

**RULES
OF
THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
STATE PARKS**

**CHAPTER 0400-02-13
COMMERCIAL USE AUTHORIZATIONS**

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0400-02-13-.01 DEFINITIONS.

“Applicant” means a person applying to receive or renew a commercial use authorization from the Commissioner.

“Commercial park activity” means any activity involving any commercial or business purpose within a state park that may impact park facilities, park visitors, or park staff, including, but not limited to, any recreational activity in a state park that is packaged and sold as a service by an organization or individual, other than the Department. Commercial park activity does not include commercial whitewater outfitter services subject to Chapter 0400-02-10.

“Commercial use authorization” means an authorization issued by the Commissioner to a person to engage in commercial park activity.

“Commissioner” means the Commissioner of the Tennessee Department of Environment and Conservation or the Commissioner’s authorized representative.

“Department” means the Tennessee Department of Environment and Conservation.

“Director” means the Director of State Park Operations for Tennessee State Parks or the Director’s designee.

“Gross revenue” means the entire amount of the actual sales price, whether for cash or other consideration, of all commercial park activities occurring within parks authorized by a commercial use authorization; all deposits not refunded to purchasers; and any money retained after a guest cancels or does not fulfill a scheduled commercial park activity and is not granted a refund.

“State park” or “park” means any land operated or managed by the Department pursuant to T.C.A. § 11-1-108, including state parks and state natural areas.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.02 AUTHORIZATION REQUIREMENT AND APPLICATIONS.

- (1) No person shall engage in any commercial park activity without holding a current, valid commercial use authorization from the Commissioner authorizing such commercial park

(Rule 0400-02-13-.02, continued)

activity except in accordance with the terms of a special use permit issued pursuant to T.C.A. § 11-3-111(c), or as otherwise authorized in accordance with law.

- (2) Any person who wishes to apply for a commercial use authorization shall file an application, accompanied by the required application fee, with the Commissioner that includes:
- (a) The name of the applicant;
 - (b) The contact information, including phone number and email address for the applicant;
 - (c) A narrative description of the commercial park activity in which the person wishes to engage;
 - (d) The expected revenues from the commercial park activity per year;
 - (e) Proof of general liability insurance covering the commercial park activity in the amount of \$1 million per occurrence with the State of Tennessee named as an additional insured, unless an alternate insurance amount is approved by the Commissioner based on the individual risk factors of the applicant's commercial park activities;
 - (f) Proof of operation plans and emergency operation plans for the proposed commercial park activity;
 - (g) Proof that the applicant is qualified to provide the proposed commercial park activity, including but not limited to training for all staff that will participate in the commercial park activities;
 - (h) A statement of the expected group sizes, if applicable, and frequency of the commercial park activity;
 - (i) The state park or parks where the commercial park activity is proposed to occur;
 - (j) If the applicant is requesting a term longer than one year, the length of the term requested, how the applicant satisfies one or more of the criteria in subparagraph (5)(b) of this rule, information that supports why the applicant should be granted a longer term, and any other relevant information the applicant believes justifies a term greater than one year;
 - (k) If the person to whom the commercial use authorization is to be issued is an individual, general partnership, or other business entity where individuals hold the right to all or part of the commercial use authorization:
 - 1. The names and Social Security Numbers of each such individual or general partner; and
 - 2. For each such individual or general partner, an attestation and documentation complying with the requirements of the Eligibility Verification for Entitlements Act, codified at T.C.A. §§ 4-58-101 through 4-58-110;
 - (l) If the person to whom the commercial authorization is to be issued is a business entity other than those subject to subparagraph (j) of this paragraph, proof that the entity:
 - 1. Holds a registration as a domestic or foreign business entity, as appropriate, in good standing with the Tennessee Secretary of State; and

(Rule 0400-02-13-.02, continued)

