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**Division of Publications**  
 312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Fax: 615-741-5133  
 Email: [sos.information@state.tn.us](mailto:sos.information@state.tn.us)

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**Rulemaking Hearing Rule(s) Filing Form**

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

**Agency/Board/Commission:** Tennessee Wildlife Resources Agency  
**Division:** Administration  
**Contact Person:** Lisa Crawford  
**Address:** PO Box 40747, Nashville, TN  
**Zip:** 37204  
**Phone:** 615-781-6606  
**Email:** [Lisa.Crawford@state.tn.us](mailto:Lisa.Crawford@state.tn.us)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised** (for additional chapters, copy and paste table)

Chapter Number	Chapter Title
1660-03-01	Rules and Regulations Governing Access to Public Records
Rule Number	Rule Title
1660-03-01-.01	Charges for Access to Public Records
1660-03-01-.02	Requests for Access to Records
1660-03-01-.03	Requests for Reproduction of Records
1660-03-01-.04	Waiver of Fees
1660-03-01-.05	Reduction of Fees
1660-03-01-.06	Payment for Records

Rules Of The  
 Tennessee Wildlife Resources Agency

Chapter 1660-03-01  
 Rules and Regulations Governing  
 Access to Public Records

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 1660-03-01-.05 Reduction of Fees  
 1660-03-01-.06 Payment for Records

1660-03-01-.01Charges For Access to Public Records

Upon a request for records under Tennessee's Public Records Act, Tenn. Code Ann. § 10-7-501 et seq., the Agency shall assess charges for the copying and labor based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel, available at <http://www.comptroller.state.tn.us/openrecords/index.htm>.

Authority: T.C.A. §§69-9-209; 70-1-206; 10-7-501, et seq.; and 2008 Public Chapter 1179. Administrative History: Original rule filed \_\_\_\_\_; effective \_\_\_\_\_.

1660-03-01-.02 Requests for Access to Records

- (1) A request for access to public records shall be made during the regular business hours of the agency from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (2) Requests may be made in writing to the office of the Executive Director and shall identify with reasonable specificity the record, set or system of records which is requested. Records requests will be processed on a first-come, first-served basis; provided, that the Executive Director, or his designee, may at any time alter this provision when circumstances warrant.
- (3) Prior Review and Assessment for Confidential, Privileged or Protected Material/Non-Routine Requests.
  - (a) Review, Assessment and Redaction for Access to Records Requests.
    1. Before providing access to the requested record, agency staff shall review the requested record or records as quickly as reasonably possible, consistent with the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status of the records and the scope of the requested access.
    2. Upon review, agency staff may redact any such data or information prior to release of the record, or portion of the record, that it has reason to believe has or may have confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.
  - (b) If the agency determines that none of the provisions of subparagraph (c) below apply and access can otherwise be provided immediately, it shall do so.
  - (c) If it appears from the agency's review and assessment that access to the record, or the system of records, cannot be provided immediately because:
    1. Additional time is required to locate and retrieve the records because the records are not stored on the site or cannot be located;
    2. The record or records require redaction of confidential, privileged or otherwise protected material;
    3. The record is subject to current use as part of an on-going investigation and cannot be provided without interrupting or jeopardizing the investigation;
    4. A computer or computer system that contains the record is unable to be accessed, is undergoing maintenance or re-programming for any agency program purposes, and/or cannot be accessed without substantially interfering with the delivery of services to the public or without damage to the integrity, operability or functioning of any computer or computer system;

5. Production of the record or records will require development of a program or application to provide access to, or a readable format for access to, electronic or magnetic sources of the record or records; or
6. For any other reason,

then the agency shall inform the requesting person of the assessment and the reasonable approximate time required in complying with the request and a summary of the basis for the assessment regarding access to the records.

Authority: T.C.A. §§69-9-209; 70-1-206; 10-7-501, et seq.; and 2008 Public Chapter 1179. Administrative History: Original rule filed \_\_\_\_\_; effective \_\_\_\_\_.

