RULES
OF
TENNESSEE DEPARTMENT OF SAFETY
ADMINISTRATIVE DIVISION

CHAPTER 1340-02-02
THE RULES OF PROCEDURE FOR ASSET FORFEITURE HEARINGS

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1340-02-02-.01 SCOPE AND CONSTRUCTION.

(1) Pursuant to T.C.A. § 4-5-219, T.C.A. § 40-33-214, and T.C.A. § 53-11-201(j), the Tennessee Department of Safety hereby adopts these Rules to be used in the administration and conduct of contested cases concerning property seized pursuant to the Tennessee Drug Control Act; T.C.A. § 53-11-201, et seq.; T.C.A. § 55-10-414; T.C.A. § 55-50-504, T.C.A. § 55-50-506, T.C.A. § 55-5-108, and any other statute pursuant to which the department holds asset forfeiture hearings. These Rules apply instead of the Uniform Rules, Chapter 1360-4-1-.01 thru .20, and any successor or additional rules thereto.

(2) Any provision of these rules, except Rules 1340-02-02-.06, .21 and .25, may be suspended by the commissioner upon motion by a party where clearly warranted in the interest of justice. Any suspension order must be in writing with a reason given for the suspension. The suspension order must be served by the commissioner on all parties to a contested case in which a suspension is ordered.

(3) These Rules shall be construed to secure the just, speedy, and inexpensive determination of claims and Notices of Seizure. Where appropriate and to the extent necessary to secure just, speedy, and inexpensive determinations, any procedural matter that is not specifically addressed by these rules may be addressed by reference to provisions of state or federal law. For guidance, reference should first be made to T.C.A. § 40-33-201, et seq., and the Tennessee Drug Control Act, or T.C.A. § 53-11-201, et seq., or T.C.A. § 55-10-414, or T.C.A. § 55-50-504, or T.C.A. § 55-50-506, or T.C.A. § 55-5-108, or any other statute pursuant to which the department holds asset forfeiture hearings, as applicable; and second, to the Uniform Administrative Procedures Act. These proceedings are not exclusively governed by the Tennessee Rules of Evidence. (See T.C.A. § 4-5-313(1)).

(4) For matters outside the definition of "rule" by the UAPA, *T.C.A. §4-5-102(10)*, nothing in these rules shall prohibit the use of informal policies and internal procedures for the administration of the Act and the handling of seized property.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-214 as amended by Public Chapter 910 (1996) and Public Chapter 959 (1996) and 53-11-201(j).* ***Administrative History:*** *Original rule filed December 5,*

(Rule 1340-02-02-.01, continued)

1994; effective February 18, 1995. Amendment filed October 31, 1996; effective February 28, 1997. Amendment filed December 10, 2014; effective March 10, 2015.

1340-02-02-.02 DEFINITIONS.

(1) Act. T.C.A. § 40-33-201, et seq., as amended, or T.C.A. § 53-11-201, et seq., as amended, or T.C.A. § 55-10-414, as amended, or T.C.A. § 55-50-504, as amended, or T.C.A. § 55-5-506, as amended, or T.C.A. § 55-5-108, as amended, or any successor law(s).

(2) Administrative Judge. An employee or official of the administrative procedures division of the office of the secretary of state or the department licensed to practice law and authorized by the commissioner to conduct contested case proceedings. Wherever the term “administrative judge” is used in these rules, it is intended to include reference to the term “hearing officer” or “commissioner,” in cases in which a hearing officer or the commissioner conducts the proceedings. For purposes of these rules, a hearing officer is an employee or official of the office of the secretary of state or the department, not licensed to practice law, and authorized by the commissioner to conduct a contested case proceeding.

(3) Administrative Procedures Division. The division of the Department of State that supplies administrative judges to hear contested cases pursuant to the UAPA. If the department employs an administrative judge from the Administrative Procedures Division, the initial or final order shall not be deemed entered until the initial or final order has been filed with the Administrative Procedures Division. Hereinafter, the Administrative Procedures Division may be referred to as “APD”.

Address: Administrative Procedures Division
Department of State
8th Floor, William R. Snodgrass Tower
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102
Telephone number: (615) 741-7008 Fax: (615) 741-4472

(4) Appeals Division. The division of the department designated by the commissioner to administer certain contested case orders and all appellate matters under the Act, including but not limited to Final Orders, Interlocutory Appeals, Petitions for Reconsideration, Petitions for a Stay, Appeals of an Initial Order, and Notices of Review of an Initial Order.

Address: Appeals Division
Tennessee Department of Safety
1150 Foster Avenue
Nashville, TN 37243
Telephone number: (615) 251--5114 Fax: (615) 253-4622

(5) Claim. A claim is a written request, signed under oath, for a hearing by a claimant seeking to recover an alleged interest in seized property. A claim must conform to Rule 1340-02-02-.07.

(6) Claimant. A person who files a claim alleging an interest in seized property.

(7) Contested Case. Administrative *in rem* forfeiture proceeding whereby the entire world’s interest in seized property is determined.

(8) Commissioner. The commissioner of the Tennessee Department of Safety.

(9) Department. The Tennessee Department of Safety.

(Rule 1340-02-02-.02, continued)

(10) File(d). Actual receipt by the Legal Division.

(11) Judge. Judges and magistrates shall include (1) the judges of the Supreme Court; (2) the judges of the circuit, criminal, and chancery courts; (3) judicial commissioners; (4) judges of the courts of general sessions; (5) city judges in cities and towns; and (6) judges of juvenile courts.

(12) Legal Division. The division of the department designated by the commissioner to receive for filing all pleadings in contested case proceedings under the Act, to maintain the record in contested case proceedings under the Act, and to administer the Act as set out in these rules.

Address: Legal Division, Tennessee Department of Safety
1150 Foster Avenue
Nashville, TN 37243
Telephone number: (615) 251-5296 Fax: (615) 532-7918

(13) Notice of Seizure. Department created form given to a person potentially having an interest in seized property.

(14) Party to a Contested Case. The department and the persons and entities who have properly filed pursuant to T.C.A. § 40-33-201, *et seq.* and any other applicable statute to protect their interest in the seized property.

(15) Pauper's Oath. The Uniform Civil Affidavit of Indigency which must be completed and signed before a notary by any potential claimant alleging that the claimant cannot pay the cost bond.

(16) Person. Any individual, partnership, corporation, association or governmental subdivision, including any agency, division, or department of government, or public or private organization of any character.

(17) Pleadings. The notice of seizure, the claim, and any motions, memoranda, responses, answers, orders, notices, title searches, or other paper filed with the Legal Division shall comprise the pleadings in a contested case.

(18) Record. All items in a contested case filed with the Legal Division, including any pleadings, transcripts and exhibits, orders, or other items, and if an administrative judge has been utilized, all items set forth above plus any initial and final orders.

(19) Secured Party. The holder of a security interest in the seized property pursuant to T.C.A. § 47-9-301, et seq.

(20) Seizing Agency. Any entity authorized to seize property pursuant to the applicable Act.

(21) Seized Property. Any property, excluding real property, seized pursuant to the Act.

(22) UAPA. The Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq.

(23) Working Day. Any day or part of the day on which state offices are open for business.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed October 31, 1996; effective February 28, 1997. Repeal and new rule filed December 10, 2015; effective March 10, 2015.*

1340-02-02-.03 STYLE, FILING AND SERVICE OF PLEADINGS AND OTHER ITEMS.

