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

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Sequence Number: 08-03-13  
 Rule ID(s): 5512  
 File Date: 8/6/13  
 Effective Date: 11/4/13

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Doe Mountain Recreation Authority (DMRA)
<b>Division:</b>	
<b>Contact Person:</b>	Gabrielle Lynch, Secretary-Treasurer, DMRA
<b>Address:</b>	10537 Hwy 421 N; Shady Valley, TN
<b>Zip:</b>	37688
<b>Phone:</b>	423.471.0700
<b>Email:</b>	glynch@tnc.org

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

- Amendment  
 New  
 Repeal

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

Rule Number	Rule Title
0485-01-01	Rules of the Doe Mountain Recreation Authority
0485-01-01-.01	Purpose
0485-01-01-.02	Applicability and Scope
0485-01-01-.03	Rules Incorporated by Reference
0485-01-01-.04	Hours
0485-01-01-.05	Hunting and Weapons
0485-01-01-.06	Off-highway Vehicles
0485-01-01-.07	User Agreement and Fees
0485-01-01-.08	Commercial Activities
0485-01-01-.09	Penalties

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rules of the Doe Mountain Recreation Authority

Chapter 0485-01-01

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0485-01-01-.01 Purpose

(1) Pursuant to the Doe Mountain Recreation Authority Act of 2012, T.C.A. §§ 11-25-101 to -119, the purpose of this Chapter is to establish rules and regulations for the administration and management of the Doe Mountain Recreation Authority and the lands under its administration.

Authority: T.C.A. §§ 11-25-107 to -108.

0485-01-01-.02 Applicability and Scope.

(1) The rules in this Chapter shall apply to the Doe Mountain Recreation Authority and all lands under its administration.

Authority: T.C.A. §§ 11-25-107 to -108.

0485-01-01-.03 Rules Incorporated by Reference

(1) General: Except as otherwise provided in these rules, and subject to the definitions below, the following rules of the Tennessee Department of Environment and Conservation, including any future amendments, shall apply to the Doe Mountain Recreation Authority and all lands under its administration:

0400-02-02 Public Use and Recreation

0400-02-05-.01-.21 Vehicles and Traffic Safety (excludes rule 0400-02-05-.22: Trail Bikes, Mini Bikes, and Other Off Road Vehicles)

(2) Definitions: The following terms used in the rules of the Tennessee Department of Environment and Conservation have the following definitions as they apply to the Doe Mountain Recreation Authority and the lands under its administration:

(a) The terms "Commissioner" and "Assistant Commissioner" shall mean the Chair of the Board of Directors of the Doe Mountain Recreation Authority.

(b) The term "Park Manager" includes the Board of Directors of the Doe Mountain Recreation Authority, the Doe Mountain Recreation Authority Manager, or their authorized representatives.

(c) The term "Authorized Person" includes any person authorized to enforce the provisions of these regulations.

(d) The term "Park Area" includes all lands administered by the Doe Mountain Recreation Authority.

(3) If there is an inconsistency between these rules and the rules of the Tennessee Department of Environment and Conservation, these rules are controlling with respect to the Doe Mountain Recreation Authority and all lands under its administration.

Authority: T.C.A. §§ 11-25-107 to -108.

0485-01-01-.04 Hours

(1) Notwithstanding any other provision of these rules or the rules of the Tennessee Department of Environment and Conservation, the Board of Directors of the Doe Mountain Recreation Authority will establish hours for use of the lands under its administration. Hours may differ depending on usage and season. Hours shall be posted publicly.

Authority: T.C.A. §§ 11-25-107 to -108.

#### 0485-01-01-.05 Hunting and Weapons

(1) Hunting: The Board of Directors of the Doe Mountain Recreation Authority shall determine when and to what extent the lands under its administration will be open for hunting, consistent with the rules and proclamations of the Tennessee Wildlife Resources Agency. When lands are open to hunting, the laws of the State of Tennessee, including the rules of the Tennessee Wildlife Resources Agency, shall apply to the extent they apply generally to other public lands in the State of Tennessee.

(2) Weapons: Firearms and weapons are authorized consistent with Tennessee Department of Environment and Conservation Rule 0400-02-02-.11, or as otherwise authorized under the laws of the State of Tennessee.

Authority: T.C.A. §§ 11-25-107 to -108.

#### 0485-01-01-.06 Off-Highway Vehicles

(1) Off Highway Vehicle (OHV) is any motorized vehicle capable of traveling off highways. The term includes all-terrain vehicles, motorcycles, dune buggies, and other four-wheeled vehicles used for off-road activities.

(2) Within the Doe Mountain Recreation Authority-administered lands, OHVs are restricted to use on roads and trails designated for OHV use.

(3) OHV users must comply with all relevant safety laws, including the use of safety belts and child safety restraints if the vehicle is so equipped. OHV users must comply with minimum age requirements and OHV passenger limitations. All pertinent safety equipment, including an approved helmet, protective eyewear, and protective clothing is recommended.

