

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 02-14-17
 Rule ID(s): 6451
 File Date: 2/16/17
 Effective Date: 5/17/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Environment and Conservation
Division: Office of General Counsel
Contact Person: Wayne Gregory
Address: William R. Snodgrass Tennessee Tower
 312 Rosa L. Parks Avenue, 2nd Floor
 Nashville, Tennessee
Zip: 37243
Phone: (615) 253-5420
Email: Wayne.Gregory@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-01-01	Fees and Charges for Certain Departmental Services
Rule Number	Rule Title
0400-01-01-.01	Access to Department of Environment and Conservation Public Records

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0400-01-01
Fees and Charges for Certain Departmental Services

Amendment

Rule 0400-01-01-.01 Access to Department of Environment and Conservation Public Records is amended by adding a new paragraph (5) to read as follows:

(5) Non-public records under T.C.A. § 10-7-504(a)(21)(A)(i)

In accordance with T.C.A. § 10-7-504(a)(21)(A)(i), the following records, and any other records determined by the Department to be described by such subdivision, shall be treated as confidential and shall not be open for public inspection:

- (a) The latitude and longitude coordinates of public water system wells, intakes, water mains, water tanks, valves and GIS analyses derived from these data;
- (b) Records pertaining to the delineation of source water protection areas; and
- (c) Records pertaining to well head protection areas and inventories of significant potential contaminant sources.

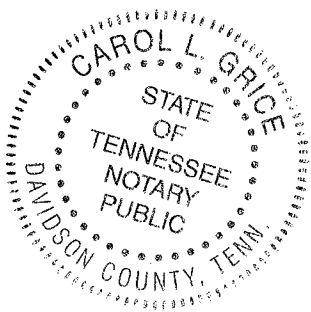
Authority: T.C.A. §§ 11-1-101, 10-7-504(a)(21) and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 10/31/2016 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/02/16

Rulemaking Hearing(s) Conducted on: (add more dates). 03/29/16



Date: October 31, 2016

Signature: [Handwritten Signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: October 31, 2016

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Herbert H. Slatery III
Attorney General and Reporter

2/10/2017
Date

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Filed with the Department of State on: 2/16/17

Effective on: 5/17/17

[Handwritten Signature]
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A commenter stated that TAUD has always felt that the GPS/GIS of intakes and wells should not be open to the public. We contracted with TDEC to perform the first wellhead and source water protection programs in Tennessee and we went to great lengths to protect that information. We support keeping this information confidential.

Response: The Department believes that Tenn. Code Ann. § 10-7-504(a)(21)(A)(i) requires the protection of this information.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Outside of utility service providers there are no small businesses impacted by this proposed rule. This rulemaking will benefit utility service providers and will not add any cost.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are no changes to reporting or recordkeeping in the proposed rule changes.

- (3) A statement of the probable effect on impacted small businesses and consumers.

No effect on businesses or consumers is expected.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Any measures less burdensome would not achieve the purpose of the rule.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Many states have laws similar to Tennessee's including Georgia, Pennsylvania, and Indiana.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

There are no additional requirements in the rule changes.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate that these amended rules will have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The purpose of this rulemaking is to provide guidance to the Department's records custodians and to interested parties requesting public records regarding the implementation of Tenn. Code Ann. § 10-7-504(a)(21)(A)(i). This subdivision designates any records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, services provided by a utility service provider as confidential and not open to public inspection. The list of records in paragraph (5) of Rule 0400-01-01-.01 is not exhaustive and may be amended in the future to include additional records determined to be exempt.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rulemaking is being promulgated under the authority of Tenn. Code Ann. §§ 11-1-101 and 10-7-504(a)(21)(A)(i).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rulemaking affects any person interested in identifying areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, services provided by a utility service provider. None of these persons commented on this rulemaking. The utility service providers and records custodians are also affected by this rulemaking. The TAUD urged adoption of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no impact in state or local government revenues or expenditures as result is this rulemaking.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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Office of General Counsel
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-5420
Wayne.gregory@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Lucian Geise

Senior Counsel for Legislative Affairs
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Lucian.Geise@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.

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Date: October 31, 2016

Signature: _____

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
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