2. Has obtained all permits and licenses, including business licenses, and paid all charges, fees, or taxes required by the State of Tennessee or its political subdivisions for the provision of the commercial park activity;
 - (m) A list of any conviction or entry of a plea of guilty by the applicant or, if the applicant is an entity, by any person that owns part or all of the applicant entity; and
 - (n) Any other documentation or information reasonably requested by the Commissioner regarding the commercial park activity.
- (3) The Commissioner may issue a commercial use authorization to the applicant upon determining that, in the Commissioner's discretion, each proposed commercial park activity:
- (a) Constitutes an appropriate use of the state park or parks;
 - (b) Will not exceed a park's or parks' capacity for conducting the commercial park activity based on other, existing commercial use authorizations to conduct substantially similar commercial park activities at that park or parks;
 - (c) Will have a minimal impact on park resources and values; and
 - (d) Is consistent with the park purpose, management plans, policies, and all laws and rules.
- (4) The Commissioner may, in the Commissioner's discretion, deny an application for failure to meet all requirements listed in paragraph (3) of this rule or for any reason listed in Rule 0400-02-13-.06. The decision of the Commissioner to deny an application is only subject to review pursuant to a petition for common law writ of certiorari.
- (5) A commercial use authorization shall expire up to one year after its issuance on the last day of the month of issuance, except:
- (a) As set out in subparagraph (7)(b) of this rule; or
 - (b) Where the Commissioner determines, in the Commissioner's sole discretion, that an applicant's business model requires a longer term for one or more of the reasons listed in parts (1) through (3) of this subparagraph, the Commissioner may grant a term of up to five years.
 1. The applicant's business model requires substantial capital investments in facilities or equipment and a one-year term would not allow sufficient time to recover the applicant's investment, thus disincentivizing the applicant and other potential applicants from entering the market and offering the proposed commercial park activity;
 2. The applicant plans to apply for a loan from a financial institution and a longer permit term is required by the financial institution as part of its underwriting process; or
 3. Based on the totality of the circumstances, a one-year term is not practical or will be detrimental to the applicant's business in a way not described above but that will materially and negatively impact the applicant's business or the applicant's customers.
- (6) If a commercial use authorization application is incomplete, the Commissioner shall notify the applicant and the applicant shall have 60 days to complete the application. If no attempt to complete the application is made by the applicant within the 60-day period then the application

(Rule 0400-02-13-.02, continued)

shall be closed and any application fee shall not be refunded. Nothing in this paragraph shall be construed to allow any person to complete an application after the expiration of a limited timeframe for applications, except pursuant to subparagraph (7)(b) of this rule.

- (7) (a) In lieu of accepting rolling commercial use authorization applications at any park or parks, the Commissioner may establish a limited timeframe during which applicants must submit an application for a commercial use authorization in order to encourage efficiency in the Department's administration of applications. Such a limited timeframe may be effective at one or more parks and different limited timeframes may be effective at different parks. The Commissioner shall make the application timeframes public by posting them on the Department's website. The Commissioner may establish a single expiration date for all commercial use authorizations issued pursuant to the limited application timeframe. Renewals of existing commercial use authorizations pursuant to Rule 0400-02-13-.08 not initially issued pursuant to this paragraph (7) shall not be subject to any limited application timeframe established under this subparagraph.
- (b) If the Commissioner establishes a limited timeframe for applications pursuant to subparagraph (a) of this paragraph, the Commissioner may issue a commercial use authorization to a person who files a completed commercial use authorization application outside of the limited timeframe if the Commissioner determines that issuance of the commercial use authorization otherwise meets all requirements for the issuance of the commercial use authorization, is in the best interest of the park or parks where the commercial park activities are requested to occur, and the applicant demonstrates that application during the limited timeframe was impractical. If the Commissioner established a single expiration date as set out pursuant to subparagraph (a) of this paragraph, a commercial use authorization issued pursuant to this subparagraph shall have the same expiration as the commercial use authorizations issued pursuant to the most recent limited timeframe and, if applicable, the anniversary date(s) for the purposes of paragraph (1) of Rule 0400-02-13-.05 shall be the anniversary date(s) of the commercial use authorizations issued during the limited timeframe application process, but the application fee shall not be prorated.
- (c) 1. If a limited timeframe is established for a park pursuant to subparagraph (a) of this paragraph and the demand for commercial use authorizations to conduct a certain commercial park activity or class of commercial park activities exceeds the park's capacity for that activity, the Commissioner may establish that a limited number of new commercial use authorizations will be issued. If the Commissioner establishes a limited number of new commercial use authorizations to be issued to conduct a certain commercial park activity or class of commercial park activities, the Commissioner shall establish a system for determining which applicants will receive a commercial use authorization from among the pool of complete, valid applications received during the limited application timeframe. The Commissioner's method shall utilize a scoring system that ranks applicants based on the information provided in their applications and may take an applicant's prior experience conducting the relevant commercial park activity or class of commercial park activities at a park into account when scoring applications.
2. No application fee shall be refunded because an application was not chosen for a commercial use authorization pursuant to this subparagraph. Provided, however, that if the Commissioner decides to choose successful applicants using a qualifications-based scoring process under part 1. of this subparagraph after an application to engage in that commercial park activity or class of commercial park activities is received, the applicant shall be given the chance to withdraw that application and have their application fee refunded by making such a request in writing within seven calendar days of the Commissioner sending written notification to the applicant of the intent to choose applicants using a qualifications-based scoring process under part 1. of this subparagraph.