(1) All pleadings and other items required to be filed with the Legal Division and the Appeals Division by a time certain shall be filed by delivery in person or in any other manner, including mail or facsimile transmission, so long as they are actually received within the required time period. Any document received after regularly scheduled business hours shall be date stamped as of the next business day. Regularly scheduled business hours for the Legal Division are as follows: For the Central Time region of Tennessee 8:00 A.M.-4:30 P.M. C.S.T. (C.D.S.T.) and for the Eastern Time region of Tennessee 8:00 A.M.-4:30 P.M. E.S.T.(E.D.S.T.)

(2) A claim filed by facsimile transmission must be accompanied by a cost bond or a pauper's oath in accordance with Rule 1340-02-02-.07 (5)(d), and (5)(e).

(3) Discovery materials that are not actually introduced as evidence need not be filed, except as set forth in Rule 1340-02-02-.13(3).

(4) A party shall serve copies of any filed item on all parties, by hand delivery, by mail or by any other means allowed by Rule 5 of the Tennessee Rules of Civil Procedure. Each pleading or other item shall contain a certificate of service indicating that copies have been served upon all parties. The administrative judge conducting the contested case proceeding must also be served.

(5) A "Notice of Hearing" filed by the Legal Division in compliance with T.C.A. § 4-5-307(b) shall bear a caption and include a department assigned contested case number. All subsequent pleadings or other items filed must bear this same caption and the contested case number. All claims filed on a particular seized property shall receive the same contested case number.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Repeal and new rule filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.04 TIME.

(1) Pursuant to T.C.A. § 40-33-206, any person claiming any interest in seized property shall file a claim within thirty (30) days after receipt of notice from the department:

(a) Any potential claimant who is not notified by the department and who could not reasonably be discovered pursuant to a search of the applicable public records shall have thirty (30) days from the date of the Forfeiture Warrant to file a claim.

(2) 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 included. The last day of the period so computed is 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 (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(3) Except in regard to the filing of a claim as noted above in Paragraph (1), petitions for review under T.C.A. §§ 4-5-315, 4-5-317, 4-5-322, and 40-33-213, acts under Rules 1340-02-02-.05, .06 and .10(3)(b), or where otherwise prohibited by law, when an act in a contested case is required or allowed to be done at or within a specified time, the administrative judge may, at any time:

(Rule 1340-02-02-.04, continued)

(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 proceedings that would be prohibited by T.C.A. § 4-5-304.

(4) Mail Rule. THIS PART DOES NOT APPLY TO THE FILING OF CLAIMS OR ADMINISTRATIVE OR JUDICIAL APPEALS FROM AN INITIAL OR FINAL ORDER. Except as noted above, whenever a party has the right or is required to do some act or to take some proceedings within a prescribed time after the service of a notice or other paper and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendments filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.05 DUTIES OF THE SEIZING AGENCY.

(1) Upon the seizure of any personal property subject to forfeiture pursuant to T.C.A. § 40-33-201 the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a Notice of Seizure. Such Notice of Seizure shall contain the following:

(a) A general description of the property seized and, if the property is money, the amount seized;

(b) The date the property was seized and the date the notice of seizure was given to or mailed to the person in possession of the seized property;

(c) The vehicle identification number (VIN) if the property seized is a motor vehicle;

(d) The reason the seizing officer believes the property is subject to seizure and forfeiture;

(e) The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and

(f) The consequences that will attach if no claim for recovery is filed within the applicable time period.

(2) Once personal property is seized pursuant to a provision of law that requires the issuance of a Forfeiture Warrant, no forfeiture action shall proceed unless a Forfeiture Warrant is issued in accordance with T.C.A. § 40-33-204 by a general sessions, circuit, criminal court or popularly elected city judge as defined in the Act. Such Forfeiture Warrant shall authorize the institution of a forfeiture proceeding.

(3) If an arrest was made at the time of the seizure, the officer making the seizure or the officer's designee shall apply for a Forfeiture Warrant by filing an affidavit within five (5) working days following the property seizure. The Forfeiture Warrant shall be based upon proof by affidavit and shall have attached to it a copy of the Notice of Seizure. The affidavit in support of the Forfeiture Warrant shall state the following:

(a) The legal and factual basis making such property subject to forfeiture;

(Rule 1340-02-02-.05, continued)

1. If the owner of the property was not the person in possession of the property at the time of seizure, and it can be determined from public records of titles, registrations, or other recorded documents, and the seizing agency intends to forfeit the owner's interest, then the seizing agency must state the legal and factual basis for forfeiture of such owner's interest in the property.

2. If the interest of a secured party with a duly perfected security interest as reflected in public records of titles, registrations, or other recorded documents is sought to be forfeited, then the seizing agency must state the legal and factual basis for forfeiture of such secured party's interest.

(4) The seizing officer may ask the judge for an additional ten (10) days to seek a Forfeiture Warrant. The seizing officer may assert to the judge that such officer is unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five (5) day period.

(5) If the person in possession of the property is not the registered owner as determined from public records of titles, registrations, or other recorded documents, the officer may submit certain indicia of ownership to the judge which proves that the possessor is nonetheless an owner of the property. Such indicia of ownership shall include, but is not limited to the following:

(a) How the parties involved regarded ownership of the property in question;

(b) The intentions of the parties relative to ownership of the property;

(c) Who was responsible for originally purchasing the property;

(d) Who pays any insurance, license or fees required to possess or operate the property;

(e) Who maintains and repairs the property;

(f) Who uses or operates the property;

(g) Who has access to use the property;

(h) Who acts as if they have a proprietary interest in the property.

(6) Upon the seizure of any personal property subject to forfeiture pursuant to T.C.A. § 40-33-201 where the person in possession is not arrested, the seizing officer shall provide the person found in possession of the property, if known, a notice entitled "Notice of Forfeiture Warrant Hearing". This notice shall contain the following:

(a) The date, time, and court in which the seizing officer will be seeking a Forfeiture Warrant against the seized property pursuant to T.C.A. § 40-33-204;

(b) A statement that the person in possession is entitled to a appear in court at the stated date and time to contest the issuance of a Forfeiture Warrant against the seized property and that this hearing shall be civil in nature pursuant to T.C.A. § 40-33-204(b); and,

(c) A statement that if the person in possession does not appear in court, a forfeiture warrant may be issued and the property subject to the forfeiture process set forth in title 40, chapter 33, part 2 and as stated on the Notice of Seizure.

(7) If no arrest was made at the time of the seizure, the officer making the seizure shall present to the court, at the date and time specified on the Notice of Forfeiture Warrant Hearing, the

(Rule 1340-02-02-.05, continued)

application for a Forfeiture Warrant, the affidavit in support, the notice of seizure, and the notice of Forfeiture Warrant hearing. At the hearing on the Forfeiture Warrant application, the court shall:

(a) Review the application for a Forfeiture Warrant and the affidavit in support and take testimony from the seizing officer regarding the probable cause to issue a Forfeiture Warrant, including any testimony as may be required in this section; and

(b) Review any evidence presented by and take testimony from the person in possession at the time of the seizure regarding why no probable cause exists to issue a Forfeiture Warrant.

(c) If the person in possession at the time of the seizure does not appear at the hearing and has received notice of the hearing, then the court shall review the application for a Forfeiture Warrant ex parte as under subsection (b)(2).

