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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Boating and Law Enforcement Division
Contact Person:	Lisa Crawford
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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-.01	Classifications
1660-02-03-.03	Flotation Devices
1660-02-03-.05	Backfire Flame Control
1660-02-03-.06	Fire Extinguishers

Amendment

1660-02-03 Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required is amended by changing the title of the chapter to “Rules and Regulations Governing Equipment Required on Vessels and Navigation Rules.”

Amendment

1660-02-03-.01 Classifications is amended by changing the title to “Applicability” and by deleting the rule in its entirety and replacing it with the following:

1660-02-03-.01 **Applicability** CLASSIFICATION. ~~Vessels subject to the provisions of these regulations shall be classified into four classes as follows:~~

- ~~(1) Class A — Less than 16 feet in length;~~
- ~~(2) Class 1 — 16 feet or over, but less than 26 feet in length;~~
- ~~(3) Class 2 — 26 feet or over, but less than 40 feet in length;~~
- ~~(4) Class 3 — 40 feet or over, but not more than 65 feet in length.~~

This rule applies to all vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel.

Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed November 20, 1975; effective December 20, 1975. Amendment filed _____; effective _____.

Amendment

1660-02-03-.03 Flotation Devices is amended by deleting the rule in its entirety and replacing it with the following:

1660-02-03-.03 Flotation Devices.

- (1) The operator of a vessel, when carrying passengers for hire, shall provide a United States Coast Guard approved life **jacket** ~~preserver~~ for each person on board, and unless the service is such that children are never carried, with an additional number of approved life **jackets** ~~preservers~~ suitable for children equal to at least 10 percent of the total number of person carried.
- ~~(2) No person shall use a vessel (which is not carrying persons for hire) unless at least one Coast guard approved personal flotation device Type I, II, III, or V is carried for each person on board. Type V devices must meet the requirements listed in paragraph (6) "exemptions" section below.~~
- ~~(3) All vessels of Class 1, 2, or 3 (except canoes and kayaks) must carry at least one type IV flotation device on board.~~

- (2) **As used in this rule:**

Personal Flotation Device or PFD means a device that is approved by the Commandant of the U.S. Coast Guard under 46 CFR part 160.

Throwable PFD means a PFD that is intended to be thrown to a person in the water. A PFD labeled as Type IV or Type V with Type IV performance is considered a throwable PFD. Unless specifically marked otherwise, a wearable PFD is not a throwable PFD.

Wearable PFD means a PFD that is intended to be worn or otherwise attached to the body. A PFD labeled as Type I, Type II, Type III, or Type V with Type (I, II or III) performance is considered a wearable PFD.

- (3) (a) **No person may use a recreational vessel unless—**
 1. **At least one wearable PFD is on board for each person;**
 2. **Each PFD is used in accordance with any requirements on the Approval label; and**
 3. **Each PFD is used in accordance with any requirements in its owner's manual, if the approval label makes reference to such a manual.**

- (b) No person may use a recreational vessel 16 feet or more in length unless one throwable PFD is onboard in addition to the total number of wearable PFDs required in paragraph (a) of this section. Canoes and kayaks 16 feet or more in length are exempted from the requirements for carriage of the additional throwable PFD.
- (4) All Personal Flotation devices ("PFD's") carried on board vessels operating within the state shall be in good and serviceable condition, and of an appropriate size for the persons who intend to wear them. Wearable PFD's shall be readily accessible and throwable devices shall be immediately available for use. All PFD's shall be legibly labeled with an approval number, as specified in 46 CFR part 160.
- ~~(5) Personal Flotation devices are classified and marked by "Type" according to their performance as indicated below. The marking label attached to the PFD must indicate a U.S. Coast guard approval number.~~
- ~~(a) Type I — a wearable device which has the greatest required buoyancy and is designed to turn most unconscious persons in the water from a face down position to a vertical and slightly backward position. The adult size provides a minimum buoyancy of 22 pounds and the child size provides a minimum buoyancy of 11 pounds.~~
- ~~(b) Type II — a wearable device which is designed to turn the wearer to a vertical and slightly backwards position in the water. The turning action is not as pronounced as with the Type I and the device will not turn many persons under the same conditions as the Type I. An adult size device provides a minimum buoyancy of 15 1/2 pounds and the child size provides a minimum buoyancy of 7 pounds.~~
- ~~(c) Type III — a wearable device designed so that the wearer can place himself or herself in a vertical and slightly backward position, and the device will maintain the wearer in that position and have no tendency to turn the wearer face down. A Type III device has the same buoyancy as the Type II PFD.~~
- ~~(d) Type IV — a throwable device designed to be grasped and held by the user until rescued. It can also be thrown to a person who has fallen overboard.~~
- ~~(e) Type V — A type V PFD is any PFD approved for restricted use and is acceptable only when used in the activity for which it was approved.~~
- (5) A PFD is considered to be in serviceable condition only if the following conditions are met:
- (a) No PFD may exhibit deterioration that could diminish the performance of the PFD, including—
1. Metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion;
 2. Webbing or straps used to secure the PFD on the wearer that are ripped, torn, or which have become separated from an attachment point on the PFD; or
 3. Any other rotted or deteriorated structural component that fails when tugged.
- (b) In addition to meeting the requirements of paragraph (a) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit—
1. Rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material;

2. Buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which shows evidence of fungus or mildew; or
 3. Loss of buoyant material or buoyant material that is not securely held in position.
- (c) In addition to meeting the requirements of paragraph (a) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with—
1. Except as provided in paragraph (d) of this section, a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed;
 2. Inflatable chambers that are all capable of holding air;
 3. Oral inflation tubes that are not blocked, detached, or broken;
 4. A manual inflation lanyard or lever that is not inaccessible, broken, or missing; and
 5. Inflator status indicators that are not broken or otherwise non-functional.
- (d) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (a) and (c) of this section.

