

Notice of Rulemaking Hearing  
Tennessee Department of Transportation  
Community Relations Division  
and Office of General Counsel

There will be a hearing before the Tennessee Department of Transportation to consider the promulgation of new rules concerning the inspection and copying of Department records. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204, and will take place in the Auditorium of the Main Administrative Building (Building "A") at the Tennessee Department of Transportation, Region III Office Complex, located at 6601 Centennial Boulevard, Nashville, Tennessee 37243 at 1:30 p.m. CDT on Tuesday, October 24, 2006. (Take Interstate 40 to Exit 204, and then take Briley Parkway northbound to Exit 26B, Centennial Boulevard West.)

Written comments will be considered if received by the close of business (4:30 p.m.) on October 24, 2006, in the Office of General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, or if received at the public rulemaking hearing on October 24, 2006.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Department of Transportation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone or other appropriate means, and should be made no less than ten (10) days prior to the public hearing (October 24, 2006) or the date the party intends to review such filings to allow time to provide such aid or service. Such contact may be made with the Department of Transportation's ADA Coordinator at Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, or by telephone at (615) 741-4984.

For a copy of this notice of rulemaking hearing, contact: John Reinbold, Tennessee Department of Transportation, Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, telephone number (615) 741-2941.

Substance of Proposed Rules

Chapter 1680-4-2  
Inspection and Copying of Department Records

New Rules

Table of Contents

1680-4-2-.01 Purpose  
1680-4-2-.02 Definitions  
1680-4-2-.03 General Information  
1680-4-2-.04 Inspection of Public Records  
1680-4-2-.05 Copying of Public Records  
1680-4-2-.06 Payment of Costs for Reproducing Public Records  
1680-4-2-.07 Appendices

1680-4-2-.01 Purpose.

The purpose of these rules is to establish procedures to accommodate requests from the public to inspect and/or copy records maintained by the Tennessee Department of Transportation, to the extent that such records are public records open to inspection by citizens of the State of Tennessee under the Tennessee Public Records Act, T.C.A. § 10-7-501, et seq., while at the

same time preserving the confidentiality of confidential records and/or confidential information as provided in Federal or State law. In addition, these rules establish procedures and standard fees for recovering the cost of providing copies of public records upon request.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503 and 10-7-506.

1680-4-2-.02Definitions.

As used in these rules, the following terms are defined as follows:

- (1) "Aerial Surveys Office" means the Aerial Surveys Office of the Tennessee Department of Transportation.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Transportation.
- (3) "Community Relations Division" means the Community Relations Division of the Tennessee Department of Transportation.
- (4) "Confidential record" means any Department record that is considered confidential or privileged under Federal or State law, including without limitation, and without waiving any privilege or any right to confidentiality available under Federal or State law, as follows:
  - (a) Any record or portion of any record that is not subject to public inspection or is defined as confidential under the Public Records Act;
  - (b) Any record or portion of any record that is not subject to discovery or admissible into evidence in any Federal or State court proceeding or in any action for damages under the provisions of 23 U.S.C. § 409;
  - (c) Any record or portion of any record that is otherwise protected as confidential or privileged under any Federal or State law or regulation or pursuant to any court order;
  - (d) Any record that is protected under the attorney/client privilege;
  - (e) Any record that is protected under the attorney work product doctrine; and
  - (f) Any record that is protected under any other statutory or common law privilege.
- (5) "Construction Division" means the Construction Division of the Tennessee Department of Transportation.
- (6) "Copy Center" means the Copy Center for the Tennessee Department of Transportation.
- (7) "Department" means the Tennessee Department of Transportation.
- (8) "Legal Office" means the Tennessee Department of Transportation, Office of General Counsel.
- (9) "Map Sales Office" means the Map Sales and Publications Office of the Tennessee Department of Transportation.

