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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission: Tennessee Wildlife Resources Agency
Division: Wildlife
Contact Person: Lisa Crawford
Address: TWRA, PO Box 40747, Nashville, TN 37204-0747
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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: Stan Powell
Address: TWRA, PO Box 40747, Nashville, TN 37204-0747
Phone: 615-781-6594
Email: Stan.Powell@tn.gov

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

Address 1:	U.T. West Tennessee Experiment Station
Address 2:	605 Airways Blvd.
City:	Jackson
Zip:	38301-3201
Hearing Date :	August 19, 2010
Hearing Time:	9:00 a.m., local time <input checked="" type="checkbox"/> CST <input type="checkbox"/> EST

Additional Hearing Information:

<http://westtennessee.tennessee.edu/location/>

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
1660-02-03	Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required
Rule Number	Rule Title
1660-02-03-.07	Navigation Rules – Adoption of Federal Code and Regulations

Chapter Number	Chapter Title
1660-02-09	Rules and Regulations Governing Noise Level Standards
Rule Number	Rule Title
1660-02-09-.01	Noise Level Standards

Chapter Number	Chapter Title
1660-02-13	Rules and Regulations Governing Abandoned Vessels
Rule Number	Rule Title
1660-02-13-.01	Definitions
1660-02-13-.02	Notification to Agency
1660-02-13-.03	Notice to Owner(s) and/or Secured Party(ies)
1660-02-13-.04	Application for Certificate of Number
1660-02-13-.05	Vessels Abandoned at Storage Facilities

Rules and Regulations
of the
Tennessee Wildlife Resources Agency

Chapter 1660-02-03
Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required

Amended Rule

Rule 1660-02-03-.07, Navigation Rules – Adoption of Federal Code and Regulations, is amended by deleting paragraph (1) in its entirety and inserting a new paragraph (1), to read as follows:

- (1) The State of Tennessee hereby adopts, and incorporates by reference, The Inland Navigation Rules Act of 1980, as amended hereinafter, which appears in 33 CFR Parts 83 - 90. All vessels operating on or using the waters of Tennessee shall be governed by and follow these rules.

Authority: T.C.A. §§69-9-209 and 70-1-206.

Rules and Regulations
of the
Tennessee Wildlife Resources Agency

Chapter 1660-02-09
Rules and Regulations Governing Noise Level Standards

Amended Rule

Rule 1660-02-09-.01, Noise Level Standards, is amended by deleting paragraph (1) in its entirety and inserting a new paragraph (1), to read as follows:

- (1) No person shall operate nor give permission for the operation of any vessel in or upon the waters of Tennessee in such a manner so that the total noise produced by the watercraft exceeds 90 dBA at idle or 75 dBA at 50 feet by operation.
 - (a) Measurements shall be made with a Type I or Type II sound level meter which meets the requirements of the American National Standards Institute SI.4-1971.
 - (b) A noise level of 90 dBA when subjected to a stationary sound level test as prescribed by the Society of Automotive Engineers in Stationary Sound Level Measurement Procedure for Recreational Motorboats ("SAE") SAE J2005 will be utilized when testing and a noise level of 75 dBA when subjected to a sound level test as prescribed by SAE J1970 will be utilized when testing.

- (c) Any duly commissioned officer of the Wildlife Resources Agency who has reason to believe that a vessel is not in compliance with the noise levels may direct the person operating such vessel to submit the vessel to either the J2005 or J1970 on-site testing to measure the noise level, and the operator shall comply with such request.
- (d) Any TWRA enforcement officer who conducts vessel sound level tests shall be qualified in motorboat noise testing by the agency. Such qualifications shall include but are not limited to selection of the measurement site and the calibration and use of noise testing equipment.
- (e) If such vessel exceeds the decibel levels, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the vessel to a mooring and keeping the vessel at such mooring until the violation is corrected.
- (f) Any person who fails to comply with the directive to submit to such testing shall be subject to prosecution under this rule.

Authority: T.C.A. §§69-9-209, 69-9-302 and 70-1-206.

Rulemaking Hearing Rules
of
Tennessee Wildlife Resources Agency

New Rules

Chapter 1660-02-13
Rules and Regulations Governing Abandoned Vessels

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- 1660-02-13-.04 Application for Certificate of Number
- 1660-02-13-.05 Vessels Abandoned at Storage Facilities

1660-02-13-.01 Definitions

- (1) "Abandoned vessel" is a vessel intended as a means of transportation upon or under the water, whether or not it is still capable as a means of transportation including watercraft in an 'obvious state of disrepair' such as being burned throughout and/or inoperable under its own power which:
 - (a) has remained unattended on public water(s) of the State of Tennessee, or land adjacent to these public water(s) for more than thirty (30) days without the expressed consent of the owner(s) or person(s) in control of the property; or
 - (b) is adrift or submerged for more than thirty (30) days in or upon the public waters of the State of Tennessee; or
 - (c) a vessel deemed, through due process, to have no ownership;
 - (d) is left unattended on any public property without notice to the managing entity of such public property for more than thirty (30) days;
 - (e) has remained on private property without the consent of the owner or person in control of the property or, parked or left in a garage, trailer park, or any type of storage or parking lot without consent of the managing entity for more than thirty (30) days.

- (2) A "dry dock storage facility" is an entity, not on the public waters of Tennessee, where vessels, parts and pieces of vessels and components are available for sale or trade and stored either inside a building or outside for more than thirty (30) days.
- (3) A "wet slip," "boat dock" or "storage facility" is a commercial business located on the public waters of Tennessee, where vessels, parts, and pieces of vessels and components are stored either on a dock or within a boat slip.
- (4) "Agency" means the Tennessee Wildlife Resources Agency.

