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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 Fish and Wildlife Commission
Division:	
Contact Person:	Torrey S. Grimes, General Counsel Tennessee Wildlife Resources Agency
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Revision Type (check all that apply):

☐ Amendment ☐ Content based on previous emergency rule filed on _____
☒ New ☐ Content is identical to the emergency rule
☐ 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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
1660-01-36	RULES AND REGULATIONS GOVERNING THE SALE OF FORESTRY PRODUCTS
Rule Number	Rule Title
1660-01-36-.01	PURPOSE
1660-01-36-.02	DEFINITIONS
1660-01-36-.03	SALE PROCEDURES

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). 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>.

**RULES
OF
TENNESSEE WILDLIFE RESOURCES AGENCY
WILDLIFE RESOURCES**

**CHAPTER 1660-01-36
RULES AND REGULATIONS GOVERNING THE SALE OF FORESTRY PRODUCTS**

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1660-01-36-.01 Purpose.

- (1) The Agency may conduct sales of forestry products derived from agency owned property in accordance with the Agency's statutory mission and in furtherance of its habitat and wildlife management responsibilities.
- (2) The Agency will conduct the sale of forestry products consistent with the process established by the Tennessee Department of Agriculture's Division of Forestry, and the Tennessee Department of General Services.
- (3) The Agency will further comply with Tenn. Comp. R. & Regs. 0690-02-01-.18 when conducting sales of forestry products derived from agency owned property.

Authority: *Tenn. Code Ann.* §70-1-206, and §70-1-302, and §70-1-306(i).

1660-01-36-.02 Definitions.

- (1) "Forestry products" means any product derived from trees of the forest including processed or unprocessed logs, timber, and wood.
- (2) "Commercially feasible sales" means the proposed area of forestry products has an accessible quantity of material that an appropriate and experienced contractor would likely be interested in bidding for the rights to harvest and purchase it.
- (3) "Non commercially feasible sales" means the proposed area of Forestry Products does not have an accessible quantity of material that an appropriate and experienced contractor would likely be interested in bidding for the rights to harvest and purchase it.
- (4) "Invitation to bid" means a procurement method where a contract is awarded to one or more bidders.
- (5) "Sealed bids" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Invitation to bid.

Authority: *Tenn. Code Ann.* §70-1-206, §70-1-302, and §70-1-306(i).

1660-01-36-.03 Sale Procedures.

- (1) The Agency's procedures for the sale of forestry products are outlined as follows:
 - (a) Commercially feasible sales that are conducted to meet established objectives of habitat and wildlife management will be conducted as follows:
 1. Such sales shall be under sealed bids, publicly advertised, opened, and recorded.
 2. Notice of each sale shall be entered in at least one (1) newspaper of general circulation in the county or counties in which the sale is to be made. Invitations to bid shall specify the terms and conditions of the sale and the date the bids will be publicly opened and recorded, which shall be not less than twenty (20) days after the date of mailing, excluding Saturdays, Sundays, and holidays.
 3. The bid of the highest responsible bidder who accepts the terms and conditions contained in the invitations to bid shall be selected.
 4. The successful bidder shall be required to sign a timber sale contract at which time he will pay the full purchase price and post a performance bond equaling seven (7) percent of the sale price of the timber.
 5. Payment of both of the above amounts shall be by certified or cashier's checks, payable to the Tennessee Wildlife Resources Agency.
 6. Official records of the sale will be maintained in the Tennessee Wildlife Resources Agency Main Office in Nashville. Copies of the documents described in (a)1 through (a)5 above shall be forwarded to the State Surplus Property Division for review.
 - (b) The following procedures shall be followed when commercially feasible sales are conducted as a result of natural or man-made catastrophes, such as ice storms, wind storms, wildfire, or insect and disease attacks occur:
 1. The Agency will notify prospective buyers when catastrophes occur that require emergency sales. Also, a notice of the sale will be entered in at least one (1) newspaper of general circulation in the county or counties in which the catastrophe occurred.
 2. The Agency will establish a set price of fair market value for each forestry product in the sale which all contractors will be required to pay. The price of each product will be periodically reviewed and will be revised if deemed necessary. Adequate documentation shall be provided concerning the establishment of prices and shall be dated and signed by the official or officials establishing the prices. This documentation shall be made a part of the official records of the sale. The fair market value shall be determined by considering the following criteria:
 - i. The character, condition, and location of the forestry products,
 - ii. The condition and climate of the potential market,
 - iii. Known prevailing market prices,
 - iv. The use of published industry value guides,
 - v. The use of estimates by persons knowledgeable of the type of forestry products to be sold,
 - vi. The immediacy of removal needs to avoid spoilage or conserve habitat.
 3. All contractors will be required to sign a timber sale contract specifying the amount, time limit, the amount of performance bond, and other details of the sale.