- (10) "Non-routine record" means a record, in any form, that cannot be readily produced for public inspection or copied upon request without more than minimal assistance from the Records Custodian to whom the request has been made, and including without limitation, as follows:
  - (a) Archived records;
  - (b) Microfilmed records;
  - (c) Audio recordings;
  - (d) Records accessed only through the manipulation of electronically or digitally stored information;
  - (e) Oversized pages or bound volumes that cannot be fed automatically into and copied on a standard office photocopier; and
  - (f) Records containing or located within files containing material that may be a confidential record under Federal or State law.
- (11) "Plan Sales Office" means the Plan Sales Office of the Tennessee Department of Transportation.
- (12) "Public Information Officer" means the Public Information Officer of the Tennessee Department of Transportation.
- (13) "Public record" means any Department record that is open to inspection by any citizen of the State of Tennessee under the provisions of the Public Records Act, and is not otherwise considered a confidential record under Federal or State law.
- (14) "Public Records Act" means the Tennessee Public Records Act as codified in Tennessee Code Annotated, Section 10-7-501, et seq.
- (15) "Record" means any document or stored information, in any form, that has been generated or received and maintained by the Department pursuant to law or in connection with the transaction of the Department's official business.
- (16) "Record available for purchase" means a record generated by the Department in connection with official business that the Department also offers for sale to other governmental agencies, bidders, and/or individuals as a service to the public, including without limitation as follows:
  - (a) Maps and publications that are available from the Map Sales Office;
  - (b) Plan sheets from the Department's final roadway right-of-way plans, final roadway construction plans, and structural plans that are available from the Plan Sales Office;
  - (c) Aerial photographs and films that are available from the Aerial Surveys Office;
  - (d) Standard Specifications for Road and Bridge Construction, Standard Roadway Drawings, and contract proposal books for current construction projects being let to bid that are available from the Construction Division; and
  - (e) Construction plans for current projects being let to bid that are available from the Copy Center.

- (17) "Records Custodian" means an employee of the Department, or the designee of such employee, who has direct supervisory authority over the specific division, section or office of the Department where the requested Department records are maintained.
- (18) "Redacted record" means a record that has been edited to remove information that is confidential under Federal or State law so as to generate a public record available for inspection and copying under the Public Records Act.
- (19) "Routine record" means a public record, in any form, that can be readily produced for public inspection or copied upon request with minimal assistance from the Records Custodian of the Department to whom the request has been made, and including without limitation as follows:
  - (a) An unbound paper record of standard letter or legal size which can be automatically fed into and copied on a standard office photocopier;
  - (b) Any electronically or digitally stored record that can be readily accessed and printed on a standard office printer; provided, however, that such a record shall not be considered a routine record if each separate screen-page of the record must be printed as a separate page.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503 and 10-7-506.

1680-4-2-.03General Information.

(1) Business Hours.

A request to inspect or copy public records of the Department pursuant to the Public Records Act shall be made, and any inspection or copying shall be conducted, during the Department's normal business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays, unless the Department expressly authorizes the inspection or copying of public records outside of normal business hours.

(2) Notice of Requests.

- (a) Notice of a request to inspect or copy public records of the Department, other than a record available for purchase, may be made orally or in writing to the Community Relations Division, Public Information Officer, Legal Office, or to an appropriate Records Custodian of the Department where the requested records are maintained. The contact information for the Community Relations Division, Public Information Officer, and the Legal Office is indicated below.
- (b) The Department may request the notice to be made or confirmed in writing if, in the judgment of the Department, the request is for any non-routine record or for multiple routine records that cannot be readily produced for inspection in the specific office where the request has been made. The Department may require a request for copies of public records to be made in writing.
- (c) Any form of written notice, e.g., letter, facsimile transmission or e-mail, will be acceptable.
- (d) The notice shall identify the record or records requested for inspection or copying with as much specificity as reasonably possible.

- (e) Any record available for purchase may be obtained by contacting the appropriate office where the record is offered for sale to the public. The contact information is indicated below.

(3) Department Contact Information.

(a) Inspection and/or Copying of Public Records.

To obtain assistance in processing a request to inspect and/or obtain copies of public records of the Department, a requestor may contact the Community Relations Division, Public Information Officer, or Legal Office. The current contact information for these offices, which may be subject to change without amendment of these rules, is as follows:

1. Community Relations Division  
Tennessee Department of Transportation  
Suite 700, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
Telephone: 615-741-7736  
Fax: 615-741-9093
2. Public Information Officer  
Tennessee Department of Transportation  
Suite 700, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
Telephone: 615-741-2331  
Fax: 615-741-9093
3. Office of General Counsel  
Tennessee Department of Transportation  
Suite 300, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
Telephone: 615-741-2941  
Fax: 615-532-5988

(b) Records Available for Purchase.