(d) The taking of testimony shall consist solely of the judge putting the seizing officer and person in possession under oath and asking questions to determine if probable cause exists for a Forfeiture Warrant to be issued. Any examination by the judge of the seizing officer shall in no form or manner extend to whether the seizure is part of an ongoing investigation, nor shall the judge's examination extend in any form or manner to the source of any confidential information used in making a stop leading to seizure of the property.

(8) All hearings on applications for Forfeiture Warrants pursuant to Paragraphs 6 and 7 shall be recorded and maintained by the court. Certified copies of the proceeding shall be made available to any party requesting them, and the same shall be admissible as evidence.

(9) The seizing agency shall send a Notice of Seizure, Affidavit, Notice of Forfeiture Warrant Hearing, if applicable, and Forfeiture Warrant pursuant to T.C.A. § 40-33-204(e) to the Legal Division within seven (7) working days of the issuance of the Forfeiture Warrant. The Legal Division shall stamp the aforementioned documents with the date and time of receipt.

(10) The seizing agency shall not use or release any seized property unless and until an order of forfeiture has become final by the expiration of any relevant appeal time and the department has received payment of assessed costs in accordance with Rule 1340-02-02-.24.

(11) The seizing agency shall cooperate with the Legal Division in that division's effort to administer the Act. In the absence of cooperation, and within the discretion of the staff attorney handling a particular claim, the department may settle a claim.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended; 53-11-201, et seq. and Public Chapter No. 382 (2013).* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Repeal and new rule filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.06 THE LEGAL DIVISION.

(1) The Legal Division is designated by the commissioner to receive for filing all pleadings in contested case proceedings under the Act, to maintain the record in contested case proceedings under the Act, and to administer the Act as set out in these rules.

(2) Upon receipt of a Notice of Seizure, Affidavit and Forfeiture Warrant the Legal Division shall:

(a) Search for potential claimants and secured parties by:

1. Reviewing the Notice of Seizure and the Forfeiture Warrant,

(Rule 1340-02-02-.06, continued)

2. Checking the vehicle's identification number, registration, and title in appropriate public data bases,

3. Checking the secured party address file created under subparagraph 2(g) of this Rule, and

4. Checking other sources of indicia of ownership as may be appropriate for the property seized.

(b) Take steps to notify each potential claimant and secured party unearthed through the search performed under subparagraph (2)(a) of this Rule, reflected on a Notice of Seizure, or related by a seizing agency after the filing of a Notice of Seizure.

(c) All potential claimants and secured parties shall be sent notification to their last known address that Forfeiture Warrant has been issued. The notice shall state the name of the potential claimant or secured party, the name of the person(s) in possession of the seized property, give a general description of the seized property, the reasons for the seizure, the procedure by which recovery of the property may be sought, including the time period in which a claim or proof of security interest shall be filed with the Legal Division, and the consequences of failing to file within the time period.

(d) Any potential claimant who is not notified by the department and who could not reasonably be discovered pursuant to a search of the applicable public records shall have thirty (30) days from the date of the Forfeiture Warrant to file a claim.

(e) Notice to a potential claimant or secured party shall be given in accordance with state and federal constitutional requirements. Such notice to a potential claimant or a secured party may be proven by any method used by the United States Postal Service to inform its users of the date of delivery of certified mail.

1. When the potential claimant or secured party or an agent or other representative of the potential claimant or secured party refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the case shall be deemed an actual and valid service of the notice. Service by mail is complete upon mailing. For purposes of these rules, the United States Postal Service notation that a properly addressed registered or certified letter is "unclaimed," or other similar notation, is sufficient evidence of the potential claimant's refusal to accept delivery.

(f) If no claim or proof of security interest is received by the conclusion of the thirtieth (30th) day after the date of the potential claimant's or secured party's receipt of the Notice of Forfeiture Warrant sent by the Legal Division, seized property shall be forfeited to the state for disposition under the Act. A final order shall be issued. The final order shall be sent to each potential claimant and secured party and the person in possession of seized property.

(g) A secured party may at any time notify the Legal Division – Nashville in writing of any address or addresses that it wishes the Legal Division to use when sending a Notice of Forfeiture Warrant to that secured party. The Legal Division shall keep the requested address or addresses on file until notified otherwise in writing by the secured party. Upon receiving written notification of address or addresses from a secured party in accordance with this rule, that shall be the primary address or addresses that the Legal Division shall use when sending a Notice of Forfeiture Warrant to that secured party until notified otherwise in writing by the secured party.

(Rule 1340-02-02-.06, continued)

(3) Upon receipt of a claim, the Legal Division shall within thirty (30) days of such receipt establish a hearing date and set such case on a docket. Nothing in these Rules shall be construed as requiring the hearing to be conducted within the thirty (30) day period. Only the cases on the docket may be heard on the merits on that day and at that time.

(4) The commissioner designates the Legal Division to administer the forfeiture of seized property, to make settlements on behalf of the department and seizing agency, and to prosecute on behalf of the department all contested cases under the Act. The Legal Division, in its discretion, may associate with third party attorneys, e.g., district attorneys, seizing agency attorneys, etc., to prosecute the contested cases under the Act.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-308, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendments filed August 9, 2007; effective December 28, 2007. Repeal and new rule filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.07 FILING CLAIMS AND BONDS.

(1) Filing Claims. A properly filed claim commences a contested case proceeding under the Act. Each claimant shall file a separate claim, except a husband and wife with common interests may file a single claim but each must sign the claim.

(2) The Legal Division shall stamp or write on the claim the date that a claim is received. Any document received after regularly scheduled business hours shall be date stamped as of the next business day. Regularly scheduled business hours for the Legal Division are as follows: For the central time region of Tennessee 8:00 A.M.-4:30 P.M. C.S.T. (C.D.S.T.) and for the eastern time region of Tennessee 8:00 A.M.-4:30 P.M. E.S.T.(E.D.S.T.)

(3) A purported claim that does not comply with Paragraph (4) of this Rule does NOT commence a contested case proceeding and does NOT stay the thirty (30) day filing time. Claims not filed by an attorney may be reviewed less stringently.

(4) Claim.

(a) A claim is a written request, signed by the claimant, seeking to recover an alleged interest in seized property. If the claimant is an individual, the claim must be signed by the claimant and/or claimant's attorney. If the claimant is a business entity, the claim must be signed by an individual whose authority to sign is reflected on the claim. Claims shall be filed with the Legal Division at the address below within thirty (30) days of notification of a forfeiture warrant. A claim must set forth the following:

1. The full name of claimant.

2. The address where claimant will accept mail.

3. The telephone number where claimant can be reached.

4. Identification of the seized property in which claimant asserts an interest.

5. The nature and extent of claimant's interest in the seized property.

6. A valid cost bond or Pauper's Oath per paragraph (5) below.

(b) If a secured party with a duly perfected security interest receives notification pursuant to T.C.A. § 40-33-204(g) that a Forfeiture Warrant has been issued with regard to such secured property, such secured party must submit proof of the security interest (copy

(Rule 1340-02-02-.07, continued)

of title and security agreement) to the department within thirty (30) days of receipt of such notification in order for the provisions of this subparagraph to apply. A secured party with a duly perfected interest or any successor in interest to such secured party who does not receive notice of intent to forfeit such interest pursuant to T.C.A. § 40-33-204(b)(3), need not file a claim to preserve any right such party may have to such property. However, it shall be the duty of the lienholder who receives notice pursuant to T.C.A. § 40-33-204(g) to inform the department that there is a successor-in-interest. Upon receiving proof of a security interest, no cost bond or other pleadings need be filed by the secured party or successor in interest in order to protect its interest in the seized property or to assert a claim to the property as provided in T.C.A. § 40-33-206. If the department notifies a secured party that it intends to seek forfeiture of the secured party's interest, it shall seek a Forfeiture Warrant against such secured party as provided in T.C.A. § 40-33-204(b). Upon receiving notice that such a Forfeiture Warrant has been issued, the secured party is required to file a claim for the property as provided in this part.

