules (*Note: These dates are approximate*)
- December 2020-January 2021
 - Commission Executive Director and General Counsel defend rule in front of Joint Government Operations Committee (*Note: These dates are approximate*)
- January 1, 2021
 - Charter Commission can begin accepting appeals