

Proposed Rules
of the
Department of Safety
Administrative Division

Chapter 1340-02-02
The Rules of Procedure for Asset Forfeiture Hearings

Presented herein are proposed amendments of the Administrative Division, Department of Safety submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Safety 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 with the Department of Safety, 1150 Foster Avenue, Nashville, TN 37249, and in the Department of State, 8th Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Gerry Crownover, Staff Attorney, Tennessee Department of Safety, 1150 Foster Avenue, Nashville, TN, 37249-1000, 615-251-5277.

The text of the proposed amendments is as follows:

Amendments

Subparagraph (a) of paragraph (2) of Rule 1340-02-02-.06 The Legal Division is amended by adding the words "and secured parties" after the word "claimants" and by adding the words "the secured party address file created under subparagraph (2)(f) of this rule" so that, as amended, the subparagraph shall read:

- (a) Search for potential claimants and secured parties by, among other things, reviewing the notices of seizure, checking out a vehicle identification number, registration, title, the secured party address file created under subparagraph 2(f) of this rule, or other source of indicia of ownership as may be appropriate for the property seized.

Authority: T.C.A. §§4-3-2009, 4-5-202, 40-33-201 et seq. and 53-11-201 et seq.

Subparagraph (b) of paragraph (2) of Rule 1340-02-02-.06 The Legal Division is amended by adding the words "and secured party" after the word "claimant" so that, as amended, the subparagraph shall read:

- (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.

Authority: T.C.A. §§4-3-2009, 4-5-202, 40-33-201 et seq. and 53-11-201 et seq.

Amendment

Subparagraph (c) of paragraph (2) of Rule 1340-02-02-.06 The Legal Division is amended by adding the words "and secured parties" after the word "claimants", by adding the words "or secured party" after the word "claimant" and by adding the words "or proof of security interest" after the word "claim" so that, as amended, the subparagraph shall read:

- (c) All potential claimants and secured parties shall be sent notification to their last known address that a 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.

Authority: T.C.A. §§4-3-2009, 4-5-202, 40-33-201 et seq. and 53-11-201 et seq.

Subparagraph (d) of paragraph (2) of Rule 1340-02-02-.06 The Legal Division is amended by adding the words “or secured party” after the word “claimant”, by adding the words “or secured party” after the second appearance of the word “claimant” and by adding the words “or secured party’s” after the word “claimant’s” so that, as amended, the subparagraph shall read:

- (d) Notice to a potential claimant or secured party shall be given in accordance with state and federal constitutional requirements. Such notice may be proven by notice sent to the potential claimant or secured party by certified mail, return receipt requested, at the claimant’s or secured party’s last known address.

Authority: T.C.A. §§4-3-2009, 4-5-202, 40-33-201 et seq. and 53-11-201 et seq.

Subparagraph (e) of paragraph (2) of Rule 1340-02-02-.06 The Legal Division is amended by adding the words “or proof of security interest” after the word “claim”, by adding the words “or secured party’s” after the word “claimant’s” and by adding the words “and secured party,” after the word “claimant” so that, as amended, the subparagraph shall read:

- (e) 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.

Authority: T.C.A. §§4-3-2009, 4-5-202, 40-33-201 et seq. and 53-11-201 et seq.

Paragraph (2) of Rule 1340-02-02-.06 The Legal Division is amended by inserting a new subparagraph (f) so that, as amended, the new subparagraph shall read:

- (f) 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 forwarding 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 forwarding Notice of Forfeiture Warrant to that secured party until notified otherwise in writing by the secured party.

Authority: T.C.A. §§4-3-2009, 4-5-202, 40-33-201 et seq. and 53-11-201 et seq.

Subparagraph (b) of paragraph (4) of Rule 1340-02-02-.07 Filing Claims and Bonds is amended by changing the citation “T.C.A. §40-33-204(e)” to “T.C.A. §40-33-204(g)”; by adding the phrase “(copy of title and security agreement)” after the words “proof of security interest”; by changing the word “subsection” to “subparagraph”; by changing the sentence “Claimants whose property was seized in the following counties may file with the Legal Division – Nashville:” to “Claimants and secured parties whose property was seized in the following

counties may file their claims or proof of security interest with the Legal Division – Nashville:”; by changing the area code “(423)” to “(865)”; by changing the sentence “Claimants whose property was seized in the following counties may file their claims with Legal Division – East:” to “Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with Legal Division – East:”; by changing the address “170 N. Main Street, Second Floor Memphis, TN 38103” to “6174 Macon Road Memphis, TN 38134”; by changing the telephone number “543-7090” to “372-0622”; by changing the sentence “Claimants whose property was seized in the following counties may file their claims with Legal Division – West:” to “Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with legal Division – West:”, and by adding the words “and secured parties” after the words “Note: Claimants” so that, as amended, the subparagraph shall read:

- (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 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. 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.

Address: Legal Division,
Tennessee Department of Safety, 1150 Foster Avenue,
Nashville, TN 37249-1000.
Telephone number: (615) 251-5296.

Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with Legal Division - Nashville:

Bedford	Jackson	Putnam
Cannon	Lawrence	Robertson
Cheatham	Lewis	Rutherford
Clay	Lincoln	Smith
Cumberland	Macon	Stewart
Davidson	Marshall	Sumner
DeKalb	Maury	Trousdale
Dickson	Montgomery	Wayne
Giles	Moore	White
Hickman	Overton	Williamson
Houston	Perry	Wilson
Humphreys	Pickett	

Address: Legal Division -East Tennessee
Department of Safety, 322 Nancy Lynn Lane, Suite 8
Knoxville, TN 37919.
Telephone Number: (865) 594-6519.

Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with Legal Division - East:

Anderson	Grundy	Morgan
Bledsoe	Hamblen	Polk
Blount	Hamilton	Rhea
Bradley	Hancock	Roane
Campbell	Hawkins	Scott
Carter	Jefferson	Sequatchie
Claiborne	Johnson	Sevier
Cocke	Knox	Sullivan
Coffee	Loudon	Unicoi
Fentress	McMinn	Union
Franklin	Marion	Van Buren
Grainger	Meigs	Warren
Greene	Monroe	Washington

Address: Legal Division - West Tennessee
Department of Safety, 6174 Macon Road
Memphis, TN 38134
Telephone Number: (901) 372-0622.

Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with Legal Division - WEST:

Benton	Gibson	Lauderdale
Carroll	Hardeman	McNairy
Chester	Hardin	Madison
Crockett	Haywood	Obion
Decatur	Henderson	Shelby
Dyer	Henry	Tipton
Fayette	Lake	Weakley

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

Authority: T.C.A. §§4-3-2009, 4-5-202, 40-33-201 et seq. and 53-11-201 et seq.

The proposed rules set out herein were properly filed in the Department of State on the 9th day of August, 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 28th day of December, 2007. (FS 08-07-07; DBID 2650)