Any secured party, other than one described above, or any successor-in-interest to such secured party may file a claim for seized property by complying with the provisions of T.C.A. § 40-33-206, within thirty (30) days of the date the Forfeiture Warrant is issued.

(c) Claims, proof of security interests and any other filings in a contested case should be mailed or sent by facsimile to the Legal Office that serves the county in which the seizure took place:

<table>
<tr><td colspan="2">Legal Division-Nashville</td></tr>
<tr><td>Bedford
Cannon
Cheatham
Clay
Cumberland
Davidson
DeKalb
Dickson
Giles
Hickman
Houston
Humphreys

Jackson
Lawrence
Lewis
Lincoln
Macon
Marshall
Maury
Montgomery
Moore
Overton
Perry
Pickett

Putnam
Robertson
Rutherford
Smith
Stewart
Sumner
Trousdale
Wayne
White
Williamson
Wilson</td><td>Legal Division - Nashville
Tennessee Department of Safety
1150 Foster Avenue,
Nashville, TN 37243

Telephone number: (615) 251-5296
Facsimile: (615) 532-7918</td></tr>
<tr><td colspan="2">Legal Division – East Tennessee</td></tr>
<tr><td>Anderson
Bledsoe
Blount
Bradley
Campbell
Carter
Claiborne
Cocke
Coffee
Fentress
Franklin
Grainger
Green

Grundy
Hamblen
Hamilton
Hancock
Hawkins
Jefferson
Johnson
Knox
Loudon
McMinn
Marion
Meigs
Monroe

Morgan
Polk
Rhea
Roane
Scott
Sequatchie
Sevier
Sullivan
Unicoi
Union
Van Buren
Warren
Washington</td><td>Legal Division - East Tennessee
Tennessee Department of Safety
7175 Strawberry Plains Pike, Ste. 102
Knoxville, TN 37914

Telephone Number: (865) 594-6519
Facsimile: (865) 594-5311</td></tr>
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(Rule 1340-02-02-.07, continued)

Legal Division – West Tennessee			
Benton	Gibson	Lauderdale	Legal Division - West Tennessee
Carroll	Hardeman	McNairy	Tennessee Department of Safety
Chester	Hardin	Madison	6174 Macon Road
Crockett	Haywood	Obion	Memphis, TN 38134
Decatur	Henderson	Shelby	
Dyer	Henry	Tipton	Telephone Number: (901) 372-0622
Fayette	Lake	Weakley	Facsimile: (901) 372-1294

Note: Claimants and secured parties may file at the Legal Division-Nashville address for any property seizure pursuant to the Act, regardless of the county of seizure.

(5) Cost Bonds. A claim shall have a valid cost bond or no contested case proceeding will commence. The following will be considered a valid cost bond:

(a) Money order or cashier's check.

(b) Attorney's check. Only checks from an attorney licensed to practice law in the State of Tennessee will be accepted.

(c) Surety. The commissioner may accept a surety signed by an attorney licensed to practice in the State of Tennessee, a bond from a licensed bonding company approved by the commissioner, or a corporate surety bond.

(d) Pauper's Oath. Any individual claimant may file a claim without filing a cost bond if the individual claimant submits the Pauper's Oath forms, properly completed, signed and notarized, provided by the Department. The factors that will be considered by the department in determining indigence are yearly income, the value of real and personal property owned**,** debts, other household income, and whether or not the claimant has hired an attorney to represent the claimant.

(e) To be a valid cost bond, any of the above bonds must be filed with the Legal Division, and not with the seizing agency.

(f) If a cost bond or a pauper's oath is rejected, then claimant shall have ten (10) days from receipt of notification by Certified United States Mail Return Receipt Requested, or 10 days from the return to the department of the unclaimed notice:

1. To request a hearing on the improper cost bond or pauper's oath. Failure to request a hearing is deemed a waiver of claimant's right to a hearing on the improper cost bond or pauper's oath and shall result in rejection of the claim; or

2. To provide a proper cost bond.

(6) Debarment. No check, surety, or bond shall be accepted from any attorney or bonding company that has failed to pay costs pursuant to a previous cost bond within thirty (30) days of notice by the department to pay. A claim accompanied by a cost bond from a debarred attorney or bonding company shall not commence a contested case proceeding.

(7) Bonding Out Seized Property. Bond for release of seized property for safekeeping purposes only shall consist of the following:

(a) Pending any contested case proceeding to recover a vehicle, aircraft or boat, the commissioner may bond out such seized property for its retail value per the N.A.D.A., Southeastern Edition for vehicles and boats and per a source approved by the

(Rule 1340-02-02-.07, continued)

commissioner for airplanes to a claimant who has established a right to immediate possession. The bond may be revoked at the discretion of the commissioner.

1. If the property seized was other than the property stated above, the bond shall be in an amount equal to two times the retail value of the property.

2. If the property seized was a motor vehicle titled in the name of one or more persons who are not secured parties, the bond shall be in an amount equal to the N.A.D.A., Southeastern Edition, retail value of the vehicle.

(b) A secured party may obtain immediate possession of the seized property by executing a bond in an amount equal to two (2) times the retail value of the property or by executing an annual bond or letter of credit with a regulated financial institution in the amount of twenty-five thousand dollars ($25,000). Upon submitting proof of such bond or letter of credit, the department or seizing agency shall release the property to the secured party.

(c) The following will be considered valid bonds:

1. Cashier's check or money order.

2. Bond from a bonding company licensed in the State of Tennessee and approved by the commissioner.

3. An annual bond or letter of credit with a regulated financial institution in the amount of twenty-five thousand dollars ($25,000) submitted by a secured party.

(d) Bonded out property shall be returned in the same condition as of the date of the bond-out order. If the bonded out property is returned in worse condition or not at all, at any settlement or contested case hearing, the bond shall be substituted for the bonded out property.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-308, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed August 9, 2007; effective December 28, 2007. Repeal and new rule filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.08 REPRESENTATION BY COUNSEL.

(1) Any individual party in a contested case may represent himself or herself. A business entity may participate through an authorized representative such as an officer, director or appropriate employee.

(2) Any party to a contested case may be represented, at his or her own expense, by an attorney either licensed in the State of Tennessee or in another state if approved by the administrative judge pursuant to paragraph 9 of this rule. If a claimant cannot afford to hire an attorney, then free or low-cost counsel might be available from a number of sources.

(3) A party to a contested case may not be represented by a non-attorney, except where Federal law requires.

(4) The Legal Division 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:

(Rule 1340-02-02-.08, continued)

(a) the filing of pleadings signed by counsel;

(b) the filing of a formal or informal notice of appearance signed by counsel; or

(c) appearance as counsel at a prehearing conference or a hearing.