1. To request assistance in purchasing Department maps and publications, a requestor may contact the Map Sales Office. The current contact information for the Map Sales Office, which may be subject to change without amendment of these rules, is as follows:

Map Sales and Publications Office  
Tennessee Department of Transportation  
Suite 300, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
Telephone: 615-741-2195  
Fax: 615-741-1791  
Web site: [www.tdot.state.tn.us/longrange/mapsales.htm](http://www.tdot.state.tn.us/longrange/mapsales.htm)

2. To request assistance in purchasing copies of plan sheets from the Department's final roadway right-of-way plans, final roadway

construction plans, or structural plans, a requestor may contact the Plan Sales Office. The current contact information for the Plan Sales Office, which may be subject to change without amendment of these rules, is as follows:

Plan Sales Office  
Tennessee Department of Transportation  
Suite 1300, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
Telephone: 615-741-3337  
Fax: 615-532-2799

3. To request assistance in purchasing the Department's aerial photographic products, a requestor may contact the Aerial Surveys Office. The current contact information for the Aerial Surveys Office, which may be subject to change without amendment of these rules, is as follows:

Aerial Surveys Office  
Tennessee Department of Transportation  
521 Olan Taylor Drive  
Nashville, Tennessee 37217  
Telephone: 615-741-2875  
Fax: 615-532-9654

4. To request assistance in purchasing the Department's Standard Specifications for Road and Bridge Construction, Standard Roadway Drawings, or contract proposal books for construction projects that the Department is currently letting to contract, the requestor may contact the Construction Division. The current contact information for the Construction Division, which may be subject to change without amendment of these rules, is as follows:

Construction Division  
Tennessee Department of Transportation  
Suite 700, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
Telephone: 615-741-2414  
Fax: 615-741-0782

5. To request assistance in purchasing copies of construction plans for projects that the Department is currently letting to contract, the requestor may contact the Copy Center. The current contact information for the Copy Center, which may be subject to change without amendment of these rules, is as follows:

TDOT Copy Center  
A Level, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
Telephone: 615-741-2048  
Fax: 615-532-2886

(1) Preliminary Review of Request.

- (a) Upon receiving a request to inspect a Department record pursuant to the Public Records Act, other than a record available for purchase, the Records Custodian or other office of the Department to which the request is directed shall make a preliminary assessment of the nature and scope of the request to determine whether the request is for a routine record or non-routine record.
- (b) The Records Custodian or other office to which the request is directed may refer the request to Community Relations Office, Public Information Officer, or Legal Office, as appropriate, for assistance in processing a request to inspect public records.

(2) Routine Records.

If the Records Custodian determines that the request is for a routine public record or records located within the specific office of the Department to which the request has been made, the Records Custodian shall make the record or records available to the requestor for inspection as soon as reasonably practicable during normal business hours, taking into consideration the volume of the request and the availability of Department staff as needed to maintain custody of the record or records during the inspection.

(3) Non-Routine Records.

- (a) If the Records Custodian or other office of the Department to which the request is directed or referred determines that the requested record or records cannot readily be made available for inspection by the requestor at the time and place of the request, the Records Custodian or other office shall explain to the requestor why additional time will be needed to make the record or records available, including without limitation any of the following reasons:
  - 1. The request is for a record or records not located within the specific office of the Department to which the request has been made;
  - 2. The request is for a record that, at the time of the request, is being used to conduct official business of the Department;
  - 3. The volume of the request is such that the requested records cannot, at the time of the request, be readily produced for inspection within a reasonable time during normal business hours;
  - 4. The request is for a non-routine record, including without limitation a record that may be, or a file that may contain, a confidential record or a record that may contain confidential information that must be redacted before it can be made available for public inspection;
  - 5. The request is for a record that is maintained in an electronic, digital, or other non-printed form and cannot be readily accessed because of an equipment malfunction;
  - 6. The request is for a record or information that is maintained in an electronic or digital database or other non-printed form and providing access to the record will require development of a program/application

or the reloading of backup files in order to produce the record or put it into a readable format; or

