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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

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|---------------------------------|--|
| Agency/Board/Commission: | Tennessee Fish and Wildlife Commission |
| Division: | |
| Contact Person: | Torrey S. Grimes, General Counsel Tennessee Wildlife Resources Agency |
| Address: | 5107 Edmondson Pike Nashville, Tennessee 37211 |
| Phone: | 615.781.6657 |
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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: | Randi Tarpy, Chief of Human Resources Tennessee Wildlife Resources Agency |
| Address: | 5107 Edmondson Pike Nashville, Tennessee 37211 |
| Phone: | 615-781-6605 |
| Email: | Randi.S.Tarpy@tn.gov |

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

| | | | |
|---------------|---|---|----------------------------------|
| Address 1: | Region II Office, Tennessee Wildlife Resources Agency | | |
| Address 2: | 5105 Edmondson Pike | | |
| City: | Nashville, Tennessee | | |
| Zip: | 37211 | | |
| Hearing Date: | 06/23/2023 | | |
| Hearing Time: | 9:00 AM | <input checked="" type="checkbox"/> CST/CDT | <input type="checkbox"/> EST/EDT |

Additional Hearing Information:

In addition to the in-person public comment noted above, the Agency will accept public comment via electronic means from the date of filing of this Notice of Rulemaking Hearing until 6/22/2023 at 4:30 PM.

Any electronic public comment must be emailed to twra.rulescomments@tn.gov with the heading "Proposed Rule Comment – Rule 1660-01-18 Live Wildlife".

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 |
|-----------------------|--|
| 1660-01-18 | RULES AND REGULATIONS OF LIVE WILDLIFE |
| Rule Number | Rule Title |
| 1660-01-18-.02 | PERMITS |
| 1660-01-18-.03 | CLASSES OF WILDLIFE |
| 1660-01-18-.04 | FACILITIES |
| 1660-01-18-.05 | SPECIAL PROVISIONS |
| | |

Place substance of rules and other info here. 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>.

Rule 1660-01-18-.02 is amended by deleting it in its entirety and replacing with the following:

- (1) A propagation permit is not required for holders of a fish dealer's license issued under Rule 1660-01-26-.03.
- (2) A propagation permit is required for all Class II animals, unless otherwise stated.
- (3) An Exhibitor's permit is required when exhibiting Class II captive bred native wildlife when charging a fee.
- (4) No fee may be charged when exhibiting wild-caught Class II native wildlife. Temporary exhibitors may receive a free of charge exhibitor permit.
- (5) All Class II Wildlife legally propagated requiring a Wildlife Possession – Class II Permit shall be micro-chipped or tattooed within 30 days of taking possession. The micro-chip registration number or tattoo identification shall be reported to the TWRA Captive Wildlife Coordinator.
- (6) While all other permits do apply, a possession permit is not required for the following species regulated as Class II wildlife:
 - (a) Bobwhite Quail;
 - (b) Non-native game birds that are released in Tennessee or other states for the purpose of hunting (chukar, ringneck pheasant, etc.);
 - (c) Waterfowl defined in Chapter 1, Title 50, of the U. S. Code of Federal Regulations as North American migratory game birds;
 - (d) Legally obtained native aquatic species held in aquaria; and
 - (e) Legally obtained nonpoisonous reptiles and amphibians indigenous to the State of Tennessee.
- (7) All information requested on application for permits must be completed accurately.
- (8) Permits shall expire on the 30th day of June each year.
- (9) An importation permit is required for all fish species except the following:
 - (a) Any species (including their hybrids) native to Tennessee; except trout species and triploid grass carp certified by the United States Fish and Wildlife Service.
 - (b) All species that are approved for fish farming; and
 - (c) Golden orfe.
- (10) Class I and Class II species not listed on the permit issued for a facility other than a zoo may not be possessed at the facility until approved and added to the permit by letter from the director of the TWRA.
- (11) Permanent exhibitors cannot engage in the commercial trade of captive wildlife without a valid commercial propagators permit.
- (12) All temporary exhibitors exhibiting Class I wildlife must submit a completed application and an

itinerary of intended dates and locations of their exhibition and a diagram of the exhibit layout containing measurements shall be submitted at least twenty-one (21) days prior to first scheduled exhibition.

