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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	State Park Operations
Contact Person:	Will Kerby
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243
Phone:	615-532-0497
Email:	will.kerby@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or 615-532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298
Email:	Jennifer.Katzenmiller@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	2 nd Floor Conference Rooms, A, B, and C		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Ave.		
City:	Nashville, TN		
Zip:	37243		
Hearing Date:	08/31/20		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

The Department of Environment and Conservation is committed to the Tennessee Pledge and reopening responsibly. All individuals planning to attend this hearing are asked to follow the current recommended guidelines for social distancing, hygiene, and wearing protective equipment when appropriate.

Alternate Hearing Option (An electronic participation option is also available. If the In-Person Hearing is Prohibited or Otherwise Inappropriate the Hearing will be Electronic-Only)

Method 1:	<p>You may also join electronically.</p> <p>Join by going to this link: https://tngov.webex.com/tngov/j.php?MTID=maef7d45ff64b5c3dcb93d2ffd65714d7</p> <p>Meeting number (access code): 161 960 5644 Meeting password: 3JWytAE2Ce7</p>
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Method 2:	Join by phone 1-415-655-0003 Access code: 161 960 5644 Global call-in numbers are available online at: Link for Global Call-in Numbers
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Additional Hearing Information:

If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact Cheryl Gracy at (615) 532-0041 for more information.

Currently, permits for the operation of unmanned aircraft systems in state parks are handled through the general Special Use Permit process. This rule provides guidance to park guests as to where unmanned aircraft systems may be flown in parks and the process for obtaining a permit to do so. It also sets out factors for the Commissioner or the Commissioner's designee to consider regarding the issuance of such a permit, which should create greater consistency and predictability in the permitting process.

An initial set of draft rules has been prepared for public review and comment. The "DRAFT" rules may be accessed for review using at <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-state-parks.html>.

In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, State Parks, Attention: Will Kerby, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243; telephone (615) 532-0497 or email: will.kerby@tn.gov. However, such written comments must be received by 4:30 PM CST, September 7, 2020, in order to assure consideration. For further information, please contact Will Kerby at the above address or telephone number, or by e-mail will.kerby@tn.gov.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-02-02	Public Use and Recreation
Rule Number	Rule Title
0400-02-02-.02	Aircraft
0400-02-02-.33	Unmanned Aircraft Systems

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-02-02
Public Use and Recreation

Amendments

Chapter 0400-02-02 Public Use and Recreation is amended by adding 0400-02-02-.33 Unmanned Aircraft Systems to the Table of Contents so that, as amended, the Table of Contents shall read as follows:

0400-02-02-.01 Abandoned and Unattended Property	0400-02-02-.19 Public Assemblies, Meetings
0400-02-02-.02 Aircraft	0400-02-02-.20 Report of Injury or Damage
0400-02-02-.03 Audio Devices	0400-02-02-.21 Saddle and Pack Animals
0400-02-02-.04 Begging and Soliciting	0400-02-02-.22 Sanitation
0400-02-02-.05 Camping	0400-02-02-.23 Scientific Specimens
0400-02-02-.06 Closing of Areas	0400-02-02-.24 Skating, Skateboards, Roller Blades, Segways, Scooters, and Like Recreational Equipment
0400-02-02-.07 Disorderly Conduct	
0400-02-02-.08 Dogs, Cats, and Other Pets	
0400-02-02-.09 Explosives	0400-02-02-.25 Special Events
0400-02-02-.10 False Reports	0400-02-02-.26 Swimming and Bathing
0400-02-02-.11 Firearms, Traps, and Other Weapons	0400-02-02-.27 Tampering with Vehicle or Vessel
0400-02-02-.12 Fires	0400-02-02-.28 Travel on Trails
0400-02-02-.13 Fishing	0400-02-02-.29 Water Skiing
0400-02-02-.14 Alcoholic Beverages	0400-02-02-.30 Wildlife; Hunting
0400-02-02-.15 Lost and Found Articles	0400-02-02-.31 Winter Sports
0400-02-02-.16 Picnicking	0400-02-02-.32 Reserved
0400-02-02-.17 Portable Engines and Motors	<u>0400-02-02-.33 Unmanned Aircraft Systems</u>
0400-02-02-.18 Preservation of Public Property, Natural Features, Curiosities, and Resources	

Authority: T.C.A. § 11-1-108 and §§ 4-5-201 et seq.