7. Any other similar reason that makes it impracticable for the Department to make the record available for inspection at the time and place of the request.
  - (b) To preserve a record of the request, the Records Custodian or the office of the Department to which the request has been made or referred may ask the requestor to submit or confirm the request in writing, in accordance with Rule 1680-4-2-.03(2) above.
  - (c) In processing a request for the inspection of non-routine records, the Department will first determine whether the requested records exist within the custody of the Department. If the requested records exist within the custody of the Department, the Department will locate and review the requested records as soon as reasonably practicable, taking into consideration the nature and/or volume of the request and the availability of Department staff.
  - (d) Upon completing its review of the requested records, the Department will communicate with the requestor in writing or by telephone concerning the time, place and manner in which the requested public records may be made available for inspection.
  - (e) If the requested records do not exist within the custody of the Department, or if the requested records are confidential records not available for public inspection, such fact shall be communicated to the requestor; provided, however, that nothing in this Chapter shall be construed to require the Department to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.
  - (f) If a requested record contains confidential information (e.g., certain information maintained in personnel records) but is otherwise a public record, the Department will generate a copy of the record from which the confidential information has been removed and the redacted record will be made available for inspection. As provided in Rule 1680-4-2-.06(5) below, the Department may require reimbursement for the employee time associated with making the redacted record.
  - (g) If the requested record or information is available in an electronic or digital database or other non-printed form, and providing access to the record will require development of a program/application or the reloading of backup files to produce the record or put it into a readable format, the Department may require reimbursement for any employee time and/or other costs associated with developing the program or application and producing the record for inspection, as provided in Rule 1680-4-2-.06(6) below.
- (4) Form of Record Produced.

Nothing in this Chapter shall be construed to require the Department to make any public record available for inspection in the exact form requested by the requestor, e.g., the Department may make a public record maintained in electronic or digital form available for inspection in printed form.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503 and 10-7-506.

1680-4-2-.05 Copying of Public Records.

- (1) Preliminary Review of Request.
  - (c) Upon receiving a request to obtain a copy of a Department record pursuant to the Public Records Act, other than a record available for purchase, the Records Custodian or other office of the Department to which the request is directed shall make a preliminary assessment of the nature and scope of the request to determine whether the request is for a routine record or non-routine record.
  - (d) The Records Custodian or other office to which the request is directed may refer the request to Community Relations Office, Public Information Officer, or Legal Office, as appropriate, for assistance in processing a request for copies of public records.
- (2) Routine Records.
  - (a) If the Records Custodian determines that the request is for a routine public record or records located within the specific office of the Department where the request has been made, and the request has not been referred to the Community Relations Division, Public Information Officer, or Legal Office as provided above, the Department shall have the requested record or records located and copied as soon as reasonably practicable during normal business hours, taking into consideration the volume of the request and the availability of Department staff as needed to maintain custody of the record or records while it is being copied.
  - (b) The Department shall charge the requestor for the cost of making the copy, as provided in Rule 1680-4-2-.06 below. Except as may otherwise be provided in these rules, payment will be required prior to receipt of the copy.
- (3) Non-Routine Records.
  - (a) If the Records Custodian or other office of the Department to which the request is directed or referred determines that copies of the requested record or records cannot be readily made at the time and place of the request, the Records Custodian or other office shall explain to the requestor why additional time will be needed to make copies of the record or records available, including without limitation any of the following reasons:
    1. The request is for a record or records not located within the specific office of the Department where the request has been made;
    2. The request is for a record that, at the time of the request, is being used to conduct official business of the Department;
    3. The volume of the request is such that the requested records cannot, at the time of the request, be readily copied within a reasonable time during normal business hours;
    4. The request is for a non-routine record, including without limitation a record that may be, or a file that may contain, a confidential record or a

record that may contain confidential information that must be redacted before it can be copied;

