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Sequence Number: 03-01-09
Rule ID(s): 4135
File Date: 03/02/2009
Effective Date: 05/16/2009

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: | Region 1 (Paul Brown) |
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

| Chapter Number | Chapter Title |
|----------------|---------------------------------|
| 1660-01-02 | Rules and Regulations for Birds |
| Rule Number | Rule Title |
| 1660-01-02-.02 | Migratory Bird Hunting |
| | |
| | |

Chapter 1660-01-02
Rules and Regulations for Birds

Amendment

Rule 1660-01-02-.02(2) Migratory Bird Hunting is amended by deleting Paragraph (c) in its entirety and inserting a new paragraph (c) to read as follows:

(c) Reelfoot Wildlife Management Area

1. Waterfowl hunting on Reelfoot Wildlife Management Area is restricted to hunting from either permanent or temporary blinds as defined herein. For the purpose of this rule, the following definitions apply:
 - (i) A permanent blind is a framed structure at least 4 feet wide, 4 feet high and 8 feet long with walls consisting of netting wire or solid material to which camouflage is or may be attached, which can be hunted from as determined by the area manager, that is constructed on or moved to either a permanent registered blind site, or a permanent draw blind site. The permanent draw blind is further restricted in size so as not to exceed 30 feet in length and not to exceed 300 total square feet as provided in Rule 1660-01-02-.02(1)(c).

- (ii) A temporary blind is either a structure assembled or placed for one day of waterfowl hunting or boat that is used for one day of waterfowl hunting or, a site consisting of the use of natural vegetation or conditions for concealment for one day of waterfowl hunting.
 - (iii) A permanent registered blind site is a waterfowl hunting blind site registered in 1986 with the Tennessee Wildlife Resources Agency and identified by geographic coordinates in 1995. These sites may not be relocated.
2. Permanent registered blind sites may be registered only by the 1991 registrants.
 3. In order to annually register a permanent registered blind site, an individual must purchase a Reelfoot waterfowl blind permit Type 025. Registration may be done either in person at any TWRA License agent location or through certified mail between February 18 and July 31, inclusive. If registration is in person, the registrant must present a photo ID. To complete the registration process, blind holders must send a signed copy of the Type 025 to the TWRA Sales Office postmarked by July 31. If registered through the mail, a signed and notarized affidavit proving identification must be included and the registration must be postmarked between February 18 and July 31, inclusive.
 4. A permanent registered blind site holder may annually designate other individuals who may for that season be permitted priority use of their permanent blind site. These persons, hereinafter, will be referred to as sign-ons. The permanent registered blind site holder must obtain a type 026 Reelfoot Sign-on Permit for each individual sign-on. Each Type 026 must be signed and notarized and a photocopy submitted by the blind site registrant. Photocopies of each type 026 must be post marked by July 31 to the TWRA Sales Office.
 5. Failure to annually register a permanent registered blind site between February 18 and July 31 shall result in the termination of its status as a permanent registered blind site after which it may be designated as a permanent draw blind site, in the discretion of the area manager or an authorized employee of Tennessee Wildlife Resources Agency.
 6. Each permanent registered blind site holder must display, and maintain year-round in a conspicuous location, the appropriate permanent number inside the blind or on a stake with painted numbers which are at least two inches in height. When a floating blind is moved to a permanent registered blind site, the number must be immediately transferred from the stake to the floating blind. No permanent blind may be locked or barricaded to deny access to any portion of the blind used for discharging firearms at game when the blind is not in use. No permanent blind site may be utilized or manipulated in such a manner so as to interfere with the lawful use of the blind or so as to interfere with the lawful taking of wildlife.
 7. The permittee, who is the person to whom the Agency issued the permit, must occupy his/her blind by the legal daily opening shooting time on days he/she wishes to hunt, and if the blind is unoccupied at that time by the permittee, the first person or party occupying said blind shall be entitled to the privilege of its exclusive and uninterrupted use until the end of shooting hours that day. Exclusive and uninterrupted use entitles the person or party to the right to exclude all others from the blind, at the person's or party's option, except for law enforcement personnel engaged in the performance of their duties. The permittee has priority use (exclusive and uninterrupted) only if he/she is at the blind on or before the legal daily opening shooting time, regardless of whether or not the blind is occupied by another person or party, provided the permittee produces identification and his/her blind permit.
 8. Neither permanent blind site holders nor their sign-ons may compete for nor may they be registered or signed on any other Tennessee Wildlife Resources Agency blind site in the state.
 9. Unregistered and/or unnumbered permanent blinds and illegal temporary blinds are subject to removal and/or destruction at the discretion of the area manager or a designee of the Tennessee Wildlife Resources Agency.

