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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:	Department of Health
Division:	Inspection and Copying of Department Records
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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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-35-01	Inspection and Copying of Department Records
Rule Number	Rule Title
1200-35-01-.01	Purpose
1200-35-01-.02	Definitions
1200-35-01-.03	Making a Request
1200-35-01-.04	Inspection and Copying of Public Records
1200-35-01-.05	Payment of Costs for Reproduction of Public Records

(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>)

Department of Health
 Inspection and Copying of Department Records
 Chapter 1200-35-01

New Rules

- 1200-35-01-.01 Purpose.
 1200-35-01-.02 Definitions.
 1200-35-01-.03 Making a Request.
 1200-35-01-.04 Inspection and Copying of Public Records.
 1200-35-01-.05 Payment of Costs for Reproduction of Public Records.

1200-35-01-.01 Purpose.

The purpose of these rules is to establish procedures to accommodate requests to inspect and/or copy records maintained by the Tennessee Department of Health, 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 preserving the confidentiality of confidential records and/or confidential information as provided in Federal or State law. These rules do not govern charges made for copies of records made pursuant to a law other than the Tennessee Public Records Act. 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. §§ 10-7-503, 10-7-504 and 10-7-506.

1200-35-01-.02 Definitions. As used in these rules, the following terms are defined as follows:

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Health.
- (2) "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.
- (3) "Department" means the Tennessee Department of Health.
- (4) "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 or processing from the Records Custodian, and including without limitation:
 - (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.
- (5) "OORC" means the Office of Open Records Counsel.

- (6) "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.
- (7) "Public Records Act" means the Tennessee Public Records Act as codified in T.C.A. § 10-7-501, et seq.
- (8) "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.
- (9) "Record available for a fee" 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) Specialized output including but not limited to maps, tables, html and xml documents and spreadsheets;
 - (b) Custom and specialized aggregations or records and data;
 - (c) Custom reports not otherwise produced;
 - (d) Data sets; and
 - (e) Vital Records.
- (10) "Records Custodian" means an employee of the Department who has direct supervisory authority over the specific division, section or office of the Department where the requested Department records are maintained.

- (11) "Redacted record" means a record that has been edited to remove information that is confidential under Federal or State law.
- (12) "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, including without limitation:
 - (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. §§ 8-4-604, 10-7-503, 10-7-504, 10-7-506, and 68-3-102.

1200-35-01-.03 Making a Request.

- (1) Business Hours.
 - (a) 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.
- (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 appropriate Records Custodian where the requested records are maintained.
- (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.

Authority: T.C.A. §§ 8-4-604, 10-7-503 and 10-7-506.

1200-35-01-.04 Inspection and Copying of Public Records.

(1) Preliminary Review of Request.

- (a) Upon receiving a request to inspect a Department record, other than a record available for purchase, the Records Custodian shall make a preliminary assessment of the nature and scope of the request. If the Records Custodian determines that it is not practicable to make the record promptly available for inspection and/or copying, the Records Custodian shall, within seven business days:
 1. Make the information available to the requestor; or
 2. Deny the request in whole or in part by providing a completed records request response in the form provided by OORC stating the basis for any denial; or
 3. Provide the requestor with a completed records request response form in the form provided by OORC stating the time reasonably necessary to produce the record.
- (b) To preserve a record of the request, the Department may ask the requestor to submit the request in writing, in accordance with Rule 1200-35-01-.03(2) above; provided, that failure to put the request in writing shall not prevent the requestor from making a personal inspection of records at the appropriate office during normal business hours.
- (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) If the requested records either do not exist within the custody of the Department, or are confidential records, the requestor shall be so advised; 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.

- (e) 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 1200-35-01-.05(1) below, the Department may require reimbursement for the employee time associated with making the redacted record for copying.
 - (f) 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 copying, as provided in Rule 1200-35-01-.05(2) below.
- (2) Form of Record Produced.
- (a) 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. § 8-4-604, §§10-7-503, 10-7-504 and 10-7-506.

1200-35-01-.05 Payment of Costs for Reproduction of Public Records.

