

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: sos.information@state.tn.us

For Department of State Use Only

Sequence Number: 09-20-10
Rule ID(s): 4827
File Date: 09/20/2010
Effective Date: 12/19/2010

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:	Boating Division
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

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

Rulemaking Hearing Rules
of
Tennessee Wildlife Resources Agency

New Rules

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

Table of Contents

1660-02-13-.01 Definitions
1660-02-13-.02 Notification to Agency
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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.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown	✓			
Mike Chase	✓			
Johnny Coleman	✓			
Jim Fyke				✓
Ken Givens				✓
Jeffrey H. Griggs	✓			
Mike Hayes	✓			
Jeff McMillin				✓
Mitchell S. Parks	✓			
Julie Schuster	✓			
Todd A. Shelton				✓
Eric Wright				✓
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 08/19/2010 (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: 06/16/2010

Rulemaking Hearing(s) Conducted on: (add more dates). 08/19/2010

Date: 8-20-10

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director



Subscribed and sworn to before me on: 8-20-10

Notary Public Signature: Lisa Crawford

My commission expires on: My Commission Expires August 23, 2011

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.
Robert E. Cooper, Jr.
Attorney General
9-13-10
Date

Department of State Use Only

Filed with the Department of State on: 9/20/10

Effective on: 12/19/10

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2010 SEP 20 AM 11:23
SECRETARY OF STATE
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: 1660-02-13

New	<u> x </u>
Amendment	<u> </u>
Repeal	<u> </u>

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;

Boat dealerships, marinas, boat manufacturers, and any member of the public who has a need, desire, or concern regarding abandoned boats. Little or no cost would be borne by private businesses.

(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 Tennessee Wildlife Resources Agency will bear the major load for bookkeeping along with the administrative costs for administering the abandoned boat rule. There will be some minor costs to those persons who wish to place an abandoned boat in their name and subsequent registration of the vessel.

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

In most cases there are no current rules that allow a business or the public at large to deal with abandoned boats that are left on private or public property. This rule will give procedural guidance to those who wish to remove these boats or to place the registration of the abandoned vessel in their name.

(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;

No rules currently exist and this rule seems to be the most efficient way with which to deal with abandoned boats. The rule has been in a development stage for more than nine years.

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

Not all states have abandoned vessel rules. This rule is consistent with the intent of those rules in other states who have addressed this problem.

(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.

Exemption of small businesses would defeat the purpose of the rule which is intended to give small business a way to address the abandoned boat problem.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule to 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)

Will passage of this rule have a projected financial impact on local governments?

This rule will not have any projected impact on local governments.

Please describe the increase in expenditures or decrease in revenues: There will be no increase in expenditures or decrease in revenues.

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 rule develops a method by which businesses, government entities, and the public at large to address the problem of abandoned boats. It addresses the removal of abandoned vessels from public and private property and gives a process by which an individual may register an abandoned vessel in their name.

- (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;

TCA §§69-9-209(f) and 66-29-132 gives the Tennessee Wildlife Resources Commission the authority to develop rules and regulations concerning abandoned vessels.

- (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;

All persons or businesses with a need or desire to address abandoned vessels will have a process by which to remove these vessels and/or to register these vessels in their name.

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

None

- (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 Tennessee Wildlife Resources Agency will incur a minimal increase in expenditures in the administration of this rule.

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

Darren Rider, Chief of Boating, Tennessee Wildlife Resources Agency

- (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

- (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

Nat Johnson, PO Box 40747, Nashville, TN 37204 (615)781-6555. Nat.Johnson@tn.gov

- (I)** What prompted the promulgation of the rule? Also include any additional information relevant to the rule proposed for continuation which the committee requests.

Passage of TCA §§69-9-209(f) and 66-29-132 gave the agency the authority to deal with the problem of abandoned vessels. There are currently no state rules that address the problem of abandoned boats either on or adjacent to state waterways. There is also no current method in rule that would give a process for an individual or business to register an abandoned boat in their name. This rule was developed to create a consistent and structured method to address many of the problems created by abandoned boat vessels.

"Red line"

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Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
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- Repeal

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 - (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;
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- (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.
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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.
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- (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.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown	✓			
Mike Chase	✓			
Johnny Coleman	✓			
Jim Fyke				✓
Ken Givens				✓
Jeffrey H. Griggs	✓			
Mike Hayes	✓			
Jeff McMillin				✓
Mitchell S. Parks	✓			
Julie Schuster	✓			
Todd A. Shelton				✓
Eric Wright				✓
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 08/19/2010 (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: 06/16/2010

Rulemaking Hearing(s) Conducted on: (add more dates). 08/19/2010

Date: _____

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State