

Emergency Rules

Emergency rules are available for use in emergency situations affecting the public health, safety or welfare, and are infrequently used. They must be reviewed and approved by the State Attorney General and, if approved, become effective immediately upon filing with the Secretary of State's Office.

Emergency Rules are also used if directed by the legislature; if some impending or reasonably anticipated loss of Federal funds arises due to failure to implement some Federal law or regulation; if it is required by the constitution or court order; or if the rule is used to delay the effective date of another rule which is already in effect.

Emergency rules are only effective for 180 days following filing with the Secretary of State, and must be followed by a timely promulgation of "permanent" (i.e. "Rulemaking Hearing Rules") if they are to remain effective.

Rulemaking Hearing ("Permanent") Rules or Amendments to Rules that will become effective in 90 days or less

Rulemaking Hearing Rules are the most common type of rules which DHS will promulgate since they provide "permanent" rules that have no expiration date for the operation of the Department's programs. If emergency rules are promulgated, they will almost always be followed by Rulemaking Hearing rules.

They are always preceded by a public hearing which is initiated by the filing of what is called a "Notice of Rulemaking" with the Secretary of State for publication in the Tennessee Administrative Register. The Notice will contain a verbatim copy of the rules as the Department determines it wants to promulgate them, and it will notify the public of this rulemaking intention.

After the public rulemaking hearing, changes may be made based upon public comments or further review of the rules by the Department. The rules are sent to the Attorney General for review and following approval of the rule by the State Attorney General, the rules are filed with the Secretary of State and become effective ninety days after filing.

Public Rulemaking Hearings

Public rulemaking hearings are held at the time and place designated in the notice of hearing, and allow all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. A person has the opportunity to present facts, views or arguments in writing, whether or not such person had an opportunity to present them orally. Comments made by the public may then be incorporated in the final version of the rules.

“Proposed” Rules

Proposed rules are used primarily for the promulgation of very routine changes to the rules that make minor changes deemed not to be of significant interest to the public or which may make typographical changes or which correct matters of a routine nature due to clerical errors.

If no petition for rulemaking is filed within the ninety (90) days of the actual date the Proposed rules are published in the Tennessee Administrative Register (TAR), the rule would then become effective at the end of the ninety-day period. If an effective petition for rulemaking is filed, then the effective date is voided and the process would have to start over with a Notice of Rulemaking hearing being filed and the holding of public hearings on the proposed Rulemaking Hearing rules. The rules would then be promulgated and filed as “Rulemaking Hearing Rules” and become effective ninety days from their filing with the Secretary of State.

Stayed or Withdrawn Rules

A stay of the effective date of rules is a procedure undertaken by the agency to delay the effective date of rules which are already on file with the Secretary of State and awaiting the completion of the 90-day period before they become effective. The Stay is only effective for 75 days. After its expiration, any time remaining in the 90-day notice period which was remaining at the time the stay was filed will resume until the rules become effective.

Withdrawal of a stay of rules is a procedure in which the agency files a notice with the SOS which withdraws the Stay and lets the remaining time in the 90-day period, which was halted by the stay, begin to run so that the rules can become effective before the stay otherwise expires by operation of law.

Withdrawal of rules is a withdrawal and voiding of the rules on file with the Secretary of State and must be done before the rules become effective. Emergency rules cannot be withdrawn, but can be amended.

Government Operations Committee Review of Rules

After rules are filed, they are reviewed by the General Assembly’s joint Government Operations Committee (GOC) which is composed of members of both the House and the Senate Government Operations Committees.

The GOC may express its disapproval of a rule which fails to satisfy any or all of certain statutory criteria by voting to allow the rule or rules to expire upon its or their established expiration date or by voting to request the agency to repeal, amend or withdraw this rule before such established expiration date.

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, by legislative enactment, to allow the rule to expire by not enacting legislation to make the rule permanent, or alter or eliminate the rule or to suspend any or all of the agency's rulemaking authority or with respect to any particular subject matter.