(Rule 0400-02-13-.02, continued)

3. When the Commissioner has decided to choose applicants to receive a commercial use authorization to conduct a commercial park activity or class of commercial park activities in a park based on a qualifications-based scoring process under part 1. of this subparagraph, the Commissioner shall post notice of the Commissioner's intent to do so, including the park where such commercial park activities will be restricted, the class of commercial park activities to be restricted, and the number of commercial use authorizations to be issued on the Department's webpage.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.03 TERMS AND CONDITIONS.

The Commissioner, in issuing a commercial use authorization under Rule 0400-02-13-.02, may place such terms and conditions on the authorized commercial park activity in light of the park or parks where the commercial park activity will occur relating to the safety and welfare of the visitors and protection of the resources. These requirements may include, but are not limited to, additional park plans, building site designs, additional insurance, limitations on the frequency of the commercial park activity, limitations on the number of persons that may be allowed to enter the park for the commercial park activity at a given time, or any other reasonably required terms and conditions.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.04 AMENDMENT OF AN EXISTING COMMERCIAL USE AUTHORIZATION.

- (1) A person shall only hold one commercial use authorization, which shall be amended as necessary to include all commercial park activities in which such person is engaging and all state parks where such activity will occur. To request an amendment to a commercial use authorization, a person shall file an amendment request, accompanied by the required amendment request fee, with the Commissioner that includes:
 - (a) The name of the applicant;
 - (b) The commercial park activity that is to be added or removed from the commercial use authorization;
 - (c) The expected revenues from the commercial park activity, as requested to be amended, per year;
 - (d) Proof of any additional operation plans and emergency operation plans for the proposed commercial park activity that is necessary because of the amendment;
 - (e) Proof that the applicant is qualified to provide the proposed commercial park activity, as amended, including but not limited to additional training for all staff that will participate in the proposed commercial park activity;
 - (f) A statement of the expected group size, if applicable, and frequency of commercial park activity, if changed by the proposed amendment;
 - (g) The state park or parks where the commercial park activity is proposed to occur, as amended; and

(Rule 0400-02-13-.04, continued)

- (h) Any other documentation or information reasonably requested by the Commissioner regarding the commercial park activity, as requested to be amended.
- (2) If the Commissioner determines, in the Commissioner's discretion, that the proposed commercial park activity, as amended, is an appropriate use of the state park or parks; will have a minimal impact on park resources and values; and is consistent with the park purpose, management plans, policies, and all laws and regulations, the Commissioner may amend the existing commercial use authorization. An amendment to any existing commercial use authorization shall not change the expiration date or market fee reporting date of the commercial use authorization. The Commissioner may further deny any request to amend a commercial use authorization for any reason listed in Rule 0400-02-13-.06.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.05 MARKET FEES.

- (1) Within 60 days after each anniversary of the issuance of a commercial use authorization and the expiration date of a commercial use authorization, the person holding the commercial use authorization shall file with the Commissioner proof of all gross revenues from commercial park activities under this rule and pay all market fees owed under paragraph (3) or (4) of this rule based on those gross revenues for the year prior to that anniversary or expiration date, as appropriate. Such statement of gross revenue shall be broken down by commercial park activity and park.
- (2) Any person holding a commercial use authorization shall permit the Commissioner to inspect all financial or other records related to the holder's commercial park activities at any time to ascertain or audit the amount of market fees due under this rule.
- (3) The market fee rate for a commercial use authorization shall be 3% of the gross receipts derived from commercial park activities unless an applicable alternative method has been established under paragraph (4) of this rule.
- (4) In addition to or in lieu of the method set out in paragraph (3) of this rule, the Commissioner may approve of alternative method(s), including but not limited to a flat rate per customer, for calculating the market fee due for any commercial park activity if, in the Commissioner's discretion, it is in the Department's best interest to do so, by setting such fees in accordance with paragraph (2) of Rule 0400-01-01-.02. An alternative method of calculating market fees shall be available for commercial use authorizations issued after the effective date of the alternative method(s).
- (5) In calculating the market fees owed under this rule, the person holding the commercial use authorization shall be given a single credit equal to the amount of the application fee paid for the commercial use authorization. However, no part of the application fee shall be refunded even if gross revenues do not result in market fees greater than the application fee. A credit for an application fee shall not be carried over to any future commercial use authorization or applied to any commercial use authorization other than the one for which it was paid. No credit shall be given for any other fee.
- (6) No commercial use authorization shall be issued or renewed to any person who currently owes any fees required under this chapter unless arrangements for the payment of such fees have been made sufficient to the Commissioner.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.06 GROUNDS FOR REVOCATION, SUSPENSION, MODIFICATION, OR REFUSAL TO ISSUE OR RENEW.