5. The request is for a record that is maintained in an electronic, digital, or other non-printed form and cannot be readily accessed or copied because of an equipment malfunction;
  6. The request is for a record or information that is maintained in an electronic or digital database or other non-printed form and providing access to the record will require development of a program/application or the reloading of backup files in order to produce the record or put it into a readable format; or
  7. Any other similar reason that makes it impracticable for the Department to provide a copy of the record at the time of the request.
- (b) To preserve a record of the request, Records Custodian or other office of the Department to which the request has been made or referred may require the requestor to submit or confirm the request in writing, in accordance with Rule 1680-4-2-.03(2) above.
  - (c) In processing a request for copies of non-routine records, the Department will first determine whether the requested records exist within the custody of the Department. If the requested records exist within the custody of the Department, the Department will locate and review the requested records as soon as reasonably practicable, taking into consideration the nature and/or volume of the request and the availability of Department staff.
  - (d) Upon completing its review of the requested records, the Department will communicate with the requestor in writing or by telephone concerning the availability of the records, the cost to procure copies, and the manner in which the copies may be delivered to the requestor. Upon confirming the request and receiving payment for the copy costs (unless waived as provided in Rule 1680-4-2-.06(8) below), the Department will deliver the requested copies of public records to the requestor in the agreed upon manner.
  - (e) If the requested records do not exist within the custody of the Department, or if the requested records are confidential records not available to the public, such fact shall be communicated to the requestor; provided, however, that nothing in this Chapter shall be construed to require the Department to generate a detailed description of each confidential record not copied, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.
  - (f) If a requested record contains confidential information (e.g., certain personal information maintained in personnel records) but is otherwise a public record, the Records Custodian will generate a copy of the record from which the confidential information has been removed and the redacted record will be copied. As provided in Rule 1680-4-3-.06(5) below, the Department may require reimbursement for the employee time associated with making the redacted record in addition to payment for the cost of copying the redacted record.
  - (g) If the requested record or information is maintained in an electronic or digital database or other non-printed form and providing a copy of the record will require development of a program/application or the reloading of backup files

to produce the record or put it into a readable format, the Department may require reimbursement for any employee time and/or other costs associated with developing the program or application and producing the record, as provided in Rule 1680-4-2-.06(6) below. This charge shall be in addition to reimbursement for the cost of copying the record or records that have been produced.

(4) Records Available for Purchase.

If the request is for a copy of any of the following records available for purchase, the requestor will be referred to the identified office to purchase the requested record:

- (a) Maps and publications that are available from the Map Sales Office;
- (b) Aerial photographic products that are available from the Aerial Surveys Office;
- (c) Plan sheets from the Department's final roadway right-of-way plans, final roadway construction plans, or structural plans that are available from the Plan Sales Office;
- (d) Standard Specifications for Road and Bridge Construction, Standard Roadway Drawings, or contract proposal books for projects currently being let to contract that are available from the Construction Division; or
- (e) Construction plans for projects currently being let to contract that are available from the Copy Center.

The contact information for each of these offices is provided in Rule 1680-4-2-.03(3) above.

(5) Form of Record Copied.

Nothing in this Chapter shall be construed to require the Department to reproduce a public record in the exact form requested by the requestor, e.g., the Department may provide a printed copy of a public record maintained in electronic or digital form.

(6) Custody of Records.

- (a) The Department shall maintain custody of Department records at all times. Except where the use of a commercial copier service has been authorized, as provided in Rule 1680-4-2-.06(3) below, the Department will make and provide the requested copies to the requestor as soon as reasonably practicable, given the nature and volume of the request and the availability of Department staff.
- (b) A requestor shall not be allowed to take custody of any Department record or use a personal photocopier, personal computer, or other personal equipment of any kind to make photocopies, download electronic or digital records, reproduce computer disks, or otherwise mechanically reproduce any Department record; provided, however, that this shall not be construed to prohibit a requestor from making personal notes or manually copying all or part of the contents of a Department record.

(7) Plans Disclaimer and Limitation of Liability Agreement.