Rule 0400-02-02-.02 Aircraft is amended by adding a new paragraph that shall read as follows

(5) This rule does not apply to the operation of an unmanned aircraft system (UAS) as defined in Rule 0400-02-02-.33. See Rule 0400-02-02-.33 for the requirements that apply to operation of a UAS in park areas or natural areas.

Authority: T.C.A. § 11-1-108 and §§ 4-5-201 et seq.

Chapter 0400-02-02
Public Use and Recreation

New Rule

Chapter 0400-02-02 Public Use and Recreation is amended by adding Rule 0400-02-02-.33 Unmanned Aircraft Systems to read as follows:

0400-02-02-.33 Unmanned Aircraft Systems

(1) Definitions.

When used in this rule, the following terms have the meanings given below:

- (a) "Applicant" means the individual or entity that is submitting an application for unmanned aircraft system (UAS) flight outside the authorized flight zone. If the Applicant is an entity, the Applicant must have an individual listed on the application as the contact person for communication

purposes.

- (b) “Authorized flight zone” or “AFZ” means the land or water within a park area or natural area that is designated for unrestricted UAS launching, landing, and operation.
 - (c) “Commercial purpose” means operating a UAS for any purpose other than personal recreation and enjoyment. Such commercial purposes shall include, but not be limited to, filmmaking and photography, whether by professionals or amateurs, where there is the potential for financial gain, or where the film or photos are intended to be reproduced or posted on publicly available media outlets as brand promotion or awareness; scientific observation and data collection; specimen collection; GIS data collection; and research for institutions of higher education or governmental entities.
 - (d) “Commercial UAS flight” means a UAS operated for a commercial purpose.
 - (e) “Commissioner” means the Commissioner of the Tennessee Department of Environment and Conservation or the Commissioner’s designee.
 - (f) “Department” means the Tennessee Department of Environment and Conservation.
 - (g) “FAA” means the Federal Aviation Administration.
 - (h) “Natural Area” has the same meaning as defined in Rule 0400-02-01-.03.
 - (i) “Park area” has the same meaning as defined in Rule 0400-02-01-.03.
 - (j) “Unmanned aircraft system” or “UAS” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft along with its associated elements (including communication links and the components that control the aircraft) that are required for the safe and efficient operation of the aircraft in the national airspace system.
 - (k) “UAS flight permit” means a permit issued under this rule to operate a UAS in an AFZ.
- (2) No person may launch, land, or operate a UAS in any park area or natural area for any reason, unless:
- (a) The UAS is launched, landed, and operated entirely inside of an AFZ, in which case, the person is not required to secure prior written approval from the Commissioner or to pay a permit fee; or
 - (b) For a UAS that is launched, landed, or operated to any extent outside of an AFZ, the person obtains prior written approval from the Commissioner as evidenced by a signed UAS flight permit.
- (3) Park area or natural area guests may not operate a UAS in a manner that would violate:
- (a) Tennessee state law;
 - (b) Any regulation promulgated by the FAA regulating UAS flights;
 - (c) Any other law regulating the operation or flight of UAS; or
 - (d) For persons with a UAS flight permit, any condition of the UAS flight permit, including but not limited to conditions added to the permit in accordance with paragraphs (5) and (11) of this rule.
- (4) In order to receive a UAS flight permit, an Applicant must provide the following in or along with an application to the Commissioner prior to commencing flight of a UAS for which a UAS flight permit is required:
- (a) Name and contact information of the Applicant;
 - (b) Name contact information of the individual who will pilot the UAS;
 - (c) Anticipated time(s) and location(s) of all UAS flight activity requested to be authorized by the UAS

flight permit, including a description of the proposed UAS flight activity and whether it will affect any natural features or wildlife in the park area or natural area, or park area or natural area guests;