10. Each year, a permanent blind must be present or be constructed and/or placed on each permanent registered blind site and on each permanent draw blind site. Completion of blind construction and/or placement on these sites must occur by the fourth Monday in October. Failure to complete construction and/or placement of a permanent blind by the deadline shall result in the termination of its status as a permanent blind site, permitting its use as a site for a temporary blind for the remainder of that hunting season. Thereafter, it may be designated as a permanent draw blind site, at the discretion of the area manager. Camouflage on permanent blind sites must be completed by opening day of the regular waterfowl season. If adverse environmental conditions prevent the construction and/or placement of a blind at the site by the deadline, as determined by the Tennessee Wildlife Resource Agency, the area manager may grant an extension. The area manager must receive a written request for an extension, from the permanent registered blind holder, prior to the fourth Monday in October. Should these adverse environmental conditions persist and completely prevent the construction and/or placement of a blind on the site, as verified by the area manager, the permanent registered blind site will not be terminated. Blinds rendered unusable or destroyed may be repaired or replaced at the discretion of the area manager.
11. Decoys located at permanent blind sites shall be removed by blind holders within fifteen (15) days after the closing date of the final annual waterfowl hunting season. The use or possession of containers made of plastic or metal that are utilized for waterfowl decoys is prohibited while participating in waterfowl hunting on the waters of Reelfoot Lake.
12. No temporary blind shall be placed closer than two hundred (200) yards from a permanent blind site.
13. Persons hunting from temporary blinds must remove all decoys and other blind materials at the end of each day's hunt. No decoys and/or other blind materials may be placed at a temporary blind site and left unattended.
14. No trees, shrubs, or vegetation shall be cut, chemically sprayed, altered, or otherwise destroyed without prior approval of the area manager.
15. Blind owners may not abandon blinds on Reelfoot Wildlife Management Area and are responsible for removing all related materials, including all litter and trash, stakes, weights and lines. Abandoned blinds and related materials may be removed, destroyed or otherwise disposed of by the area manager or his designee.
16. Any person violating any rule and regulation contained herein, is subject to have his/her blind site permit canceled and/or hunting privileges on Reelfoot Wildlife Management Area revoked in addition to other penalties as prescribed by law.
17. The Wildlife Resources Commission shall review this Rule every four (4) years.

Statutory Authority: T.C.A. §§70-1-206 and 70-5-101

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 01/22/2009 (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: 11/21/2008

Notice published in the Tennessee Administrative Register on: 12/01/2008

Rulemaking Hearing(s) Conducted on: (add more dates). 01/22/2009

Date: 1-27-09

Signature: Gary T. Myers

Name of Officer: Gary T. Myers

Title of Officer: Executive Director



Subscribed and sworn to before me on: 1-27-09

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.
Attorney General

2-23-09

Date

Department of State Use Only

Filed with the Department of State on: 3/2/09

Effective on: 5/16/09



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.

RULE: 1660-01-02-.02

| | |
|-----------|--------------|
| New | _____ |
| Amendment | <u> X </u> |
| Repeal | _____ |

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 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.

(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;

The Agency is certain that none of the businesses in the area will be affected by the proposed rule. Since this rule deals only with the registration of duck blind sites on Reelfoot Lake on the REAL system and the REAL system is already in place, no beneficial or adverse affects should be noticed.

(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;

The Agency does not foresee an increase in costs for small businesses to comply with the proposed rule.

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

The Agency is certain that there will be no small businesses affected by the proposed rule. With the REAL licensing system in place, no additional costs should be accrued by the license agent.

(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;

As the Agency has not foreseen an increase in costs or burden to small businesses, it is not believed that the proposed rule is non-intrusive and should simplify the process of registering Permanent Registered Blind sites on Reelfoot Lake WMA.

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

The language contained in the proposed rule change is to allow consistency between the actual registering of duck blind sites through the REAL system and the proclamation regulating the registration of these blind sites.

(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.

Since the proposed rule change will have no effect on any small businesses, the Agency does not foresee any exemptions.

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;

This change of the rule would allow a permanent blind registrant at Reelfoot Lake WMA to register a blind site anytime between February 18 and July 31 inclusive at any TWRA, REAL system licensing agent. This does away with the registrant having to appear in person at the Reelfoot WMA office during the last two weeks of July and greatly extends the registration period.

- (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;

Statutory Authority: T.C.A. 70-1-206(a) (6)

- (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;

The Tennessee Wildlife Resources Agency and its license agents would be the only government agency or persons affected by the proposed rule change. TWRA recommends adoption of this rule change.

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

The Agency is unaware of any opinions that would impact this proposed rule change.

- (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 Agency is unaware of any increase or decrease in funding as a result of this proposed rule change.

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

Gary Cook, Region 1 Manager, TWRA

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

The current wording of the rule was not consistent with the process of registering a permanent registered duck blind site on Reelfoot Lake WMA through the REAL system of license purchasing and needed to be updated to reflect the current procedure of blind site registration at Reelfoot Lake WMA.