(4) Minors (under the age of 18) must be under the supervision of an adult and must wear a DOT or SNELL approved helmet in accordance with state law.

(5) OHVs must be operated in a safe manner. Recklessness and the harassment or disturbance of people or wildlife is not permitted.

Authority: T.C.A. §§ 11-25-107 to -108.

#### 0485-01-01-.07 User Agreement and Fees

(1) User Agreement: All Doe Mountain Recreation Authority users must sign an Acknowledgement of Risk and have a valid Doe Mountain Recreation Authority User Agreement and photo ID in their presence at all times while on Doe Mountain Recreation Authority lands.

(2) Fees - General: The Doe Mountain Recreation Authority Board of Directors will assess fees and other charges to defray the costs of the Authority's responsibilities with respect to the lands under its administration and to make the Doe Mountain Recreation Authority as self-sufficient as possible. Fees may be based on the type of recreational use, including the impact of particular uses on Doe Mountain and maintenance required for specific uses.

(3) Fee types: Charges may include, as determined by the Board of Directors of the Doe Mountain Recreation Authority, any of the following:

- (a) Single visit entry fees or user charges;
- (b) Annual fees;
- (c) Fees for special activities;
- (d) Fees assessed on authorized concessionaires;

(e) Parking fees; and,

(f) Such other fees or charges as the Doe Mountain Recreation Authority Board of Directors deems appropriate to accomplish the purposes of the Doe Mountain Recreation Act of 2012.

(4) Complementary passes and fee waivers: The Doe Mountain Recreation Authority Board of Directors may allow for complementary passes, as appropriate, for specific categories of users. The Board of Directors may also waive fees for appropriate purposes, such as for promotions, for access by persons conducting scientific research, etc., if the Board of Directors determines that waiver is in the interest of the Doe Mountain Recreation Authority. The authority to waive fees on a case-by-case basis may be exercised by the Chair of the Board of Directors of the Doe Mountain Recreation Authority. The authority to waive fees on a case-by-case basis may also be delegated by the Board of Directors to the Doe Mountain Recreation Authority Manager or to such other person as the Board of Directors designates.

Authority: T.C.A. §§ 11-25-107 to -108.

0485-01-01-.08 Commercial Activities

(1) Advertisements: Commercial notices and advertisements shall not be displayed, posted, or distributed on Doe Mountain Recreation Area lands without the written permission of the Chair of the Board of Directors of the Doe Mountain Recreation Authority or the written permission of the Doe Mountain Recreation Authority Manager. Permission may be granted if such notices or advertisements are found to be desirable or necessary for the convenience and guidance of the public.

(2) Business operations: Engaging in or soliciting any business on Doe Mountain Recreation Area lands is prohibited except in accordance with a contract, other written agreement, or other specific authorization from the Doe Mountain Recreation Authority.

Authority: T.C.A. §§ 11-25-107 to -108.

0485-01-01-.09 Violations

(1) Failure to comply with these rules may result in the cancellation of a user's day or annual pass - without refund of fees - or a permanent ban from use of the Doe Mountain Recreation Area administered lands. Violations of federal, state, or local law may also result in charges, arrests, prosecutions, and any penalties authorized by law.

Authority: T.C.A. §§ 11-25-107 to -108.

\* The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Frank Arnold	X				
Ed Carter	X				
Mike Farmer	X				
Jerry Grindstaff	X				
Carolyn Hawkins	X				
Brock Hill	X				
Lawrence Keeble	X				
Gabrielle Lynch	X				

Terry Maughon	X				
Roby Philippi	X				
Larry Potter	X				
Ray Stout	X				
Richard Strang	X				
Alicia Summers	X				
Susan Whitaker	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Doe Mountain Recreation Authority Board of Directors on 07/09/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/15/2013

Rulemaking Hearing(s) Conducted on: (add more dates). 07/09/2013

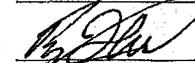
Date: 7-11-13

Signature: 

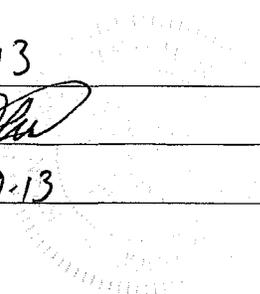
Name of Officer: Larry Potter

Title of Officer: Chair, Doe Mountain Recreation Authority Board of Directors

Subscribed and sworn to before me on: 7-11-13

Notary Public Signature: 

My commission expires on: 7-20-13



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.  
Attorney General and Reporter

7-29-13

Date

**Department of State Use Only**

Filed with the Department of State on: 6/6/13

Effective on: 1/14/13



Tre Hargett  
Secretary of State

RECEIVED  
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DEPARTMENT OF STATE

## **Public Hearing Comments**

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

Copy attached at end.

