

Tennessee Department of Environment and Conservation

The Rulemaking Process

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How do rules begin?

Legislation

- Mandated
- Permissive

Federal Agency

- Maintain authorization

Department

- Identifies a need for a change

Petition

Petition for Rulemaking

Unless restricted by law:

- Any Municipality
- Any Corporation
- Five or more persons having an interest in a rule

Types of Rulemakings

- Emergency Rules
- Proposed Rules
- Rulemaking Hearing Rules

Emergency Rules

- An immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of other rulemaking procedures are not adequate to protect the public.
- The rule only delays the effective date of another rule that is not yet effective.
- It is required by the constitution or court order.
- It is required by an agency of the federal government and a delay may jeopardize the loss of a federal program or funds.
- The agency is mandated to enact the rule by the general assembly.

Emergency Rules

- Emergency Rules must be adopted by the rulemaking authority
- The Attorney General must approve the rulemaking and the statement that justifies its emergency.
- The emergency rule is effective upon filing and remains effective for only 180 days.

Proposed Rules

- Adopted without public notice
- Approved by the Attorney General for legality and constitutionality
- Published by the Secretary of State with the statement that:
 - Agency will adopt without a hearing unless, within 60 days beginning the first day of the month following filing of the notice, a petition for a hearing is filed by 25 persons, or an association representing at least 25 or more members, a municipality, or a majority vote by a standing committee of the legislature.

Rulemaking Hearing Rules

- This process is used most often by the Department.
- This process consists of:
 - Public notice
 - Public hearing or hearings
 - Responding to comments and drafting a final rulemaking package
 - Adoption by the rulemaking authority
 - Legal review and approval
 - Filing with the Secretary of State
 - Review by the Joint Government Operations Committees

Public Notice

- Notice on the Secretary of State Website must be given at least 45 days before the hearing and the Department must allow 5 business days for the notice to be published.
- Notice must contain the date, time and place of the hearing.
- The Department may use existing equipment to include teleconferencing from multiple locations.
- Publication on the Secretary of State's website validates the public notice process.

Public Hearings

- The Department shall hold the hearing as published.
- At the beginning of the hearing the Department gives a summary of the factual information on which the proposal is based.
- The hearings are recorded.
- All interested persons are allowed to present facts, views or arguments in writing or orally, however, oral presentations may be limited in time.

Responding to Comments and Drafting a Final Rulemaking

- The Department shall consider fully all comments received whether written or orally presented.
- When responding to comments the Department may summarize the comments received and respond to an issue raised by multiple commenters with one response.
- Comments and responses become a part of the rulemaking.
- The law allows the Department to make changes in the rules 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.

Adoption by the Rulemaking Authority

- Department rules are either adopted by a regulatory Board or by the Commissioner depending upon the statutory authority that authorizes or mandates the development of rules.
- A final rulemaking package includes:
 - The final form of the rules;
 - A summary of the comments received and the responses to those comments;
 - A small business impact statement;
 - A statement regarding the impact on local governments; and
 - A regulatory impact statement.

Legal Review and Approval

- Adopted rules are reviewed by the Department's Office of General Counsel
- Reviewed by the Office of the Attorney General
 - Reviewed for legality
 - Reviewed for constitutionality
- Outcome of the review:
 - Approval
 - Return to the rulemaking authority for re-adoption after significant changes
 - Rejection with a legal justification

Filing with the Secretary of State

- Filed with the Secretary of State after legal approval.
- The rules will become effective 90 days after being filed unless stayed or withdrawn.
- The Department can stay the effective day for up to 75 days or withdraw the rules.
- The Joint GOC can stay the rules for up to 60 days.

Joint Government Operations Committee

- Any permanent rule filed with the Secretary of State shall expire on June 30 of the year following the year of its filing.
- The Joint Government Operations Committees may vote to:
 - Recommend that the rule not expire
 - Request the agency to repeal, amend or withdraw the rule before its expiration date
 - Stay the effective date of the rule for up to 60 days