#### 1660-03-01-.03 Requests for Reproduction of Records

- (1) A request for copies of public records shall be made during the regular business hours of the agency from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (2) Requests may be made in writing to the office of the Executive Director and shall identify with reasonable specificity the record, set or system of records which is requested. Records requests will be processed on a first-come, first-serve basis; provided, that the Executive Director, or his designee, may at any time alter this provision when circumstances warrant.
- (3) Prior Review and Assessment for Confidential, Privileged or Protected Material/Non-Routine Copy Requests.
  - (a) Review, Assessment and Redaction of Records for Copy Request.
    1. Before reproducing copies of the requested record, agency staff shall review the requested record or records as quickly as reasonably possible consistent with the availability of appropriate staff and with regard to the scope of the records request and shall make an assessment of the status and scope of the copy request and the difficulty and costs for copies of, or for preparing, any records to determine if the request will require that "routine" or "non-routine" copies, as defined in Rule 1240-09-01-.02, or a combination thereof, be provided.
    2. Upon review, agency staff may redact any such data or information prior to release of the record, or portion of the record, that it has reason to believe has or that may have confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.
  - (b) If the agency determines that none of the provisions of subparagraph (c) apply and copies can otherwise be provided immediately, it shall do so. If the reproduction of copies of the records is requested and the request involves the reproduction of "routine" copies, it shall inform the requesting person and shall make such records available to the requesting person as soon as reasonably possible.
  - (c) If it appears from the agency's assessment that reproduction of the record, or the system of records, cannot be provided immediately because:
    1. Additional time is required to locate and retrieve the records because the records are not stored on the site or cannot be located;
    2. The record or records require redaction of confidential, privileged or otherwise protected material;
    3. The record is subject to current use as part of an on-going investigation and cannot be provided without interrupting or jeopardizing the investigation;

4. A computer or computer system that contains the record is unable to be accessed, is undergoing maintenance or re-programming for any agency program purposes, and/or cannot be reproduced without substantially interfering with the delivery of services to the public or without damage to the integrity, operability or functioning of any computer or computer system;
5. Reproduction of the record or records will require development of a program or application to provide copies, in a readable format from, electronic or magnetic sources of the record or records, or that the person or entity has requested copies of the record in a specific format, and that such program, application or format does not currently exist; or
6. For any other reason,

then the agency shall inform the requesting person of the assessment and the reasonable approximate time required and costs involved in complying with the request and a summary of the basis for the assessment regarding the reproduction of copies of the records.

Authority: T.C.A. §§69-9-209; 70-1-206; 10-7-501, et seq.; and 2008 Public Chapter 1179. Administrative History: Original rule filed \_\_\_\_\_; effective \_\_\_\_\_.

#### 1660-03-01-.04 Waiver of Fees

Should any charge assessed under Rule Chapter 1660-3-1 total ten (\$10.00) dollars or less, the Agency may waive the charge and provide the requested documents without payment. Pursuant to T.C.A. Section 70-1-304, the Executive Director will publish, without charge, the hunting, fishing and trapping laws, for general distribution and information.

Authority: T.C.A. §§69-9-209; 70-1-206; 10-7-501, et seq.; and 2008 Public Chapter 1179. Administrative History: Original rule filed \_\_\_\_\_; effective \_\_\_\_\_.

#### 1660-03-01-.05 Reduction of Fees

The Executive Director, or his or her designee, may waive or reduce any part of the fees calculated under these rules upon a written determination that such waiver or reduction would be in the best interests of the public.

Authority: T.C.A. §§69-9-209; 70-1-206; 10-7-501, et seq.; and 2008 Public Chapter 1179. Administrative History: Original rule filed \_\_\_\_\_; effective \_\_\_\_\_.

