

Proposed Rules
Of the
Department of Finance and Administration
Administration Division

Presented herein are proposed rules of the Department of Finance and Administration submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Department of Finance and Administration, Office of the General Counsel, Suite 2100, William R. Snodgrass Tennessee Tower located at 312 8th Avenue North, Nashville, Tennessee 37243 and in the Department of State, 8th floor, William R. Snodgrass Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: April Mayambu, Office of the General Counsel, Department of Finance and Administration Suite 2100, William R. Snodgrass Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243, (615) 741-0320.

The text of the proposed rules is as follows:

Substance of Proposed Rules

New Rules

Chapter 0620-03-09

Appeals Process for Persons Barred from State Contracting for Use of Illegal Immigrants

Table of Contents

0620-03-09-.01 Purpose and Scope
0620-03-09-.02 Notice
0620-03-09-.03 Review Procedure
0620-03-09-.04 Appointment of Designee

0620-03-09-01 Purpose and Scope.

Tennessee Code Annotated Section 12-4-124 provides that a person who is discovered to have knowingly utilized the services of illegal immigrants in the performance of a contract to supply goods or services to the state or other state entities shall be prohibited from contracting for or submitting a bid for any contract to supply goods or services to the state or other state entities for a period of one year from the date of discovery of the usage of illegal immigrant services. A person subject to such prohibition may appeal under a process to be established by the commissioner of finance and administration.

The purpose of this rule is to set forth the appeals process.

Authority: T.C.A. §§ 4-5-201 et seq; 12-4-124.

0620-03-09-.02 Notice.

- (1) Each notice sent by the Commissioner of Finance and Administration declaring the prohibition required by Tennessee Code Annotated Section 12-4-124(b) shall be
 - (a) Delivered to the contractor at the address listed in the contract for "contacts and communications." If there is no such address, notice should be delivered to an address provided in the contract or related correspondence, or to an address at which the contractor may be found.
 - (b) Delivery may be by certified mail, regular mail, fax, express mail, or hand delivery. Proof that a contractor received notice may be established by a signed return receipt card, express mail delivery receipt, a fax confirmation sheet or an affidavit from a State employee establishing that the item was hand delivered to the contractor, or placed in first class mail to the contractor's address.
 - (c) The notice shall contain the date or dates that the violation occurred, the date that the violation was discovered, and other information sufficient to provide notice to the contractor of the violation. The State should, if reasonably practicable, provide the name or names used by the illegal immigrant, the place where the illegal immigrant was providing services, and the type of services provided.
 - (d) The notice should include the following information about the appeals process required under Tennessee Code Annotated Section 12-4-124(c):
 1. The name, mailing, address, and telephone number of the person to whom the appeal must be delivered.
 2. That the appeal must be in writing and must either include the contract number and the date of the notice of prohibition, or may attach a complete copy of the notice of prohibition being appealed.
 3. That the contractor may request a copy of the written record on which the notice of prohibition was based.
 4. That the request should be received by the State's designated representative within thirty (30) days of receipt of the notice of prohibition.

Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124.

0620-03-09-.03 Review Procedure.

- (1) The review of the one-year prohibition required by T.C.A. 12-4-124 may be conducted by the review committee established by Tennessee Code Annotated Section 12-4-109. The members of the review committee shall take appropriate measures to avoid conflicts of interest, including the use of designees.
- (2) All reviews shall be conducted according to the following standards:
 - (a) The appellant shall be allowed an opportunity to review and copy the record that led to the prohibition, including all documents in the agency's file regarding the prohibition except those protected from disclosure under federal or state law. The meeting will be scheduled to allow the appellant a reasonable opportunity to review this record and prepare the case.

- (b) The appellant will have the opportunity to present information at the meeting. The review committee may limit or bar information that it considers irrelevant or duplicative.
- (c) The State may present information in support of its decision.
- (d) The meeting is not required to be a contested case hearing under the Tennessee Uniform Administrative Procedures Act, compiled in title 4 chapter 5 of the Tennessee Code Annotated.
- (e) No formal discovery under the Tennessee Rules of Civil Procedure or the Tennessee Uniform Administrative Procedures Act shall apply to these review procedures.
- (f) If the prohibition decision was based on a finding by a federal court or federal administrative agency that the appellant violated federal immigration law, the findings of fact and of law of such decision will be binding and conclusive in the appeal procedure.
- (g) The results of the meeting with the review committee shall be reported in writing to the appealing party.

Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124

0620-03-09-.04 Appointment of Designee.

The Commissioner of Finance and Administration has the discretion to assign appeals under these rules to a designee instead of the review committee if he determines that the review committee may not be available to determine the appeal in a timely manner, because of scheduling issues, potential conflicts of interests, or other good cause. The designee may or may not be a Department employee but shall not have been involved previously in the decision to prohibit the contractor from state contracting. The designee shall follow the procedures set forth in regulation 0620-03-9.03 in conducting this appeal.

Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124

The proposed rules set out herein were properly filed in the Department of State on the 26th day of January, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 31st day of May, 2007. (FS 01-32-07, DBID 2324)