When providing a copy, in any form, of project plans or any part thereof, the Department may require the recipient to sign a plans disclaimer and limitation of liability agreement as a precondition for receiving a copy of the plans or portion of plans. The plans disclaimer and limitation of liability agreement may contain, at a minimum, the terms and conditions shown in Appendix 1 of Rule 1680-4-2-.07 below; provided, however, that the form may be modified or terms and conditions may be added as appropriate in particular circumstances.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503 and 10-7-506.

1680-4-2-.06 Payment of Costs for Reproducing Public Records.

(1) Standard Copy Charges.

(a) Paper Photocopies or Printings.

Except as may be provided elsewhere in this rule, the Department shall charge for the costs of making and providing paper photocopies or printings of public records as follows:

	<u>Record page size</u> <u>(color)</u>	<u>Cost (black &amp; white)</u>	<u>Cost</u>
1.	8 ½" x 11" (letter size)	\$.50/page	\$1.00/page
2.	8 ½" x 14" (legal size)	\$.60/page	\$1.20/page
3.	11" x 17" or 12" x 18"	\$2.00/page	\$4.00/page
4.	24" x 36"	\$4.00/page	\$8.00/page
5.	>24" x 36" part thereof	\$.75/sq. ft. or part thereof	\$1.50/sq. ft. or

Copies of irregular-sized records will be charged at the cost for the nearest regular size page identified above.

(b) Electronic Copies.

1. Electronic copies of public records may be provided at the discretion of the Department. If provided, electronic copies shall be charged at a minimum of \$10.00 per CD disk containing 650 megabytes, if available.
2. The charge per CD disk shall be in addition to any costs associated with the production of records from a database or backup files, as provided in paragraph (6) of this Rule below.

(2) Records Available for Purchase.

The Department will offer the following kinds of records for sale to the public at standard prices, plus sales tax and shipping charges, if applicable. The products identified and the prices indicated below are given for informational purposes only and may be subject to change without amendment of these rules.

(a) Plan Sheets Available from the Plan Sales Office.

Plan sheets from final roadway right-of-way plans, final roadway construction plans, and structural plans may be purchased from the Plan Sales Office at the following prices, plus sales tax and shipping charges, if applicable:

1. Half-size plans (12" x 18" or 11" x 17") \$2.00/page
2. Full-size plans (24" x 36") \$4.00/page

(b) Current Construction Plans Available from the Copy Center.

A full set of construction plans for projects that the Department is currently letting to contract may be purchased from the Copy Center at the following prices, plus sales tax and shipping charges, if applicable:

	<u>Total Number of Pages</u>	<u>Cost</u>
1.	1 to 10 pages	\$ 3.00
2.	11 to 50 pages	\$ 10.00
3.	51 to 100 pages	\$ 25.00
4.	101 to 200 pages	\$ 50.00
5.	201 to 250 pages	\$100.00
6.	For each additional 50-page increment, or portion thereof, greater than 250 pages	\$ 25.00

(c) Publications Available from the Construction Division.

The following publications may be purchased from the Construction Office at the following prices, plus sales tax and shipping charges, if applicable:

1. Current contract proposal books: \$25.00
2. Standard Specifications for Road and Bridge Construction \$12.00
3. Standard Roadway Drawings \$100.00

(d) Aerial Photographic Products Available from the Aerial Surveys Office.

1. Photographic Product Prices for State Agencies (effective 3/1/2004).

<u>Item</u>	<u>Description</u>	<u>Cost/Unit</u>
P31	Aerial photography, serial film, black & white	\$1.85/linear ft.
P32	Aerial photography, aerial film, color	\$7.20/linear ft.
P33	Aerial photography, contact print	\$0.55/each
P34	Aerial photography, paper enlargements	\$0.75/sq. ft.

