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Sequence
 Number: 06-07-10
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 File Date: 06/09/2010
 Effective Date: 11/28/2010

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

Agency/Board/Commission: Tennessee Department of Agriculture
Division: Administration
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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. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0080-01-05	Fees For Copies of Departmental Public Records
Rule Number	Rule Title
0080-01-05-.01	Purpose and Scope
0080-01-05-.02	Definitions
0080-01-05-.03	Requests for Access to Records
0080-01-05-.04	Fees and Costs for Reproduction of Records
0080-01-05-.05	Copying By Requesting Person or Entity
0080-01-05-.06	Payment for Records
0080-01-05-.07	Copy Fee Waivers

New Rules

0080-01-05-.01 Purpose and Scope.

These rules are promulgated for the purpose of providing procedures to allow access to records of the Tennessee Department of Agriculture that are subject to the Tennessee Public Records Act, T.C.A. §§

10-7-501 et seq., and are promulgated for the additional purpose of implementing and establishing fees to be charged for reproduction of records or for the development of records in a specific format.

Authority: T.C.A. §§4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-506.

0080-01-05-.02 Definitions.

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Agriculture.
- (2) "Commissioner's Designee" means Deputy Commissioner, Assistant Commissioners, Executive Assistants, General Counsel, Staff Attorneys or Division Directors of the Department of Agriculture.
- (3) "Routine Copy" is a paper copy of a record which, to be made, requires minimal staff assistance, i.e., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier.
- (4) "Non-routine Copy" is a copy, whether of paper or of electronically stored data, which requires more than minimal staff assistance, i.e., odd or oversize pages, bound documents, or manipulation of electronically stored data.
- (5) "Public Record"
 - (a) "Public Record" means, for purposes of this Chapter, any record of the Department that is deemed to be open to inspection of the public pursuant to the provisions of the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et. seq. and pursuant to court order and case law interpreting the Act.
 - (b) The term "Public Record" does not include any data in any record, or any portion of a record, that is:
 1. protected as confidential or privileged pursuant to any state law or regulation, or federal law or regulation or under any court order; or
 2. protected as privileged under any statutory or common law privilege; or
 3. protected as any attorney work product; or
 4. protected by the attorney/client or any other professional privilege, or
 5. investigative records protected by T.C.A. 10-7-504.
- (6) "Record"
 - (a) The term "Record" includes, for purposes of this Chapter, any data and/or documents developed and maintained by the Department, or that have been received and are maintained by the Department, during the normal course of the Department's business activities including all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.
 - (b) "Records" subject to this Chapter may be maintained on paper, magnetically, or electronically, on a single computer or computer system, whether on disk, tape or otherwise.

Authority: T.C.A. §§4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.03 Requests for Access to Records.

- (1) A request for access to public records shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (2) Requests may be made orally or in writing to the office of the Commissioner, or to any Department employee, 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 Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant, subject to the requirements of the Tennessee Public Records Act.
- (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, the Department's staff shall review the record or records as quickly as reasonably possible consistent with the requirements of the Tennessee Public Records Act, 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 scope of the requested access.
 2. Upon review, the Department's 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.

Authority: T.C.A. §§4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.04 Fees and Costs for Reproduction of Records.

Upon a request for records under the Tennessee Public Records Act, the Department 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. §§4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506, 8-4-604.

0080-01-05-.05 Copying by Requesting Person or Entity.

- (1) The Commissioner, or the Commissioner's designee, may, in his or her discretion, permit the requesting person to supply the necessary equipment and supplies to make the requested copies where the records are housed or located for purposes of the records request, and all, or a portion, of the fees required by this Section may, in his or her discretion, be waived by the Department, but no record shall be permitted to be removed from the Department's offices for this purpose without written approval by the Commissioner or the Commissioner's designee.

- (2) The Department may provide any personnel to observe the copying process permitted by this paragraph to protect the integrity of the records, and the costs of staff time necessary for this purpose may be charged pursuant to this Section.

Authority: T.C.A. §§4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.06 PAYMENT FOR RECORDS.

- (1) Prior to copies being made or prior to developing a specific format for the reproduction of records, the Department may provide an estimate of copying costs and require payment prior to copies being made or prior to developing a specific format for the reproduction of records.
- (2) The department will accept, as payment for the costs of reproducing records, cash, cashier's check, money order; and, at the department's discretion, personal checks.
- (3) The check, cashier's check or money order shall be made payable to the Treasurer, State of Tennessee, and be delivered to the Department contact responsible for reproducing the record.
- (4) 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.

Authority: T.C.A. §§4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.07 Copy Fee Waivers.

- (1) The Department may waive fees that are otherwise due pursuant to this rule if they determine that the person seeking such waiver is indigent, or if, in their opinion, such waiver serves the public welfare. Such waivers will be liberally granted; however, excessive or unreasonable requests may be denied.
- (2) The Department may provide copies of rules, guidance documents, public reports, etc., at no charge.
- (3) The Department may waive fees for copies of public records provided to Federal, State or local governmental agencies or officials.
- (4) The Department may waive fees for copies of public records provided to any person that will use the records to perform work or other official business for the Department.
- (5) 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 requester in person or by facsimile transmission.

Authority: T.C.A. §§4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on March 31, 2010, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: March 31, 2010

Signature: _____

Name of Officer: Terry J. Oliver

Title of Officer: Deputy Commissioner



Subscribed and sworn to before me on: March 31, 2010

Notary Public Signature: _____

My commission expires on: September 8, 2013

All proposed 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 and Reporter
5-21-10

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

6/9/10
11/28/10

Tre Hargett

Tre Hargett
Secretary of State

SECRETARY OF STATE
PUBLICATIONS

2010 JUN -9 AM 9:47

RECEIVED

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th 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.

These rules should have no impact on small businesses.

Additional Information Required by Joint Government Operations Committee

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;

New Rules Chapter 0080-01-05 are promulgated for the purpose of providing procedures to allow access to those records which are within the custody and control of the Tennessee Department of Agriculture and that are within the definition of public records in the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq., and that are not within any exception or privilege that excludes the public record from being available for inspection and copying by members of the public. These rules are also promulgated for the purpose of referencing and adopting the guidelines established by the Office of Open Records Counsel for fees to be charged for reproduction of records or for the development of records in a specific format.

- (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;

These proposed rules are made pursuant to T.C.A. 10-7-501 through 10-7-515.

- (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;

These rules will affect persons seeking access to records within the custody and control of the Tennessee Department of Agriculture.

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

There are no Tennessee Attorney General opinions which directly relates 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 these rules.

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

Tom Womack, Public Information Officer, Department of Agriculture

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

Tom Womack, Public Information Officer, Department of Agriculture

Theresa Denton, General Counsel, Department of Agriculture

- (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

Tom Womack and/or Theresa Denton
Tennessee Department of Agriculture
440 Hogan Road
Nashville TN 37220
615-837-5103

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