Authority: T.C.A. §§ 70-1-206, 70-4-401, 70-4-403, 70-4-404, and 70-4-405

Rule 1660-01-18-.03 is amended by deleting it in its entirety and replacing with the following:

Live wildlife, kept and maintained for any purpose, shall be classified in the following five (5) classes:

- (1) **CLASS I** — This class includes all species inherently dangerous to humans. These species may only be possessed by zoos, circuses and commercial propagators, except as otherwise provided in this part. The commission, in conjunction with the commissioner of agriculture, may add or delete species from the list of Class I wildlife by promulgating rules and regulations. The following is a listing of animals considered inherently dangerous:
 - (a) **Mammals**
 - (i) Primates – Gorillas, orangutans, chimpanzees, gibbons, siamangs, mandrills, drills, baboons, Gelada baboons, Macaques;
 - (ii) Carnivores – All species of wolves; all species of bears; all species of lions; tigers, leopards, jaguars, cheetahs, and cougars; brown hyena, spotted hyena, and striped hyena;
 - (iii) Order Proboscidea: Elephants — all species;
 - (iv) Order Perissodactyla: Rhinoceroses — all species; and
 - (v) Order Artiodactyla: Hippopotamus, African buffalo (and all sub-species).
 - (b) **Reptiles**
 - (i) Order Crocodylia: Crocodiles and alligators — all species; and
 - (ii) Order Serpentes: Snakes — all poisonous species.
 - (c) **Amphibians**
 - (i) All poisonous species; and
 - (ii) Komodo dragon.
 - (d) Hybrids resulting from the cross of two Class I species are added to the list of Class I wildlife codified in T.C.A. § 70-4-403(1).
- (2) **CLASS II** — This class includes native species, except those listed in other classes;
 - (a) Rear-fanged native poisonous snake species
 - (b) Native and passage raptors
- (3) **CLASS III** — This class requires no permits except those required by the department of agriculture, and includes all species not listed in other classes and includes, but is not limited to, those listed in subdivisions (a)-(q) as follows:

- (a) Non native, nonpoisonous reptiles and amphibians except North American native rear-fanged poisonous species;
 - (b) Non native Rodents — Gerbils, hamsters, guinea pigs, rats, mice, squirrels and chipmunks;
 - (c) Rabbits, hares, moles and shrews;
 - (d) Ferrets and chinchillas;
 - (e) Llamas, alpacas, guanacos, vicunas, camels, giraffes and bison;
 - (f) All waterfowl species except those defined in Chapter I, Title 50, of the U.S. Code of Federal regulations as North American migratory game birds; ostriches, cassowaries;
 - (g) Semi-domestic hogs, sheep and goats;
 - (h) All fish held in aquaria;
 - (i) Bovidae not otherwise listed;
 - (j) Marsupials;
 - (k) Common domestic farm animals;
 - (l) Equidae;
 - (m) Primates not otherwise listed;
 - (n) Bobcat/domestic cat hybrids;
 - (o) Hybrids resulting from a cross between a Class II species and a domestic animal or Class III species;
 - (p) Cervidae except white-tailed deer and wild elk. Elk originating from a legal source while held in captivity for the purpose of farming shall be regarded as Class III wildlife. All other elk shall be wild elk and shall be regarded as Class II wildlife. No person shall possess elk in captivity within the eastern grand division of the state as defined in § 4-1-202 without having documentary evidence indicating the origin of the elk being held. This documentary evidence will be presented to the agents of the department of agriculture or the wildlife resource agency upon request. Sale documentation of offspring of purchased elk is not required; and
 - (q) Furbearing mammals, including those native to Tennessee, raised solely for the sale of fur.
- (4) CLASS IV — This class includes those native species that may be possessed only by zoos and temporary exhibitors; provided, that rehabilitation facilities may possess Class IV wildlife as provided by rules established by the commission if authorized by a letter from the director of the agency:
- (a) Black bear (*Ursus americanus*);
 - (b) White-tailed deer (*Odocoileus virginianus*);
 - (c) Wild turkey (*Meleagris gallapavo*), including the eggs of wild turkey;
 - (d) Hybrids of a Class IV species other than bobcat shall be Class IV; and

- (e) Animals that are morphologically indistinguishable from native Class IV wildlife shall be Class IV;
- (5) CLASS V — This class includes such species that the commission, in conjunction with the commissioner of agriculture, may designate by rules and regulations as injurious to the environment. Species so designated may only be held in zoos under such conditions as to prevent the release or escape of such wildlife into the environment.
- (a) The following species or groups of wildlife are added to the group of animals designated by legislation as Class V:
 - (b) Nandaya or Black-Hooded parakeets (*Nandayus nenday*);
 - (c) Quaker or Monk parakeets (*Myiopsitta monachus*);
 - (d) Nine-banded armadillo (*Dasyopus novemcinctus*)
 - (e) African clawed frog (*Xenopus lacvis*); and
 - (f) All non-native freshwater aquatic life except the following:
 - (1) Triploid grass carp certified by the United States Fish and Wildlife Service;
 - (2) Species approved for fish farming; and
 - (3) Fish, crustaceans, and mollusks held in aquaria. This exception does not apply to the following species which shall be regarded as Class V:
 - (i) Zebra mussels (*Dreissena polymorpha*);
 - (ii) Black carp (*Mylopharyngodon piceus*);
 - (iii) Blueback herring (*Alosa aestivalis*);
 - (iv) Ruffe (*Gymnocephalus cernua*);
 - (v) Bighead carp (*Aristichthys nobilis*);
 - (vi) Silver carp (*Hypophthalmichthys molitrix*);
 - (g) Native species of wildlife are considered to be Class II unless specifically designated otherwise by T.C.A. § 70-4-403 or rules and regulations authorized therein.
 - (h) Hybrids involving two species from different Classes of animals shall be regulated as a member of the least restrictive Class involved, unless otherwise specified.