#### 1660-03-01-.06 Payment for Records

- (1) Prior to copies being made, or prior to developing a specific format for the reproduction of records, payment in full must be made to the agency, unless the payment is waived or delayed.
- (2) Payment shall be made for payment of the costs of reproducing records only by cash, cashier's check, money order, or credit card.
- (3) The cashier's check or money order shall be made payable to the Tennessee Wildlife Resources Agency and must be delivered to the agency sales office at:

TWRA Agency Sales  
Ray Bell Region II Office Building  
5105 Edmondson Pike  
PO Box 41489  
Nashville, TN 37204

Authority: T.C.A. §§69-9-209; 70-1-206; 10-7-501, et seq.; and 2008 Public Chapter 1179. Administrative History: Original rule filed \_\_\_\_\_; effective \_\_\_\_\_.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
R. B. "Buddy" Baird	✓			
Mike Chase	✓			
Johnny Coleman	✓			
Thomas H. Edwards	✓			
Jim Fyke	✓			
Ken Givens	✓			
Mike Hayes	✓			
Gary K. Kimsey	✓			
Boyce C. Magli	✓			
Mitchell S. Parks	✓			
Todd A. Shelton	✓			
Hugh Simonton, Jr.	✓			
Danya Welch	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 02-19-2009 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12-22-2008

Notice published in the Tennessee Administrative Register on: 01-01-2009

Rulemaking Hearing(s) Conducted on: (add more dates). 02-19-2009

Date: 2-26-09

Signature: Gary T. Myers

Name of Officer: Gary T. Myers

Title of Officer: Executive Director



Subscribed and sworn to before me on: 2-26-09

Notary Public Signature: Lisa Crawford

My commission expires on: 8-23-11

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.

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General

2-16-10  
Date

Department of State Use Only

Filed with the Department of State on: 2/22/10

Effective on: 5/23/10

Tre Hargett

Tre Hargett  
Secretary of State

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PUBLICATIONS

**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 shall 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.

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RULE: 1660-3-1

New	<u>  X  </u>
Amendment	<u>      </u>
Repeal	<u>      </u>

- 
- There were no public comments to the above-described rule.
  - Attached hereto are the responses to public comments.

### Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 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, and/or directly benefit from the proposed rule;

Any and all small businesses requesting copies of official state records from the Tennessee Wildlife Resources Agency pursuant to the Tennessee Open Records Act, T.C.A. §§ 10-7-501 et seq. will be directly affected by these rules.

(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;

Administrative costs for compliance with these rules will be negligible. Our accounts receivable office will perform recordkeeping in its normal course of business.

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

There should be very little effect on small businesses and consumers. The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

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

None exists.

(5) A comparison of the proposed rule with any federal or state counterparts; and

These rules are very similar to rules being adopted by other state agencies in that they adopt and reference the provisions contained in Public Chapter 1179 of the Acts of 2008 that amended the Tennessee Public Records Act, T.C.A. §§ 10-7-503, *et seq.* which provides for the establishment of a schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5.

(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.

N/A

## Additional Information Required

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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 rule is proposed to adopt and reference the provisions contained in Public Chapter 1179 of the Acts of 2008 that amended the Tennessee Public Records Act, T.C.A. §§ 10-7-503, *et seq.* which provides for the establishment of a schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5.

- (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;

Public Chapter 1179 establishes a schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5.

- (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;

Any persons who request copies of official state records from the Tennessee Wildlife Resources Agency pursuant to the Tennessee Open Records Act, T.C.A. §§ 10-7-501 *et seq.* are directly affected by these rules.

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

There have been no Attorney General opinions or judicial rulings relevant to these rules.

- (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 are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

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

Nat Johnson

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

Nat Johnson, TWRA Assistant Executive Director, will explain the rule at the scheduled meeting of the Government Operations Committees.

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

Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 781-6555.

- (I) What prompted the promulgation of the rule? Also include any additional information relevant to the rule proposed for continuation which the committee requests.

Passage of Public Chapter 1179 of the Acts of 2008.