P35	Film, continuous tone negative	\$2.55/sq. ft.
P36	Aerial photography film, limited tonal range, or halftone transparencies, reproducible	\$1.75/sq. ft.
P36	Film reproductions, line negatives	\$1.75/sq. ft.
P36	Film reproduction, line transparencies	\$1.75/sq. ft.
P37	Aerial photography, film diapositives (continuous tone transparencies)	\$4.20/each
P38	Small format black & white film TMY	\$4.75/each
P39	Medium format black & white film	\$3.25/roll
P40	Medium format color film negative	\$3.75/roll
P41	Medium format, color slide	\$9.75/roll, plus vendor's processing charge
P42	Medium format color slide film	\$10.50/roll, plus vendor's processing charge
P43	Small format color negative film	\$5.00/each
P58	Scanning Digital Photographs	\$5.83/each

2. Photographic Product Prices for Other Purchasers (effective 3/1/2004).

<u>Item</u>	<u>Description</u>	<u>Cost/Unit</u>
O33	Aerial photography, contact prints	\$3.00/each
O34	Aerial photography, paper enlargements	\$3.00/sq. ft.
O35	Film, continuous tone film	\$5.00/sq. ft.
O36	Aerial photography, film limited tonal range or halftone transparencies, reproducible	\$4.00/sq. ft.
O36	Film reproductions, line negatives	\$4.00/sq. ft.
O36	Film reproductions, line transparencies	\$4.00/sq. ft.
O37	Aerial photography, film diapositives (continuous tone transparencies)	\$10.00/each
O38	Aerial photography, aerial film continuous tone duplicate negative film (film transparency required for reproduction duplicate negative)	\$20.00/each
O58	Scanning Digital Photographs	\$8.25/each

O59 Initial Set Up Fee (Research Fee) \$10.00/each

All sales are subject to sales tax and shipping costs, if applicable.

(e) Maps and Publications Available from the Map Sales Office.

The current prices (effective January 1, 2003) for maps and publications currently available for purchase through the Map Sales Office are posted on the Map Sales Office web page at [www.tdot.state.tn.us/longrange/mapsales.htm](http://www.tdot.state.tn.us/longrange/mapsales.htm) and are incorporated herein by reference. The product listing and prices are subject to change without amendment of these rules. All sales are subject to sales tax and shipping charges, if applicable.

(3) Use of Commercial Copier Services.

If a request for copies involves a large volume of public records or for the convenience of the Department in other appropriate circumstances, the Department may, in its sole discretion, authorize public records to be taken to a commercial copier service for copying. In such cases, the Department shall assign a Department employee or employees to transport the records to and from the commercial copier service and to maintain custody of the records at all times. In addition to paying the commercial copier service for the cost of making the copies, the requestor shall reimburse the Department for the full cost of employee time expended in gathering, transporting and maintaining custody of the requested records. The cost shall be calculated by multiplying the total number of hours expended times the employee's hourly wage rate plus the cost of any applicable employee benefits and overtime pay as required by law.

(4) Recovery of Development Costs for Public Records Having Commercial Value.

(a) If the request is for a copy of a public record that has commercial value, and such request requires the reproduction of all or a portion of a computer generated map or other similar geographic data that was developed with public funds, the Department may charge a fee to recover costs associated with development of the map or geographic data, as provided in Tennessee Code Annotated § 10-7-506. This charge shall be in addition to any fees charged for the cost of copying the record as provided elsewhere in this Rule.

(b) For the purposes of this paragraph, a "public record that has commercial value" means a public record requested for any purpose other than:

1. A non-business use by an individual; and
2. A news gathering use (broadcast or publication) by a news media organization.

(c) The recovery of development costs from a requestor shall be limited to not more than ten percent (10%) of the total actual costs relating to the development of the computer generated map or other geographic data, including:

1. Labor costs;
2. Costs incurred in design, development, testing, implementation and training; and

3. Costs necessary to ensure that the map or data is accurate, complete and current, including the cost of adding to, updating, modifying and deleting information.

(5) Production of Redacted Records.

If a record must be edited to remove confidential information in order to generate a copy of a public record for inspection and/or copying, the requestor shall reimburse the Department for the full cost of employee time expended in redacting the record or records. The cost shall be calculated by multiplying the total number of hours expended times the employee's hourly wage rate plus the cost of any applicable employee benefits and overtime pay as required by law. The charge for producing a redacted record shall be in addition to any fees charged for the cost of copying the public record as provided elsewhere in this Rule.

(6) Production of Records from a Database or Backup Files.