- (1) The Department adopts the "Schedule of Reasonable Charges for Copies of Public Records" and any successor schedule developed by the Office of the Open Records Counsel for copies of public records made pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501 et. seq. Any charges not specifically listed or in addition to the amounts specified in the Schedule must be documented by the Records Custodian.
- (2) If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, the custodian shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.
- (3) Electronic records will be produced only in a read-only format.
- (4) If the custodian utilizes an outside vendor to produce copies of the requested records because the Department is unable to produce the copies, the cost charged by the vendor to the Department shall be recovered from the requesting party.
- (5) Delivery and/or shipping costs incurred may be included in the total amount charged for the records release if appropriate.
- (6) Payment must be made in advance in the form of a check or money order made payable to the "Treasurer, State of Tennessee".
- (7) The Department adopts the "Frequent and Multiple Requests Policy" and any successor policy developed by the Office of the Open Records Counsel for copies of public records made pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501, et. seq. A Records Custodian may aggregate such requests on any level, whether by agency, department, bureau, division, office or otherwise.
- (8) A Records Custodian may waive or reduce charges governed by these rules if:

- (a) Charges total less than Ten Dollars (\$10.00);
 - (b) The person requesting the copies is indigent pursuant to Federal poverty guidelines and signs a statement to that effect; or
 - (c) The person requesting the copies does so on behalf of a government agency.
- (9) The Commissioner may waive or reduce charges governed by these rules if the charges exceed Ten Dollars (\$10.00). A person requesting such reduction or waiver must do so in writing submitted to the Records Custodian.

Authority: T.C.A. §§ 4-4-103, 4-5-218(b) and (d), 8-4-604 and 10-7-506(a).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
NA					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Health on 10/25/2010, 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: 08/31/10

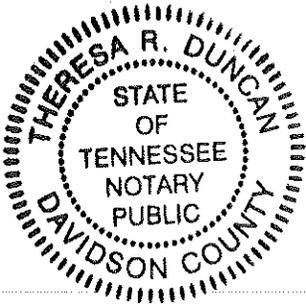
Rulemaking Hearing(s) Conducted on: (add more dates). 10/25/10

Date: 10/11/11

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel
Department of Health



Subscribed and sworn to before me on: 10-11-11

Notary Public Signature: Theresa R. Duncan

My commission expires on: 1-9-2012

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
10-13-11
 Date

Department of State Use Only

Filed with the Department of State on: 10/5/12

Effective on: 11/3/13

Tre Hargett
 Tre Hargett
 Secretary of State

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 SECRETARY 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.

INSPECTION AND COPYING OF DEPARTMENT RECORDS

The rulemaking hearing for the Department of Health was held on October 25, 2010 at 10:30 a.m. CDT in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Mary Kennedy, Deputy General Counsel, presided over the hearing.

No members of the public attended the rulemaking hearing. No oral comments were received at the rulemaking hearing.

The Department solicited comments from the Office of Open Records Counsel and received the following:

In the definitions portion of the rules, there are definitions for "record having commercial value" and "vital records"; and rule 1200-35-01(1)(e) and (f) should be clarified to charge for labor when an actual copy of extract is requested and not when the request is for inspection.

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.

This rule only affects State government and does not affect small businesses.

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 amendment will have 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 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;

These rules are for the implementation of the law relative to requests for inspection and copying of public records, pursuant to T.C.A. § 68-1-103 and T.C.A. § 10-7-501 et. seq. These rules set forth the procedures for requesting to review and copy public records and to implement the fee schedule for requests for copies of public records. They further define "routine" and "non routine" records, as well as records having commercial value, and they address the provision of electronic, as well as hard, copies of departmental records.

- (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. § 68-1-103 and T.C.A. § 10-7-501, et seq.

- (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 requesting copies of public records and the government agency fulfilling the request. The Department has received no feedback indicating support of or opposition to the rule.

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

None known

- (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 should be no noticeable increase or decrease in state or local government revenues and expenditures.

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

Mary Kennedy, Deputy General Counsel, Department of Health

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

Mary Kennedy, Deputy General Counsel, Department of Health

- (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

Mary Kennedy, Deputy General Counsel, Department of Health, 425 5th Avenue North, Cordell Hull Building, Third Floor, Nashville, TN 37243, (615) 532-7665, Mary.Kennedy@tn.gov

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

The Department will provide any further information upon request of the committee.