1660-02-13-.02 Notification to Agency

- (1) A person or governmental entity wishing to possess an abandoned vessel shall follow the procedures and guidelines set forth by the Agency. All records of recovered abandoned vessels shall be held by the Agency.
- (2) A state, federal or local law enforcement entity may remove an abandoned vessel that constitutes a hazard or obstruction to navigation from the public waters of the State of Tennessee.
- (3) A person or governmental entity shall notify the Agency within 48 hours after removing or recovering an abandoned vessel from the public waters of the State of Tennessee. Upon notification, the agency will provide a Notification/Request to Register Abandoned Boat form (WR-0932) which the person or entity will fill out and return. The form shall include: where the vessel was located prior to recovery, condition of vessel, name of person or entity recovering the vessel, date and time vessel was removed/recovered, where vessel is currently stored or located, any identification numbers found, and the name, address, and phone number of the person responsible for the removed/recovered vessel. A photograph of the vessel must also be included with the form.

1660-02-13-.03 Notice to Owner(s) and/or Secured Party(ies):

- (1) If the vessel has a registration number assigned by any State, or if there are means of identifying the owner(s) and/or lienholder(s), the Agency will notify the owner(s) and/or lienholder(s) at their last known address by certified mail/return receipt requested.
- (2) The United States Coast Guard will be provided with a copy of the notice when commercial vessels are involved.
- (3) The Agency will provide a copy of the notice to the Uniform Commercial Code Division of the Office of the Secretary of State if a lienholder is identified.
- (4) The notice must contain the following information:
 - (a) A description of the vessel, including any identifying numbers;
 - (b) Location of the vessel;
 - (c) A statement informing the owner(s) and/or the lienholder that the vessel must be claimed within thirty (30) days of receipt of notice, if notice is given by certified mail, and a statement that if notice is given by publication, the owner(s) and/or the lienholder must claim the vessel within 30 days after the last day the notice runs in the newspaper.
 - (d) A statement informing the owner(s) and/or the lienholder(s) that a failure to claim the vessel within the prescribed time will constitute the vessel being considered abandoned.
 - (e) A statement informing the owner(s) and/or the lienholder(s) that the vessel will be disposed of if no claim is made and the vessel removed within the prescribed time.
 - (f) In the event the requesting party is a governmental agency, such agency shall have the discretion of placing the vessel into service in lieu of auction.

(5) Notice by Publication

If the Tennessee Wildlife Resources Agency is unable to determine the last registered owner(s) or the identity of any secured party(ies) of the abandoned vessel, or if notice by certified mail is unsuccessful following one (1) attempt, the requesting party shall place a notice, to appear for two (2) consecutive publications, in a newspaper of general circulation published in the county or city where the vessel was recovered. The notice by publication shall contain the information required under Rule 1660-02-13-.03(4) and shall be published within 15 days following the failed attempt at certified mail.

If notice is given by publication, the owner(s) and/or the lienholder must claim the vessel within 30 days after the last day the notice runs in the newspaper.

(6) Failure to recover vessel

- (a) If the owner is properly notified prior to recovery and owner does not remove/recover vessel within 5 days, the owner may be responsible for all charges incurred in removing/recovering the vessel and may be charged with a violation of this rule.
- (b) The removal time for the vessel may be immediate if the vessel impedes the use of a public facility, or presents a safety, navigational, or environmental hazard.

1660-02-13-.04 Application for Certificate of Number

- (1) If the owner(s) or secured party(ies) fails to claim the vessel within 30 days after the certified mail and after the notice by publication is given, the requesting party may apply to the Tennessee Wildlife Resources Agency for certificate of number.
 - (a) The requesting party must provide the following:
 - 1. A completed affidavit for Request to Register Abandoned Boat (WR-0932); and
 - 2. Original copies of the notice of publication as required in Rule 1660-02-13-.03(5); and
 - 3. A photograph of the vessel.
 - 4. A Certificate of Deletion issued by the U.S. Coast Guard if the vessel bears an official number issued by the Coast Guard or there is other evidence that the vessel was documented by the Coast Guard. Applicant must contact the National Vessel Documentation Center.
- (2) Issuance of Registration:
 - (a) Upon receipt of the documents noted above, the Tennessee Wildlife Resources Agency shall issue a Letter of Authorization form (WR-# 0939) to the applicant that allows the county clerk to validate the claimant's State of Tennessee Application for Boat Certificate of Number.
 - (b) Applicant must submit validated State of Tennessee Application for Boat Certificate of Number along with the proper fees to Tennessee Wildlife Resources Agency's Registration Division.
 - (c) All costs incurred in obtaining a certificate of number shall be borne by the applicant.

1660-02-13-.05 Vessels Abandoned at Storage Facilities

- (1) Any vessel(s) subject to this rule shall be available for inspection by a commissioned officer of the TWRA during normal business hours. This vessel inspection shall include but not be limited to:
 - (a) Documentation records;

- (b) All identification numbers;
- (c) All records, receipts, or transfers of ownership;
- (d) Any other paper work which may show vessel origination; and
- (e) Physical inspection of vessels, or parts thereof, located at these facilities.

Authority: T.C.A. §§66-29-132, 69-9-207, 69-9-209 and 70-1-206.

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: 6-15-10

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 6-15-10

Notary Public Signature: Lisa Crawford

My commission expires on: 8-23-11

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Filed with the Department of State on: 6/16/10

Tre Hargett

Tre Hargett
Secretary of State

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