(6) Exemptions:

- (a) Racing shells, rowing sculls, and racing **paddlecraft** ~~canoes and racing kayaks~~ are exempted from the requirements for carriage of any Type PFD. ~~racing shell, rowing scull, racing canoe, and racing kayak means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.~~

This exemption only applies to racing shells, rowing sculls, and racing paddlecraft when competing in an organized or sanctioned race or training program approved by a national or international body, or by appropriate permit, and where adequate safety precautions are in place.

Paddlecraft means a vessel powered only by its occupants, using a single or double bladed paddle as a lever without the aid of a fulcrum provided by oarlocks, thole pins, crutches, or similar arrangements.

- ~~(b) A Type V PFD may be carried in lieu of any PFD required provided the approval label on the Type V PFD indicated that the device is approved:~~

- ~~1. For the activity in which the vessel is being used or as a substitute for a PFD of the Type required on the vessel in use.~~
- ~~2. The PFD is used in accordance with any requirements on the approval label.~~
- ~~3. The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.~~

- ~~(c)~~(b) Sailboards are exempted from the requirements for any carriage of any Type PFD. A sailboard means a sail propelled vessel with no freeboard and equipped with a swivel mounted mast not secured to a hull by guys or stays.

- (d)(c) Vessels of the United States used by foreign competitors while practicing for or racing in competition are exempted from these carriage requirements provided the vessel carries one of the sponsoring foreign country's acceptable flotation devices for each foreign competitor on board.

Authority: T.C.A. §§69-9-209, 69-9-502, and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed March 2, 1978; effective April 1, 1978. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed May 27, 1983; effective June 27, 1983. Amendment filed September 26, 1996; effective December 10, 1996. Amendment filed _____; effective _____.

Amendment

1660-02-03-.05(4) Backfire Flame Control is amended by correcting the word "file" to "fuel" in (4) (d).

- (1) Except for compartments open to the atmosphere, a natural or power ventilation system must be provided for each compartment in a boat that—
 - (a) contains a permanently installed gasoline engine;
 - (b) has openings between it and a compartment that requires ventilation; except that an accommodation compartment above a compartment requiring ventilation by a deck or other structure does not have to comply;
 - (c) contains a permanently installed fuel tank where an electrical component is not ignition protected;
 - (d) contains a ~~file~~ fuel tank that vents into that compartment; or
 - (e) contains a non-metallic fuel tank with an aggregate permeability rate greater than the allowable standards established in CFR 183.620.

Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed June 11, 1981; effective July 27, 1981.

Amendment

1660-02-03-.06(5) Fire Extinguishers is amended by removing vessel classes in paragraph (5) and replacing it with vessel lengths as follows:

- (5) All motorboats shall carry at least the minimum number of hand portable fire extinguishers as set forth below, except that motorboats less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire need not carry such portable fire extinguishers if the construction of such motorboat will not permit the entrapment of explosive or flammable gases or vapors.

Minimum Number of BI Hand Portable Fire Extinguishers Needed

Class Length of Motrboat	No fixed fire Extinguishing system in machinery spaces	With fixed fire extinguishing system in machinery spaces
A Less than 16'	1	0
1 16' to less than 26'	1	0
2 26' to less than 40'	2 or 1 BII	1

Examples of minimum size graduations for some of the typical hand portable fire extinguishers are set forth below:

Type	Classification		Foam (gallons)	Carbon dioxide (pounds)	Dry chemical (pounds)
		Size			
B	I		1¼	4	2
B	II		2½	15	10
B	III		12	35	20

Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed June 11, 1981; effective July 27, 1981. Amendment filed _____; effective _____.

* 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)
Chad Baker					
<u>Jim Bledsoe</u>					
<u>Harold Cannon</u>					
Jeff Cook					
<u>Bill Cox</u>					
Kurt Holbert					
<u>Connie King</u>					
Jeff McMillan					
<u>Jim Ripley</u>					
Bill Swan					
<u>Trey Teague</u>					
<u>David Watson</u>					
<u>Jamie Woodson</u>					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Game Commission on 10/28/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/29/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 10/28/2016

Date: _____

Signature: _____

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: 3-10-2019

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-03) 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.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
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.

RULE: 1660-02-03

New	_____
Amendment	___X___
Repeal	_____

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

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.

(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;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(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;

The rule puts a minimal burden on small business.

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

The rule follows Federal guidelines for vessel equipment.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

Impact on Local Governments

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)

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

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

The rule describes equipment to be carried on vessels and reference to navigation rules.

- (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;

33 CFR 175 Subpart B relative to personal flotation devices have a preemptive effect on state vessel regulations. T.C.A Section 69-9-209 establishes guideline for this rule.

- (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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

- (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 fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

- (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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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