**Regulatory Flexibility Addendum**

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

(If applicable, insert Regulatory Flexibility Addendum here)

This rule does not affect small businesses.

### **Impact on Local Governments**

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

This rule has no projected impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

This is the initial rule of the Doe Mountain Recreation Authority (DMRA). The Rule adopts portions of the rules of the Tennessee Department of Environment and Conservation that apply to Tennessee State Parks and natural areas. The rule provides definitions to apply these rules to the DMRA. It also contains specific provisions on off-highway vehicles, fees, hours, hunting and weapons, and violations.

- (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;

T.C.A. §§ 11-25-107 and 11-25-108 authorize the DMRA to make rules and regulations deemed expedient for the management of the affairs of the Authority.

- (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;

Potential users of DMRA lands will be most directly affected by this rule. Representatives of potential user groups serve on the Board of Directors of the DMRA and urge adoption of this rule.

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

Not applicable.

- (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;

The fiscal impact on state and local government revenues and expenditures is minimal.

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

Gabrielle Lynch, Secretary-Treasurer, DMRA and Mona Alderson, Pro Bono DMRA Legal Counsel

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

Gabrielle Lynch, Secretary-Treasurer, DMRA and Mona Alderson, Pro Bono DMRA Legal Counsel

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

Gabrielle Lynch, 10537 Hwy 421 N; Shady Valley, TN 37688 phone 423.471.0700

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

Doe Mountain Recreation Authority Rules: Chapter 0485-01-01  
Rulemaking Hearing: July 9, 2013  
Rulemaking Hearing Comments and Responses

Two persons provided comments at the rulemaking hearing, one of whom provided written comments. A summary of the comments and responses are provided below:

Comment: The rules should address noise abatement, including the need to require spark arrestors on off-road vehicles.

Response: The TDEC rules, adopted by the DMRA Board of Directors (the Board), address noise levels at 0400-02-02-.03 (Audio Devices); 0400-02-02-.07 (Disorderly Conduct – includes “unreasonable noise”); 0400-02-05-.08 (Excessive Acceleration); 0400-02-05-.12 (Mufflers). DMRA rule 0485-01-01-.06 addresses off-highway vehicles: “harassment or disturbance of people or wildlife is not permitted.” The DMRA User Agreement requires spark arrestors on off highway vehicles.

Comment: The rules should address Tennessee handgun permit laws and authorize legal weapons.

Response: A section has been added, “Firearms and Other Weapons: Weapons are permitted pursuant TDEC Rule 0400-02-02-.11 and as otherwise authorized by the laws of the State of Tennessee.”

Comment: The definitions of “Commissioner,” “Assistant Commissioner,” and “Park Manager” are confusing. The commenter also disagreed with some of the designations of responsibility.

Response: The rule now combines the definition of “Commissioner” and “Assistant Commissioner” into one subsection; the Chair of the DMRA Board will perform these functions. The term “Executive Director” has been changed to “DMRA Manager.” The rules identify several persons/entities who may perform the function of TDEC “Park Manager.” Because the DMRA does not yet have a DMRA Manager, someone has to perform those functions until it does. In the interest of the greatest flexibility, the Board or its designee may also perform the “Park Manager” functions.

Comment: The TDEC rules are not specific to the DMRA-administered property; they should be revised to be specific to the DMRA.

Response: The Board is adopting two chapters of TDEC rules in the interest of simplicity. Recognizing that these TDEC rules are not a perfect fit in every respect (for example, there is no large body of water), these rules have gone through Attorney General review, have stood the test of time, and are applicable to large numbers of public lands in Tennessee. The Board believes they can and should also apply to the DMRA, at least until a Master Plan is finished and changes in usage or management of the property might dictate changes to the rules. The Board adopted unique DMRA specific rules in limited areas: OHV, hours, fees, hunting, and other areas where TDEC rules would be inconsistent with DMRA purposes and requirements.

Comment: Penalties for violations of rules should be identified. How will the rules be enforced?

Response: The rule as proposed and as adopted contains a section on “Violations.” The DMRA has no authority to impose criminal penalties. Violation of some of the rules would also violate State law and carry a penalty. Penalties are found in the Tennessee criminal code and are not in regulations.

Comment: The rule does not address all uses, for example ziplines, caving, hang gliding, etc.

Response: Neither the DMRA nor the TDEC rules address every conceivable use. The rules do provide that the Park Manager may “close or restrict the public use of all or any portion of a park area, when necessary for the

protection of the area or the safety and welfare of persons or property.” TDEC Rule 0400-02-02-.06. The TDEC rules also address the intentional or wanton destruction, defacement, or removal of features or natural resources. TDEC Rule 0400-02-02-.18. The Board believes the current rules are sufficient at this time.

Comment: One commenter provided a number of suggestions to change the TDEC rules that were editorial in nature.

Response: Because the DMRA is adopting the TDEC rules as they stand or are hereafter amended and the suggestions do not go to the substance of the rule, the Board has not accepted these comments.