This hearing has been cancelled. See page 10.

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Sequence Number: 03-03-20
Notice ID(s): 3073
File Date: 3/4/2020

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Environment and Conservation
Division:	State Parks
Contact Person:	Will Kirby
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243
Phone:	(615) 532-0497
Email:	will.kerby@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or 615-532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298
Email:	Jennifer.Katzenmiller@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Conference Room B, 3rd Floor		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Ave.		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	04/27/20		
Hearing Time:	10:00 AM	_X_ CST/CDT ___ EST/EDT	

Additional Hearing Information:

If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact Cheryl Gracy at (615) 532-0041 for more information.

This rule creates a commercial use authorization to allow those who wish to engage in commercial activities at one or more state parks or state natural areas to obtain a permit to do so. This permit will, generally, be for two years and will require payment of annual market fees based on gross revenues from the commercial activities if the market fee exceeds the application fee. Currently, those who wish to engage in such activities would be required to either obtain special use permits (which are statutorily limited to 10 days each) or enter into a contract with the Department.

An initial set of draft rules has been prepared for public review and comment. The "DRAFT" rules may be accessed for review using at https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-

general.html.

Draft copies are available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation
Office of General Counsel
William R. Snodgrass TN Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0131

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Office of General Counsel Attention: Will Kirby, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243; telephone (615) 532-0497 or fax (615) 532-0145. However, such written comments must be received by 4:30 PM CST, May 1, 2020, in order to assure consideration. For further information, please contact Will Kirby at the above address or telephone number or by e-mail at will.kerby@tn.gov.

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

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

Chapter Number	**Chapter Title**
0400-02-13	Commercial Use Authorizations
Rule Number	**Rule Title**
0400-02-13-.01	Definitions
0400-02-13-.02	Authorization Requirement and Applications
0400-02-13-.03	Terms and Conditions
0400-02-13-.04	Amendment of an Existing Commercial Use Authorization
0400-02-13-.05	Market Fees
0400-02-13-.06	Grounds for Revocation, Suspension, Modification, or Refusal to Issue
0400-02-13-.07	Fees

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

Chapter 0400-02-13
Commercial Use Authorizations

New Rules

Chapter 0400-02-13
Commercial Use Authorizations

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0400-02-13-.01 Definitions

"Applicant" means a person applying to receive 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. §§ 11-1-101 and 4-5-201 through 4-5-229

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 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 $300,000 per person and $1 million per incident with the State of Tennessee named as an additional insured;

(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 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;

(k) 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

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;

(l) 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

(m) 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 deny any commercial use authorization for any reason listed in Rule 0400-02-13-.06.

(5) A commercial use authorization shall expire two years after its issuance on the last day of the month of issuance, except as set out in subparagraph (7)(b) of this rule. A commercial use authorization shall not be subject to renewal and a person holding a commercial use authorization wishing to continue to engage in the authorized commercial park activity shall apply for a new commercial use authorization.

(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 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.

(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, 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 commercial use authorizations will be issued at random among the pool of complete, valid applications to engage in that commercial park activity or class of commercial park activities at that park.

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 randomly choose successful applicants 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 at random.

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 at random, 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. §§ 11-1-101 and 4-5-201 through 4-5-229

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. §§ 11-1-101 and 4-5-201 through 4-5-229

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

(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. §§ 11-1-101 and 4-5-201 through 4-5-229

0400-02-13-.05 Market Fees

(1) Within 60 days after the anniversary of the issuance of a commercial use authorization and the expiration date of a commercial use authorization, or within 60 days of the expiration date of a commercial use authorization if issued for a period of one year or less, 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) of this rule based on those gross revenues. 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 bank or other financial records at any time to ascertain or audit the amount of market fees due under this rule.

(3) Market fees shall be determined by calculating the gross revenues during each of the periods described in paragraph (1) of this rule. If gross receipts from commercial park activities are:

(a) Less than $250,000, the market fee owed shall be 3% of the gross receipts;

(b) More than or equal to $250,000 but less than $500,000, the market fee owed shall be 4% of the gross receipts; or

(c) At least $500,000, the market fee owed shall be 5% of the gross receipts.

(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) 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 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. §§ 11-1-101 and 4-5-201 through 4-5-229

0400-02-13-.06 Grounds for Revocation, Suspension, Modification, or Refusal to Issue

(1) The Commissioner may revoke, suspend, modify, or refuse to issue 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;

(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 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

(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 permit, including, but not limited to, adding terms and conditions authorized by this chapter, 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, 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. §§ 11-1-101 and 4-5-201 through 4-5-229

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 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. §§ 11-1-101 and 4-5-201 through 4-5-229

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: March 4, 2020

Signature:

Name of Officer: Jim Bryson

Title of Officer: Deputy Commissioner for Parks and Conservation

KIMBERLY BERNAL RIDINGS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 3-4-20

Notary Public Signature: Kimberly Bernal Ridings

My commission expires on: 9-6-22

Department of State Use Only

Filed with the Department of State on: 3/4/2020

Tre Hargett
Secretary of State

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For Department of State Use Only

Sequence Number: 04-08-20
File Date: 4/3/2020

Cancellation of Rulemaking Hearing Form

Agency/Board/Commission:	Environment and Conservation
Division:	State Park Operations
Contact Person:	Will Kerby
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0497
Email:	will.kerby@tn.gov

Cancelled Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Conference Room B, 3rd Floor		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date:	04/27/2020		
Hearing Time:	10:00 AM	_X_ CST/CDT ___ EST/EDT	

This cancellation refers to the following Notice of Rulemaking Hearing:

Cancelled Rulemaking Hearing Sequence Number: 03-03-20

Cancelled Rulemaking Hearing File Date: 03/04/2020

Additional Hearing Cancellation Information:

Based on Governor Lee's Executive Orders to limit exposure to and spread of COVID-19 and the President's Coronavirus Guidelines for America, the Department believes it prudent to cancel this rulemaking hearing originally scheduled to be held April 27, 2020. The Department will fill a new rulemaking hearing notice for a new date and time in order to receive verbal comments on the new Tennessee State Parks rules by using the WebEx online application. Written comments will also be received by email or U.S. Mail anytime during the comment period.

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Date: April 3, 2020

Signature:

Name of Officer: Michael D. Driver

Title of Officer: Senior Associate Counsel