- (d) Whether the UAS flight is for recreational or commercial purposes;
 - (e) The permit fee, if any;
 - (f) Proof that the Applicant has all necessary licenses, certificates, waivers, clearances, and permits required by the FAA for the type of UAS flight in which Applicant seeks to engage;
 - (g) Certification that the Applicant agrees to remain liable for any damage caused by the UAS flight conducted under Applicant's permit, regardless of who is piloting the UAS at the time of the damage;
 - (h) If the permit application includes a request to authorize a UAS flight for commercial purpose, in addition to the other information required by this paragraph (4), the Applicant shall provide:
 - 1. The intended use of the footage, photographs, information, or specimens to be captured during the UAS flight, as applicable; and
 - 2. If determined to be necessary by park area or natural area management, a certificate of general liability insurance naming the State of Tennessee as an additional insured with minimum limits per person and per accident that are acceptable to the Commissioner; and
 - (i) Any other pertinent information requested by park area or natural area management.
- (5) All UAS flights for the purpose of collecting artifacts or specimens on park areas or natural areas must also comply with and receive a permit for such flight in accordance with Rule 0400-02-02-.23 or Rule 0400-02-08-.28, respectively.
- (6) The Commissioner may, prior to the issuance of any UAS flight permit, require a UAS flight permit applicant to pay (in the form of a credit card, cash, certified check, or money order made payable to the Department) a permit fee in an amount determined by the Commissioner to be the reasonable anticipated costs sufficient to cover costs incurred by the Department in processing the permit application and overseeing the permitted activity as determined by the specific facts and circumstances of that permit, including the presence of the UAS as an inconvenience to the park area or natural area guests or interference with the recreational nature of the park area or natural area. Upon request, the Commissioner shall provide a written breakdown of the anticipated costs. Nothing in this paragraph shall require the Commissioner to charge any costs for the issuance or renewal of a permit if the Commissioner determines that the permit may be issued and overseen without substantial cost to the Department.
- (7) Each UAS flight permit issued will grant the one pilot named in the permit application the right to operate one UAS at a time, subject to any special conditions outlined in the permit.
- (8) Each UAS permit shall only be valid for the time(s) and location(s) authorized by the Commissioner in the approval of the permit application.
- (9) The Commissioner may establish the boundaries of any AFZ within a park area or natural area and a reasonable schedule of UAS flight operation for the AFZ, as well as whether an AFZ is permanent, seasonal, or temporary. A suitable location for an AFZ is one that:
- (a) Is relatively open and free from obstruction;
 - (b) Is not near campgrounds, cabins, or other infrastructure where park area or natural area guests may routinely recreate or have accommodations;
 - (c) Is of a sufficient size to allow multiple UAS pilots to operate simultaneously; and
 - (d) If possible, possesses scenic beauty or picturesque landscapes that will provide attractive

backgrounds and opportunities for photography.

- (10) The Commissioner may issue a UAS flight permit on a form issued by the Department to authorize UAS pilots to operate a UAS outside an AFZ pursuant to subparagraph (2)(b) of this rule. The Commissioner may deny an application for a UAS flight permit if the Commissioner determines, in the Commissioner's sole discretion, that the issuance of the requested permit is inappropriate.
- (11) When issuing a permit pursuant to paragraph (10) of this rule, the Commissioner may include additional reasonable terms and conditions the Commissioner deems necessary for the safety and protection of park area or natural area property and/or guests. Such terms and conditions may only limit a pilot's ability to launch, land, or operate a UAS on certain park areas or natural areas, and may not regulate the airspace over a park area or natural area, or the flight of the UAS itself.
- (12) This rule does not apply to the following types of UAS flight occurring within park areas or natural areas:
 - (a) UAS operated by employees of the State of Tennessee, the federal government, or contractors working on behalf of the State of Tennessee or the federal government, who are operating a UAS for official government business; or
 - (b) A government agency, or a person acting on behalf of a government agency, using UAS flights for search-and-rescue, law-enforcement, or fire-prevention purposes.
- (13) Persons exempted by paragraph (12) of this rule must still comply with all other applicable federal, state, and local laws governing UAS flights.
- (14) This rule is not intended to impose any restrictions on the national airspace system under the sole regulatory authority of the FAA. To the extent reasonably possible, this rule should not be construed as regulating the national airspace system in any way, but only the launching, landing, and operation of UAS on park areas or natural areas.
- (15) The Commissioner may revoke a UAS flight permit issued under this rule for any reason in the sole discretion of the Commissioner. A UAS flight permit issued under this rule only constitutes temporary, terminable permission to engage in the permitted activity.

Authority: T.C.A. § 11-1-108 and §§ 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: July 10, 2020

Signature: _____

Name of Officer: Michael D. Driver

Title of Officer: Senior Associate Counsel

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State