(6) After appearance, it is the affirmative duty of counsel to keep the Legal Division notified of a current address and telephone number where counsel can be reached by mail and phone.

(7) After appearance of counsel, all pleadings and other items shall be served by the parties upon counsel and not the claimant.

(8) Counsel cannot withdraw except upon motion granted by the administrative judge.

(9) Out-of-state counsel shall comply with T.C.A. § 23-1-108 and Supreme Court Rule 19, except that the affidavit referred to in Supreme Court Rule 19 shall be filed with the Legal Division and approved by the administrative judge .

Authority: *T.C.A. §§4-3-2009, 4-5-219, 4-5-301(b), 4-5-305, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.09 SETTLEMENT.

(1) Settlements are encouraged. After a timely valid claim has been filed, the claimant may enter into a written settlement agreement with either the department or the seizing agency. All settlements are subject to approval by the department. If a claim is filed timely with a settlement agreement, costs may be reduced.

(a) A settlement agreement shall reflect the terms of the settlement on a form provided by the Legal Division. It must be signed by the claimant and/or claimant's counsel and the designated authority of the seizing agency and/or the department.

(b) The commissioner shall enter a final order of settlement that incorporates the settlement agreement. The final order shall be served on the claimant and the seizing agency, with a copy maintained in the Legal Division's case file.

(c) Upon entry of a final order of settlement and upon the parties' compliance with its terms, the seized property shall be released to the claimant or forfeited to the state for disposition under the Act.

(d) The final order of settlement may provide that the failure of a claimant to comply with the terms of the order may result in the forfeiture of the seized property to the state subject to the disposition of any other timely, valid claim. Prior to the issuance of the final order in a case where the claimant has failed to comply with the order of settlement, the claimant shall have the opportunity to appear in a show cause hearing.

(e) The seizing agency shall not release any property until it has received a final order.

(2) The administrative judge shall not, in any way, interfere in any settlement negotiations or render advice to either party during settlement negotiations.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-305, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.10 MOTIONS.

(1) Scope.

(a) This rule applies to all motions in a contested case proceeding. Motions in a contested case before the administrative judge shall be filed with the APD with a copy certified to the Legal Division and other parties. All other motions shall be filed with the Legal Division with a copy certified to the other parties. Each party shall be responsible for filing its own motions and/or pleadings. The department is not responsible for filing another party's motions or ensuring timely filing with the APD, the commissioner or any court.

(b) Parties to a contested case proceeding 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. Motions shall state why the motion should be granted and the grounds upon which movant relies. Each motion which is based on a legal issue shall be accompanied by a memorandum of law. Failure to submit a memorandum in support of a motion will result in the striking of the motion.

(c) Parties to a contested case proceeding should bring matters to the attention of the administrative judge and opposing parties before a hearing on the merits in order to avoid delay at the hearing. Certain motions, set out in subparagraph (3)(b) of this Rule, must be made at a particular time. If there is inadequate prior notice of a motion, then the administrative judge shall grant a continuance to the non-moving party if to proceed would prejudice the non-movant's case.

(2) Rulings and Interlocutory Appeals.

(a) All decisions on motions shall be made by the administrative judge and shall be reviewable on interlocutory appeal to the commissioner.

(b) Interlocutory appeals to the commissioner shall be accompanied by a memorandum of facts and law.

(c) This Rule does not preclude the administrative judge from convening a hearing on motions 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. Per T.C.A. § 40-33-209(c), all hearings shall be recorded.

(3) Time Limits.

(a) A party may file a written response to any motion within seven (7) days of the date the motion was filed. Motions shall be submitted for disposition after responses are filed or after the expiration of time for filing such response, unless oral argument is granted.

(b) Certain motions shall be made in writing at least ten (10) days prior to a hearing on the merits. These motions are:

1. Motions to suppress evidence for any reason,

2. All discovery motions,

3. Motions asserting an affirmative defense,

4. Motions for the testimony of a departmental keeper of the record, and

(Rule 1340-02-02-.10, continued)

5. Motions for the testimony of a toxicologist.

Failure to file a motion timely will result in the striking of the motion.

(4) Oral Argument.

(a) A party may request oral argument on a motion by stating in the caption of a motion underneath the docket number: "Oral Argument Requested." Oral argument may be unnecessary and will be granted at the discretion of the administrative judge. If oral argument is requested, the motion may be argued electronically per T.C.A. § 4-5-312.

(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 subject to official notice. 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.

(b) In the discretion of the administrative judge, a party may be required to submit additional briefs or supporting statements pursuant to a schedule established by the administrative judge.

(c) Affidavits shall be admitted into evidence pursuant to T.C.A. § 4-5-313 (2).

(6) Disposition of Motions; Drafting the Order.

(a) The administrative judge shall render a decision on the motion by issuing either a written order or a verbal ruling on the record. The administrative judge may instruct the prevailing party to prepare and submit an order. If the ALJ does not intend to issue a written order, the ALJ shall state such intention on the record and the date of the record shall be the effective date of such order.

(b) The administrative judge shall file the order in the Administrative Procedures Division and serve the order upon the parties.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-308, 4-5-312, 4-5-313, 40-33-201, et seq., as amended, and 3-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Repeal and new rule filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.11 SERVICE OF NOTICE OF HEARING.

(1) At a reasonable time prior to a hearing, a "Notice of Hearing" shall be filed by the Legal Division and served on all parties, per Rule 1340-02-02-.03(4).

(2) In serving a "Notice of Hearing," the Legal Division shall rely upon the addresses of record as given by a claimant or by claimant's counsel. Proof of service per Rule 1340-02-02-.03(4) to the addresses of record shall establish a rebuttable presumption that claimant or claimant's counsel received notice of the hearing date.

(3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. Such notice may be proven as set forth in Rule 1340-02-02-.06(2). Claimants and their attorneys shall have an affirmative duty to notify the Legal Division in writing of any change in address.

(Rule 1340-02-02-11, continued)

(4) All claims filed against a specific seized property shall be consolidated for a single hearing.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-307, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.12 CONTINUANCES.

(1) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. Such notice may be proven as set forth in Rule 1340-02-02-.06(2). Claimants and their attorneys shall have an affirmative duty to notify the Legal Division in writing of any change in address.

(2) If rulings on preliminary motions at a hearing on the merits cause prejudice to a party who received inadequate notice of the motion prior to the date of the hearing, then a continuance shall be granted.

(3) Any case may be continued by mutual consent of the parties.

(4) A continuance shall be granted rather than a default or dismissal for failure to appear at the first setting of a case.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-307, 4-5-308, 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.13 DISCOVERY.

(1) Parties are encouraged to conduct discovery informally, in order to avoid undue expense and delay in the resolution of the contested case proceeding. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery may be guided by reference to Rule 26.01 of the Tennessee Rules of Civil Procedure.

(2) Discovery shall be completed at least ten (10) days prior to a hearing on the merits. Upon motion of a party or the administrative judge, the administrative judge may order that the discovery be completed by a date certain.

(3) Any motion to compel discovery, motion to quash, motion for protective order, motion to enlarge the permitted number of interrogatories, 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 deposition which shows the question and objection or response, if applicable;

(b) state the reason or reasons supporting the motion, including a memorandum applying law to facts; and

(c) be accompanied by a statement certifying that the movant 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) Other than as provided in subsection (3) above, discovery materials need not be filed with the Legal Division, but must be served on opposing counsel.