- (1) The following acts by the holder of a commercial use authorization shall be violations of this chapter and the Commissioner may revoke, suspend, modify, or refuse to issue or renew a commercial use authorization for one or more of the following reasons:
 - (a) Failure to abide by any term or condition of a commercial use authorization, including but not limited to failure to maintain required insurance;
 - (b) Providing any false, misleading, or deceptive information to the Commissioner regarding any matter, including the amount of market fees owed;
 - (c) Engaging in any false, fraudulent, or dishonest practices in the course of business, whether such practices are engaged in during the course of commercial park activity or otherwise;
 - (d) Failure to comply with any request for information from the Commissioner regarding the commercial park activity authorized under this chapter;
 - (e) Conducting any commercial park activity for which the person does not hold a commercial use authorization;
 - (f) Conducting any commercial park activity in any state park that the person's commercial use authorization does not include;
 - (g) Engaging in any behavior that does not have a minimal impact on park resources and values and is not otherwise approved within a commercial use authorization;
 - (h) Engaging in any behavior that is not consistent with the park purpose, management plans, policies, and all laws and regulations;
 - (i) Failure to timely pay any fees owed under this chapter;
 - (j) Operating a commercial park activity in a manner that:
 1. Is contrary to the purposes for which the natural, historic, recreational, and special use areas exist in a state park; or unreasonably impairs the atmosphere of peace and tranquility maintained in natural, historic, hospitality, recreational, or commemorative areas in a state park;
 2. Unreasonably interferes with interpretive, visitor service, or other program activities, or with the administrative activities of a state park;
 3. Substantially impairs the operation of public use facilities or services of state park concessioners or contractors;
 4. Presents a clear and present danger to public health and safety; or
 5. Results in significant conflict with other existing uses of a state park.
 - (k) A commercial park activity requested to be authorized is reasonably anticipated to be operated in a manner in violation of subparagraph (1)(j) of this rule; or

(Rule 0400-02-13-.06, continued)

- (l) Conviction of or entry of a plea of guilty by any person holding a commercial use authorization of any felony or of a misdemeanor directly reflecting on such person's fitness to conduct commercial park activities.
- (2) A modification ordered under paragraph (1) of this rule may make any change to the commercial use authorization that could have been made at the issuance of the commercial use authorization, including, but not limited to, adding terms and conditions authorized by this chapter, modifying the term of the commercial use authorization, changing state parks where the commercial park activity can be conducted, and altering the scope of the authorized commercial park activity.
- (3) Any action by a person who owns part or all of a business entity that holds a commercial use authorization, including conviction of a crime, shall be imputed to the business entity holding the commercial use authorization.
- (4) Any hearing to revoke, suspend, refuse to renew, or modify a commercial use authorization under this rule shall be conducted pursuant to the Administrative Procedures Act, (T.C.A. Title 4, Chapter 5, Parts 1 through 3).

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.07 FEES.

The Commissioner may set any fees the Commissioner determines are reasonably necessary for the administration of this chapter, including but not limited to an application fee, renewal fee, reissuance fee, and a commercial authorization permit amendment fee, by setting such fees in accordance with paragraph (2) of Rule 0400-01-01-.02.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.08 RENEWAL OF COMMERCIAL USE AUTHORIZATION.