- (a) If the requested record or information is maintained in an electronic or digital database or other non-printed form and providing the record for inspection and/or copying will require development of a program/application or the reloading of backup files to produce the record or put it into a readable format, the requestor shall reimburse the Department for the full cost of employee time and/or other costs, including the cost of services provided by an independent contractor, associated with developing the program/application or the reloading of backup files to produce the record. The charge for producing the record shall be in addition to any fees charged for the cost of copying the public record as provided elsewhere in this Rule.
- (b) The cost of employee time shall be calculated by multiplying the total number of hours expended times the employee's hourly wage rate plus the cost of any applicable employee benefits and overtime pay as required by law.
- (c) The cost of services provided by an independent contractor shall be the actual cost charged to the Department by the contractor in accordance with the unit rates established in the Department's contract.

(7) Payment of Production and Copy Costs.

- (a) Unless waived in accordance with Rule 1680-4-2-.06(8) below, all production and copy costs shall be remitted to the Department prior to or immediately upon receipt of any copies of a public record or records. These copy costs include the cost of producing redacted records and/or the cost of producing records from a database or backup files, if applicable, and shipping charges, if applicable, as well as any standard copy charges as provided in this Rule.
- (b) At the discretion of the Department, a requestor may be invoiced for the cost of providing copies of public records.
- (c) Payment shall be remitted by check or money order made payable to the Tennessee Department of Transportation.

(8) Waiver of Production and Copy Charges.

- (a) The Department may waive production and/or copy charges for copies of public records provided to Federal, State or local governmental agencies or officials.
- (b) The Department may waive production and/or copy charges for copies of public records provided to any person or entity that will use the records to perform work for the Department or to perform work for another person or entity in connection with and for the benefit of a construction project or other official business of the Department.
- (c) The Department may waive copy charges for copies of a map, plan sheet, or other public record provided to any person or entity whose property may be directly impacted by a Department project.
- (d) The Department may waive copy charges if the request is for a routine record not exceeding ten (10) pages in length that may be readily copied and delivered to a requestor in person or by facsimile or e-mail transmission.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503 and 10-7-506.

1680-4-2-.07Appendices.

- (1) Appendix 1: Plans Disclaimer and Limitation of Liability Agreement.



#### **Plans Disclaimer and Limitation of Liability Agreement**

The Tennessee Department of Transportation (TDOT) is committed to providing access to files and plans. TDOT does not possess a staff that is available to provide technical support to outside parties who receive copies of plans. It is important, therefore, that all potential users of these plans read the following disclaimer and accept its terms as prerequisite to the use of the plans.

1. TDOT makes no warranty of any kind, express or implied, with respect to the plan(s) subject to this agreement, and specifically makes no warranty that said plan(s) shall be fit for any particular purpose. Furthermore, any description of said plan(s) shall not be deemed to create an express warranty that such plan(s) shall conform to said description.
2. Receiver assumes all risk and liability for any losses, damages, claims or expenses resulting from the use or possession of any plan(s) furnished by TDOT pursuant to this agreement.
3. Receiver agrees to indemnify, defend and hold harmless to the extent permitted by law TDOT, its officers, agents, and employees from and against any and all claims, suits, losses, damages and costs, including reasonable attorney's fees, arising from or by reason of receiver's use or possession with respect to any of the plan(s) furnished by TDOT pursuant to this agreement, and such indemnification shall survive acceptance of said plan(s) by receiver.
4. Since **revisions or additions to the design plan(s) may occur at any time**, the receiver agrees to indemnify, defend and hold harmless to the extent permitted by law TDOT, its officers, agents, and employees from and against any and all claims, suits, losses, damages or costs, including reasonable attorney's fees, arising from the use of outdated plans, and such indemnification shall survive acceptance of said plan(s) by receiver.
5. The design plan(s) are copyrighted by the Tennessee Department of Transportation and may not be resold.

6. These terms and conditions constitute the complete and final agreement of the parties hereto.
7. The undersigned is authorized by \_\_\_\_\_ to execute this agreement on its behalf. (Firm / Agency)

**I accept the aforementioned terms and conditions.**

Project: \_\_\_\_\_

File (s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature (Receiver)

\_\_\_\_\_  
Firm / Agency

Date

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503 and 10-7-506.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2006.