(5) Depositions. There shall be at least ten (10) working days notice given before the taking of a deposition, unless otherwise agreed by the parties. If a motion for a protective order is filed

(Rule 1340-02-02-.13, continued)

before the deposition takes place, then the deposition is stayed automatically until the motion is stricken or an order on the motion becomes final. An order by an administrative judge allowing a deposition to go forward may be appealed in the manner prescribed by Rule 1340-2-2-.10(2) within ten (10) days of the entry of the order.

(6) Interrogatories. No party shall serve on any other party more than thirty (30) single question interrogatories, including subparts, without leave of the administrative judge. The answering party shall verify the answers immediately following the answer to the last interrogatory.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-311, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.14 SUBPOENAS.

(1) The administrative judge, at the request of any party, shall issue signed subpoenas in blank. Service may be proven as set forth in Rule 1340-02-02-.06(e). Parties shall complete and serve their own subpoenas.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-311, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.15 BURDEN OF PROOF.

(1) The “burden of proof” refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation of fact is true or that an issue should be resolved in favor of that party.

(2) 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.

(3) The claimant has the burden of proof as to standing, as to any motions or other pleadings advanced by the claimant, and as to any matter set forth in the Act whereby the burden of proof is placed on the claimant. Claimant’s burden of proof at a contested case hearing includes proving the requisites of T.C.A. §53-11-201(f)(1) and any alleged exception from forfeiture.

(4) The department has the burden of proof as to the illegal use of the seized property pursuant to the Act and as to any motions or other pleadings advanced by the department.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.16 ORDER OF PROCEEDINGS.

(1) The order of proceedings for the hearing of contested cases is as follows:

(a) Prior to a hearing, the administrative judge may confer with the parties to discuss the order of proceedings, admissibility of evidence, number of witnesses and other matters, provided, however, that the administrative judge shall not act as an advocate in any contested case.

(b) Hearing is called to order by the administrative judge.

(Rule 1340-02-02-.16, continued)

(c) The parties, their counsel and the administrative judge introduce themselves for the record. If necessary, the administrative judge gives a brief statement about the nature of the proceedings and the making of legal rulings.

(d) The administrative judge states what documents the record contains.

(e) The witnesses are sworn.

(f) The administrative judge asks the parties if they call for the exclusion of witnesses from the hearing under "the Rule." If so, the excluded witnesses are instructed not to discuss the case during the pendency of the proceeding. Notwithstanding the exclusion of witnesses, individual parties will be permitted to stay in the hearing room. The seizing agency or any party that is a corporation or other artificial person may have one appropriate individual, other than counsel, who may also be a witness, remain in the hearing room as its representative.

(g) Any preliminary motions, stipulations, or agreed orders are entertained.

1. Motions that may be heard at this time include, but are not limited to, a motion to suppress filed at least ten (10) days prior to the date of the hearing, a motion to de-pauperize a claimant, a motion asserting an affirmative defense, and a motion to strike a claim upon the claimant's lack of standing, and a motion to strike a claim pursuant to T.C.A. § 53-11-201(f)(1).

2. The administrative judge shall rule on a motion to suppress before the contested case proceeds further. If any part of a motion to suppress is granted, the department shall have a short recess to reevaluate its case and to decide whether to proceed.

3. The administrative judge shall rule on a motion to strike a claim for lack of standing and a motion to de-pauperize a claimant before the contested case proceeds further. If the motion to strike is granted, then claimant's claim shall be dismissed and the property forfeited to the state. If a motion to depauperize is granted, and if the administrative judge finds that the claimant has committed perjury, then the claim may be dismissed; otherwise, the claimant shall be given ten (10) days within which to provide the cost bond. The hearing will then be reset contingent upon a timely cost bond being filed.

(h) The parties make opening statements.

(i) The Legal Division calls its witnesses and questioning proceeds as follows:

1. Legal Division questions.

2. Claimant cross-examines.

3. Legal Division redirects.

4. Claimant re-cross-examines.

5. Legal Division continues with its witnesses until it concludes its case.

(j) Claimant may move to dismiss the department's case for failure to carry its burden of proof. If Claimant's motion is granted, the case is concluded. If the Claimant's motion is not granted, then the case proceeds as set out herein.

(k) Claimant proceeds with the case, following the above pattern with the parties switched, until claimant's case is concluded.

(l) Questioning proceeds as long as is necessary to provide all pertinent testimony by all parties.

(m) Claimant and the Legal Division shall be allowed to call appropriate rebuttal and rejoinder witnesses with the examination proceeding as set forth in paragraph (i). Rebuttal and rejoinder witness may have heard the testimony of the witness to be rebutted or rejoined, in accordance with Rule 615 of the Tennessee Rules of Evidence.

(n) Closing arguments are allowed all parties.

(o) If the commissioner is hearing the case, then the parties are informed that a Final Order will be entered and sent to the parties, with appeal rights explained. If an administrative judge hears the case, the parties are informed that an Initial Order will be entered and sent to the parties, with appeal rights explained. Either the commissioner or the administrative judge may make an oral ruling at the conclusion of the contested case proceeding; however, an oral ruling shall be placed into appropriate written form as an order and sent to the parties, with appeal rights explained. If the ALJ does not intend to issue a written order, the ALJ shall state such intention on the record and the date of the record shall be the effective date of such order.

(2) Paragraph (1) of this Rule is intended to be 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 fairness of proceedings, would be in violation of this Rule. In all cases, preliminary motions on suppression, affirmative defenses, standing and motions to strike pursuant to T.C.A. § 53-11-201(f)(1) shall be decided before a hearing proceeds.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.17 DEFAULT AND UNCONTESTED PROCEEDINGS.

(1) Default. A motion for default may be in writing or oral.

(a) The failure of a party to attend or to participate in a prehearing conference, a party's non-attendance at a second setting of a hearing on the merits in a case or a party's non-attendance at another stage of contested case proceedings after notice thereof are each causes for holding such party in default pursuant to *T.C.A. §4-5-309.*

(b) The failure of a party to comply with any lawful order of the administrative judge that is necessary to maintain the orderly conduct of a hearing may be deemed a failure to participate in a stage of a contested case and be cause for a holding of default.

(c) In any situation set out in subparagraphs (a) and (b) of this Rule, a motion may be made to hold the absent party in default and to enter an initial default order or to continue on an uncontested basis.

(d) No default shall be entered against a claimant for failure to attend except upon proof, that the Legal Division has given notice of the hearing per Rule 1340-02-02-.06(2)(e).

(Rule 1340-02-02-.17, continued)

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding. An order under this part must be in writing, with reasons given and appeal rights stated. Uncontested proceedings may go forward at the time of default. These orders must subsequently be filed with the Legal Division.

(f) The defaulting party, no later than ten (10) days after service of an order 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 administrative judge may enter an order pursuant to T.C.A. § 4-5-317. These orders by an administrative judge are reviewable by the commissioner.

(g) No party shall be required by the administrative judge to call or inquire as to the whereabouts of a missing party.

(h) A default shall be deemed effective as of the date and time that the party failed to appear after having been properly noticed to the hearing.

(2) Effect of Default.