- (1) Any person who holds a commercial use authorization issued under this chapter may renew a commercial use authorization by filing with the Commissioner a renewal application, accompanied by the required renewal fee, that includes:
 - (a) The name of the applicant;
 - (b) The contact information, including phone number and email address for the applicant;
 - (c) Proof of general liability insurance covering the commercial park activity in the amount of \$1 million per occurrence with the State of Tennessee named as an additional insured, unless an alternate insurance amount is approved by the Commissioner based on the individual risk factors of the applicant's commercial park activities;
 - (d) Any changes to the applicant's operation plans and emergency operation plans for the proposed commercial park activity since the last time such plans were provided to the Commissioner;
 - (e) Any changes in qualification of the applicant to provide the proposed commercial park activity, including but not limited to training for all staff that will participate in the commercial park activities, since the last time such qualifications were provided to the Commissioner;

(Rule 0400-02-13-.08, continued)

- (f) Any change to the statement of the expected group sizes, if applicable, and frequency of the commercial park activity since the last time such information was provided to the Commissioner;
 - (g) If the person who is renewing the commercial authorization is a business entity other than an individual or general partnership, proof that the entity:
 - 1. Holds a registration as a domestic or foreign business entity, as appropriate, in good standing with the Tennessee Secretary of State; and
 - 2. Has obtained all permits and licenses, including business licenses, and paid all charges, fees, or taxes required by the State of Tennessee or its political subdivisions for the provision of the commercial park activity;
 - (h) A list of any conviction or entry of a plea of guilty by the applicant or, if the applicant is an entity, by any person that owns part or all of the applicant entity that has not previously been disclosed to the Commissioner;
 - (i) Whether the applicant is requesting the renewal term be the same as the expiring commercial use authorization's term and, if not, the requested term length; and
 - (j) Any other documentation or information reasonably requested by the Commissioner regarding the commercial park activity.
- (2) Upon receipt of a complete renewal application with all required fees that is filed prior to the expiration of the commercial use authorization, the Commissioner shall renew a commercial use authorization, including one originally issued pursuant to a limited timeframe, unless the Commissioner refuses to renew the commercial use authorization pursuant to Rule 0400-02-13-.06. Persons whose commercial use authorization has expired but who have filed a complete renewal application, including payment of all required fees, prior to the commercial use authorization becoming invalid pursuant to paragraph (3) of this rule may continue to operate under the terms of the expired commercial use authorization until the Commissioner either approves the application or there is a final refusal to renew the commercial use authorization pursuant to Rule 0400-02-13-.06. However, no person shall engage in any activity under a commercial use authorization while it is expired if the person's application has not been submitted or is incomplete, including not having paid all required fees.
- (3) If a person submits a complete renewal application, including all applicable fees, after the person's commercial use authorization has expired but within 60 days of expiration, the Commissioner shall reissue the commercial use authorization if the application would have been approved under paragraph (2) of this rule had the application been submitted before expiration. If a person who holds a commercial use authorization fails to file a complete renewal application, including payment of all fees, within 60 days of the expiration of the commercial use authorization, then the commercial use authorization shall be invalid and the person shall file a new application for a commercial use authorization.
- (4) If a person who holds a commercial use authorization files a renewal application before the expiration of the 60-day period outlined in paragraph (3) of this rule and the renewal application is incomplete, the Commissioner shall notify the applicant of the reason that the renewal application is incomplete and that the applicant has until 60 days after the expiration of the commercial use authorization to file a complete application as required under paragraph (3) of this rule.
- (5) Commercial use authorizations shall be renewed for the same term as the applicant's expiring commercial use authorization unless the applicant requests a different term length in its application. If the applicant's requested term is longer than the term of the applicant's expiring

(Rule 0400-02-13-.08, continued)

commercial use authorization, the applicant must meet one or more of the criteria in Rule 0400-02-13-.02(5)(b) and demonstrate how the applicant's business or market in which the business operates has changed in a way that necessitates a longer term since the last time the applicant submitted an application to the Commissioner.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.

0400-02-13-.09 UPDATE OF INFORMATION ON FILE WITH THE COMMISSIONER.

Any person who holds a commercial use authorization shall notify the Commissioner of any information required to be provided to the Commissioner under this chapter, including but not limited to conviction of any felony or of a misdemeanor directly reflecting on such person's fitness to conduct commercial park activities, change of address, change of contact information, and change of ownership, within 30 days of any change to the information previously provided to the Commissioner.

Authority: T.C.A. §§ 4-5-201, et seq. and 11-1-101. **Administrative History:** Emergency rules filed June 29, 2021; effective through December 26, 2021.