4. Payments shall be made by certified or cashier's checks payable to the Tennessee Wildlife Resources Agency.
 5. Official records shall be maintained in the Tennessee Wildlife Resources Agency Main Office in Nashville. Copies of the documents described in (b)1 through (b)4 above shall be forwarded to State Personal Property Utilization Division for review.
- (c) The following procedures will be followed when sales are conducted which are not commercially feasible because they do not contain sufficient volume, or the timber is too scattered.
1. All timber involved in this type of sale will be harvested by the Agency personnel and sold at the highest price obtainable.
 2. If possible, the Agency shall obtain three written bids. If not possible, documentation shall be provided setting out reasons why bids could not be obtained. This documentation shall be made a part of the official records of the sale.
 3. All sales shall be approved in writing by the Executive Director and made a part of the official records of the sale.
 4. The successful bidder will not be required to sign a timber sale contract or post a performance bond.
 5. All checks shall be made payable to the Tennessee Wildlife Resources Agency.
 6. Official records shall be maintained in the Tennessee Wildlife Resources Agency Main Office in Nashville. Copies of the documents described in (c)2 through (c)5 above shall be forwarded to State Personal Property Utilization Division for review.

Authority: *Tenn. Code Ann.* §70-1-206, §70-1-302, and §70-1-306(i).

* 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)
Chris Devaney	X				
Jimmy Granbery	X				
Stan Butt	X				
Wally Childress	X				
Bill Cox	X				
Chip Saltsman	X				
Rhonda Moody	X				
Kent Woods	X				
Greg Davenport	X				
Tommy Woods	X				
Monte Belew	X				
Brad Box	X				
Hank Wright	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the TN Fish and Wildlife Commission on 06/23/2023 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: 04/28/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 06/23/2023

Date: 11/20/2023

Signature: 

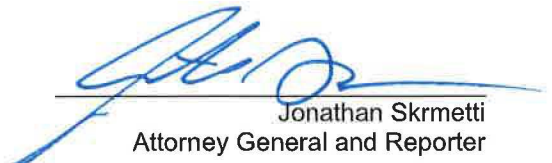
Name of Officer: Torrey S. Grimes

Title of Officer: General Counsel, Tennessee Wildlife Resources Agency

Agency/Board/Commission: Tennessee Fish and Wildlife Commission

Rule Chapter Number(s): 1660-01-36

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.


Jonathan Skrmetti
Attorney General and Reporter
Nov 29, 2023
Date

Department of State Use Only

Filed with the Department of State on: 12/1/2023

Effective on: 2/29/2024



Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There was one public comment on this rule. It occurred at the Commission Meeting on June 26, 2023.

Ex-Officio Commission Member David Salyers' Designee, Mr. Chuck Yoest, commented on behalf of the Tennessee Chapter of the Wildlife Society, of which he is a board member, support for this new rule as it pertains to timber harvest and the potential to increase wildlife habitat.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

While this rule may impact small businesses that purchase surplus forestry products from the Agency, there appears to be no discernable impact to the small businesses as the Agency followed the Department of General Services' promulgated rule relative to the surplus of state property.

That rule as well as the disposition procedures of the Tennessee Department of Agriculture, Division of Forestry, are the basis upon which this Rule is modeled.

Further, the promulgated rule provides consistency with executive branch agencies.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Agency does not anticipate that the Rule will have a financial impact on local governments.

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 new rule as presented prescribes the process by which the Tennessee Wildlife Resources Agency may dispose of forestry products derived from agency owned property in accordance with the Agency's statutory mission and in furtherance of its habitat and wildlife management responsibilities.

This rule presents the alignment of the Tennessee Wildlife Resources Agency process with the corresponding Department of General Services Tenn. Comp. R. & Regs. 0690-02-01-.18 which is utilized by the Department of Agriculture, Division of Forestry, in furtherance of its duties, in accordance with Public Chapter 798 of 2022 amending Tenn. Code Ann. § 70-1-306(i). The only modifications from the General Services rule are for clarity.

- (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;

Tenn. Code Ann. § 70-1-306(i), stating that "when conducting sales of timber harvested from agency property, the agency shall comply with all processes followed by the department of agriculture, division of forestry for those sales."

- (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;

Forestry companies that purchase surplus timber from the State. As the Agency followed the General Services rule upon which this promulgated rule is modeled, there should be no change for those individuals or companies.

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

The Agency is unaware of any Attorney General opinions or judicial rulings directly relating to the promulgated rule.

- (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;

Minimal to no fiscal impact. The Tennessee Wildlife Resources Agency has historically adhered to the General Services Rule governing the sale of forestry products and the processes undertaken by the Department of Agriculture, Division of Forestry; both of which this rule is modeled on.

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

Brandon Wear, Deputy Director
Wally Akins, Asst. Chief of Wildlife
Brain Chandler, Forester

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

Brandon Wear, Deputy Director
Mike Bell, Legislative Director
Torrey Grimes, General Counsel
Daniel Cox, Asst. General Counsel

- (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

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

None.