(a) Upon a default by the agency, a claimant's claim shall be granted by initial default order or, if the claimant requests, the claimant may proceed uncontested.

(b) Upon a default by a claimant, a claimant's claim shall be stricken by initial default order or, if the agency requests, the agency may proceed uncontested.

(3) Uncontested Proceeding. When the matter is tried as uncontested, the party having the burden of proof must establish its case by a preponderance of the evidence.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-309, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2015; effective March 10, 2015.*

1340-02-02-.18 COMMON EVIDENTIARY PROBLEMS AND PRECEDENT.

(1) Privileges. All privileges recognized by constitution, statute, common law, or by these or other applicable rules, apply to contested case proceedings under the Act.

(a) Fifth Amendment. In accordance with state and Federal law:

1. A person who asserts the Fifth Amendment right against self-incrimination in response to any discovery or at a hearing shall personally assert that right.

2. If a claimant invokes the Fifth Amendment, then the inference is that the response called for is adverse to the claimant's case. This inference shall be taken by an administrative judge and shall be used to support the department's burden of proof in accordance with applicable law.

(b) Informant's Privilege. The name of a confidential informant shall not be revealed, provided, however, that in the event the name of a confidential informant is ordered revealed, the department may, in its discretion, either dismiss its case or appeal such order. If an appeal is taken, the case shall be stayed until such appeal is concluded.

(2) The Rule. In all contested cases, the testimony of witnesses shall be taken in open hearings. Under the rule, witnesses may be excluded prior to their testimony, except that a

(Rule 1340-02-02-.18, continued)

representative of the seizing agency or business entity may sit with counsel as provided in Rule 1340-02-02-.16(1)(f).

(3) Admissibility. The standard for admissibility of evidence is set forth at *T.C.A. §4-5-313.* These proceedings are not governed exclusively by the Tennessee Rules of Evidence.

(4) Toxicology. Any controlled substance, controlled substance analogue, counterfeit, intoxicant, marijuana, narcotic drug producing stimulating effects on the central nervous system, legend drug, any scheduled drug, prescription drug or any other substance set forth in T.C.A. § 39-17-401, *et seq.* may be identified for the purpose of the contested case by the testimony of a qualified representative of a seizing agency, statements of the claimant or claimant's co-conspirator(s), field test, breath alcohol content (BAC) test, toxicology report or testimony of a toxicologist.

(a) If the claimant objects to the introduction of a toxicologist report without the testimony of the toxicologist, the claimant may request that a toxicologist testify at the hearing.

(b) The department shall be granted a continuance, in the event of such request, to subpoena the toxicologist, and the hearing shall be reset to allow introduction of the toxicologist's testimony and report.

(c) Failure to request a toxicologist or keeper of the records within ten (10) days of the date of the hearing constitutes a waiver.

(5) Statements against interest of the claimant by persons in possession of seized property are relevant and may be admitted into evidence pursuant to *T.C.A. §4-5-313.*

(6) Affidavits shall be filed pursuant to *T.C.A. §4-5-313.*

(7) A final order by the Commissioner on an issue that has not been reversed, remanded, or significantly modified by a court, or that has been affirmed by a court, establishes legal precedent that administrative judges shall follow in cases under the Act.

(8) A Certified Driving Record shall be admissible in these hearings without requiring the Legal Division to produce the keeper of the records.

(a) If the claimant objects to the introduction of a Certified Driving Record without the testimony of the keeper of the records, the claimant may request that the keeper of the records testify at the hearing.

(b) The department shall be granted a continuance, in the event of such request, to subpoena the keeper of the records and the hearing shall be reset to allow introduction of the testimony of the keeper of the records.

(c) Failure to request the appearance of the keeper of the records within ten (10) days of the hearing constitutes a waiver.

(9) Any Field Test for alcohol and controlled substances and breath alcohol tests shall be admissible in these hearings to meet the preponderance of the evidence without requiring the State to produce the person who administered the Field Test.

(a) If the claimant objects to the introduction of a Field Test without the testimony of those who administered the tests, the claimant may request that those who administered the tests testify at the hearing.

(Rule 1340-02-02-.18, continued)

(b) The department shall be granted a continuance, in the event of such request, to subpoena those who administered the tests, and the hearing shall be reset to allow introduction of the testimony of those who administered the tests.

(c) Failure to request the appearance of those who administered the tests within ten (10) days of the date of the hearing constitutes a waiver.

(10) Arrest records shall be admissible in these hearings.

Authority: *T.C.A §§ 4-3-2009, 4-5-219, 4-5-312, 4-5-313, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed October 31, 1996; effective February 28, 1997. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.19 CLERICAL MISTAKES.

(1) Clerical mistakes in orders or other parts of the record, and errors arising from oversight or omissions, may be corrected by the respective administrative judge or the commissioner on motion of any party or on their own motion, as the interest of justice requires, provided, however, that the administrative judges shall correct clerical errors on their own motion when so notified by the Legal Division of errors in the initial orders. The entering of a corrected order will not affect the dates of the original appeal time period.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Repeal and new rule filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.20 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*, with a legal memorandum attached that states any and all facts and legal theories under which the petitioner asserts 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 asserts an interest relating to the case and whether the petitioner is so situated that the disposition of the case may as a practical matter impair or impede petitioner’s ability to protect that interest;

(b) Whether the petitioner’s assertion of interest and the main case have a question of law or fact in common;

(c) Whether petitioner’s 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) As prohibited by Rule 1340-02-02-.07(4), the provisions of this rule do not permit the inclusion of an additional claimant or additional seized property to pending contested cases.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-310, 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.21 THE APPEALS DIVISION.

(1) The Appeals Division is designated by the Commissioner to administer contested case matters that involve the Commissioner, including but not limited to, final orders, Interlocutory Appeals, Petitions for Reconsideration of a Commissioner's Order, Petitions for a Stay, Appeals of an Initial Order, and Notices of Review of an Initial Order. The original of all appellate matters must be filed with the Appellate Division, with service to the Legal Division and to the appropriate party.

(2) However, any appeals or reconsiderations of an initial order rendered by an administrative judge must be filed within the specified time period with the APD, with a copy certified to the other party. All other appeals must be filed with the Appeals Division with a copy certified to the other party.

(3) If transfer of the record from the Legal Division is necessary for the administration of an appellate matter, the Legal Division shall transfer the record upon request by the Appeals Division. The record must be logged out of the Legal Division to the Appeals Division. Upon completion of the appeal, such file shall be returned to the appropriate Legal Division.

(4) The Appeals Division may advise the commissioner on appellate matters in accordance with T.C.A. § 4-5-304. By filing a delegation order in a specific case, the commissioner may delegate to the Appeals Division the authority to enter a final administrative order. Any delegation order must be served upon all parties. The commissioner may file a blanket order delegating to the Appeals Division the authority to enter a final administrative order on all settlements per Rule 1340-02-02-.09(1)(b) and administrative forfeitures. Every order entered by the Appeals Division shall recite the authority under which it is entered.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-315, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Repeal and new rule filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.22 PETITIONS FOR RECONSIDERATION OR A STAY.

(1) Petitions for Reconsideration.

(a) Any party may file a petition for reconsideration within fifteen (15) days after entry of an initial or final order. The filing of a petition is not a prerequisite for seeking administrative or judicial review.

(b) A petition for reconsideration shall be disposed of by the same person who rendered the initial or final order, if available.

(c) Any petition for reconsideration shall include the specific grounds upon which relief is requested. It shall be accompanied by a memorandum applying law to facts and stating why the petition should be granted. Failure to submit such a memorandum will result in the striking of a petition.

(d) If a party seeks to present new evidence, the petition shall include a statement showing good cause for the failure to introduce the proposed new evidence in the original proceeding and a detailed description of any such proposed new evidence, including copies of documents, identities and addresses of witnesses, and summaries of testimony. Documents that are unavailable at the time the petition is filed shall be described in as much detail as is possible and shall be provided at a later time, should a hearing be granted, but not later than three (3) working days prior to any hearing on the petition.

(Rule 1340-02-02-.22, continued)

(e) A petition for reconsideration may be granted or denied pursuant to *T.C.A. §4-5-317*, to the following extent:

1. Any such petition not granted within the 20-day time period set at *T.C.A. §4-5-317(c)* shall be deemed denied.

2. If a petition is granted, then a new order may issue or the matter may be set for further hearing by written order served upon all parties. Such hearing may be conducted electronically per *T.C.A. §4-5-312.*

3. If a hearing is ordered, the order shall state that: the parties may make oral argument on the merits of the petition, the party seeking reconsideration may present new evidence only if good cause is shown for the failure to introduce the new evidence in the original hearing, and the opposing party may present rebuttal proof if the party seeking reconsideration is allowed to present new evidence.

4. Any new evidence introduced by the party seeking reconsideration shall be limited to that described in the petition for reconsideration as required in subparagraph (1)(d) of this rule.

(2) Petitions for Stays.

(a) A party may submit to the administrative procedures division or the Appeals Division 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 Appeals Division may take action on the petition for stay, either before or after the effective date of the initial or final order.

(b) A hearing may be scheduled on a petition for a stay. Such hearing may be conducted electronically per T.C.A. § 4-5-312.

(c) Automatic Stay. By operation of this rule, an automatic stay shall be in effect for every initial or final order under the Act to prohibit the disposition of the property seized and forfeited, pending the expiration of time for administrative and judicial appeals, unless otherwise provided by a settlement order. The automatic stay does not toll the running of any time limits.

(d) If time for a judicial appeal expires, then so does the automatic stay.

(e) If a judicial appeal is timely filed by a claimant, then the automatic stay continues until modified by the court.

(f) Either the department or the claimant may move either the administrative judge, the commissioner, or the Chancery Court of Davidson County for relief from the automatic stay. Moreover, the department and the claimant may agree to dissolve the automatic stay.

(g) Any petition for a stay shall include the specific grounds upon which relief is requested. It shall be accompanied by a memorandum applying law to facts and stating why the petition should be granted. Failure to submit such a memorandum will result in the striking of the petition.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-316, 4-5-317, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.23 FILING OF ORDERS.

(1) After the administrative judge has made a decision in a contested case hearing, the order will be filed with the Administrative Procedures Division and the administrative judge shall serve copies on all parties and the regional Legal Division in which the contested case was heard. The order shall state that it is entered upon the date that it is filed with the Administrative Procedure Division. The administrative judge shall insure that a copy of the order with its entry date filled in is mailed to all opposing parties on the date of entry. All 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. All orders of the commissioner shall state thereon the date of entry and shall be filed with the Legal Division, with copies served on the opposing parties. All such orders shall be accompanied by a clear and concise statement of the available procedures and time limits for seeking reconsideration and the time limits for seeking judicial review.

(2) Any order rendered by an administrative judge shall be an Initial Order with findings of fact and conclusions of law, provided, however, that orders or rulings rendered verbally on the record shall contain a short, concise statement of the law and facts, if applicable, supporting the administrative judge's decision.

(3) All orders, procedural or otherwise, by an administrative judge shall be reviewable by the commissioner, in accord with these rules.

(4) No seizing agency shall release seized property to a claimant unless in possession of a Final Order.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.24 COSTS OF ADMINISTRATION AND PROCEEDINGS.

(1) Administrative costs of $350.00 shall accompany a petition for hearing and shall attach when a hearing date is set by the Legal Division.

(a) In certain circumstances, in the discretion of the department, the administrative costs may be reduced as part of settlement negotiations.

(b) If the final order determines that all the seized property from the claimant shall be returned to the claimant, then no administrative costs shall attach and any such costs received by the commissioner will be refunded.

(c) No final order shall be issued to a claimant until all administrative costs of that claimant have been satisfied.

(2) Storage Costs.

(a) Storage costs may be assessed by the seizing agency and such costs may be negotiated as part of a settlement and compromise agreement.

(b) Storage costs, not negotiated pursuant to a settlement and compromise agreement, may only be assessed from the date of the order disposing of the case, except against a prevailing claimant.

(Rule 1340-02-02-.24, continued)

(c) The commissioner may assess appropriate storage costs against a claimant in any case where the seized property must be stored in a facility to protect the condition of the seized property, except against a prevailing claimant.

(3) The department may assess wrecker fees and other reasonable costs that arise from the transportation and storage of the seized property, except against a prevailing claimant.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.25 CODE OF CONDUCT.

(1) 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 amendment thereto, shall apply to all administrative judges and to personnel in the Appeals Division. However, any complaints regarding the conduct under the code of any individual administrative judge shall be made to the chief administrative judge or other comparable entity with supervisory authority over the administrative judge, and any complaints about the chief administrative judge shall be made to the appointing authority. Complaints about the Appeals Division shall be made to the commissioner.

(2) The Appeals Division shall be entirely separate in personnel and functions from the other divisions of the department. Personnel in the Appeals Division shall work only for the Appeals Division.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995.*

1340-02-02-.26 DECLARATORY ORDERS.

(1) Any affected person may petition the commissioner for a declaratory order as to the validity or the applicability of a statute, rule or order within the primary jurisdiction of the commissioner under the Act.

(2) The petition seeking a declaratory order shall be filed in writing with the department.

(3) The form of such petitions shall be substantially as follows:

(a) Caption—Petition for Declaratory Order Before the Commissioner.

(b) Name of Petitioner

(c) Address of Petitioner

(d) Department rule, order, or statutory provision on which declaratory order is sought

(e) Statement of the facts of the controversy and description of how this rule, order or statute affects or could affect the Petitioner.

(f) Description of requested ruling

(g) Signature of Petitioner

(h) Date of Petition

(Rule 1340-02-02-.26, continued)

(4) A memorandum of law shall accompany the petition setting forth the legal basis why the declaratory order should be granted. Failure to submit a memorandum in support of a petition will result in the denial of the petition. The commissioner may ask for additional facts or law before deciding whether to convene a contested case proceeding or to grant or deny the petition.

(5) In the event the commissioner convenes a contested case hearing pursuant to this rule and T.C.A. § 4-5-223, the Commissioner shall determine whether a departmental hearing officer or an administrative judge, either departmental or from APD, shall hear the case. If an administrative judge from APD is to hear the case, then APD shall be notified and shall be provided originals or legible copies of all pleadings, motions, objections, etc.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 4-5-223, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed December 10, 2014; effective March 10, 2015.*

1340-02-02-.27 REPEALED.

Authority: *T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq.* ***Administrative History:*** *Original rule filed December 5, 1994; effective February 18, 1995. Repeal filed December 10, 2014; effective March 10, 2015.*