Authority: T.C.A. §§ 70-1-206, 70-4-107, 70-4-401, 70-4-403, 70-4-404, and 70-4-405.

Rule 1660-01-18-.04(4) is deleted in its entirety and replaced with the following:

- (4) Facilities, whether permanent or temporary, for holding or exhibiting Class I animals shall be inspected and approved by TWRA personnel prior to any Class I animals being placed in the facility or a permit being issued. Exhibitor (temporary or mobile) permits shall not be valid until inspected and approved. The exhibitor must have a copy of the permit and approved inspection on hand while inside the boundaries of the state.

Rule 1660-01-18-.04(6) is deleted in its entirety and replaced with the following:

- (6) Exhibitors of Class I animals must have a mobile or temporary facility in accordance with state law for any species of Class I animals that is taken out of a stationary facility. These animals shall not be allowed out of a caged area at any time. The animals may be placed in a caged arena for the purpose of exhibiting, as long as the sides and top meet specifications as required by law for a stationary facility. Also, the animals must remain in the mobile facility until the mobile facility is either brought into or up to the arena in such a fashion as to allow for the animal to be directly released into the arena. These animals may be led from a holding facility, either mobile or stationary, into a caged area through a totally enclosed caged corridor. Elephants are exempt from the requirement of this paragraph as long as they are maintained in accordance with this law. Persons exhibiting in a mobile or temporary facility poisonous animals shall have in their possession antivenin for each species possessed.

Authority: T.C.A. §§ 70-1-206, 70-4-401(a), 70-4-403, 70-4-404, and 70-4-405.

Rule 1660-01-18-.05 is deleted in its entirety and replaced with the following:

- (1) All Nature Centers, Rehabilitation Centers, Educational Exhibits, and Zoos meeting provisions which exempt them from the fees for necessary permits must complete an application and provide requested information.
- (2) A zoo shall be defined as a facility where any class of wildlife is exhibited to the public while meeting provisions set forth in T.C.A. §§ 70-4-401 et seq.
 - (a) Zoos must be accredited by the American Association of Zoological Parks and Aquariums (AAZPA) and/or be designated as the official zoo of a political subdivision of the state.
 - (b) Zoos provided for in this provision must maintain an annual visitation rate of one hundred thousand (100,000) visitors annually.
 - (c) Animals may not be sold or transferred to the general public in Tennessee.
- (3) A nature center shall be defined as a facility which operates in order to educate the general public about natural ecosystem interrelationships, in which man's actions are an integral part, and which has as its chief goal the protection and enhancement of all populations of Tennessee animal life.
 - (a) Class II wildlife may be utilized at these facilities for educational purposes. Authorization must be obtained annually from the Executive Director of the TWRA if animals are maintained.
 - (b) Any program using wildlife originating from the wild in Tennessee must be done at no charge, which would include an exchange for goods or services.
- (4) Rehabilitation centers are defined as those facilities which house and treat injured, diseased and displaced Class II and Class IV wildlife (except wild turkeys) which are temporarily incapable of surviving in the wild. The objective of the centers will be to return such wildlife to their natural habitat.
 - (a) A permit or letter of authorization from the TWRA is required for rehabilitation centers.
 - (b) The applicant shall provide the TWRA with information about the proposed rehabilitation of Class II and Class IV wildlife (except wild turkey), including:
 - (1) Categories (e.g. raptors) of wildlife proposed for rehabilitation.
 - (2) Documentation showing one of the following qualifications has been met in order to be eligible for a Rehabilitation and/or Education Exhibit permit:

- (i) Two hundred hours (200) of experience in rehabilitation or handling of the species in which the person wishes to be permitted; or
 - (ii) One year of full-time employment as a Veterinary Technician; or
 - (iii) Be licensed to practice veterinary medicine in the State of Tennessee: or
 - (iv) Possess a valid permit for Wildlife Rehabilitation or Education from another state for the species in which the person wishes to be permitted.
 - (v) Must complete the Basic Skills in Wildlife Rehabilitation Course from NWRA or IWRC
- (3) At least one reference from a person knowledgeable in wildlife husbandry regarding qualifications of the applicant.
 - (4) Description of the physical facilities to be used.
 - (5) Availability of veterinary care for use as needed.
 - (6) Whether the facility is to be used as a nonprofit operation and whether it is certified as nonprofit by the U. S. Internal Revenue Code [26 U.S.C. § 501(c)].
 - (7) The extent to which wildlife can be accepted for rehabilitation.
- (c) Prior to issuance of a permit or letter of authorization to wildlife rehabilitators not charging for their services, their facilities must be certified as nonprofit on application forms provided by the TWRA.
 - (d) Cages and facilities must be provided of such quality material, and of such strength as appropriate for the animals involved. Minimum facility guidelines of the National Wildlife Rehabilitators Association (see "Wildlife Rehabilitation Minimum Standards and Accreditation Program") are acceptable, except as may be specified by the TWRA.
 - (e) Rehabilitation facilities where Class III animals (other than dogs and cats) are present, shall abide by the following:
 - (1) Outdoor facilities (any cage, enclosure, corral, pen or the like) shall be no less than one-hundred (100) feet from any Class III animal;
 - (2) Indoor facilities shall be separate from the living area by a locking door;
 - (3) TWRA approved bio-safety and bio-security protocols shall be followed at all times.
 - (f) Temperature shall be regulated by heating or cooling as may be needed, to protect the animal from extremes and to provide for its health and comfort.
 - (g) If the facilities are outdoors, the cages should be constructed in a manner to protect the animals from excessive sunlight and from inclement weather.
 - (h) Cages and/or enclosures shall be of sufficient size to give the confined animal(s) ample space for exercise and to avoid overcrowding.
 - (i) Nails or other sharp protrusions, which might injure or impair the animal, shall not be allowed within the cage. Bird cages shall be of a design (e.g. vertical bars or netting) to minimize fraying of feathers.
 - (j) Adequate perches shall be provided for any raptors or other perching birds.

- (k) Provisions shall be made for prompt removal and disposal of animal and food wastes.
- (l) A suitable method shall be provided to rapidly eliminate excess water from housing facilities.
- (m) Food and water receptacles shall be of sufficient number and size as appropriate for the animals being served. Such receptacles shall be kept clean and sanitary at all times. If self-feeders are used adequate measures should be taken to prevent the contamination or deterioration of food.
- (n) A safe and effective program for the control of insects, ectoparasites, and other pests shall be established and maintained.
- (o) Rehabilitation techniques shall be in accordance with standards generally accepted by veterinarians, the TWRA, and/or other persons recognized as having expertise with care of the affected species.
- (p) Minimum human contact shall be provided with releasable wildlife in order to avoid imprinting on humans.
- (q) Rehabilitation periods are as follows:
 - (1) Eastern Gray Squirrel, Skunk, Opossum, Groundhog: 120 days; Raccoon, Fox, Coyote, Box Turtle: 210 days; All other species: 90 days
 - (2) After the rehabilitation periods, all Class II wildlife must be released, except:
 - (3) Permission may be sought for extension of possession for rare species listed as Endangered, Threatened, or "In Need of Management", for wildlife indicating likelihood of recovery and release with the foreseeable future, or for use for educational purposes.
 - (4) Animals authorized by the Executive Director of the Tennessee Wildlife Resources Agency for use under the authority of a valid Educational Exhibit Permit issued by the Tennessee Wildlife Resources Agency.
- (r) Permits are effective from July 1 through June 30 of each year.
- (s) By January 31 of each year, the permittee shall submit an annual report of the prior calendar year's activities concerning the number and status of all Class II wildlife. Records of wildlife rehabilitated must be maintained reflecting source of animals, date obtained, and date and method of disposition.
- (t) Black bears may be rehabilitated under the following special provisions in addition to the above requirements:
 - (1) Prior to receiving a permit, the applicant must submit a plan for care and rehabilitation which precludes or minimizes human contact and provides for conditioning and habitat acclimation prior to release. Final approval of a permit to rehabilitate black bears shall be at the discretion of the Executive Director of the Tennessee Wildlife Resources Agency.
 - (2) Each animal accepted for rehabilitation shall be marked with an indelible mark so that future identification may be possible.
 - (3) Bears housed in rehabilitation facilities shall not be exhibited or come into public contact under any circumstances.
 - (4) A TWRA officer or wildlife biologist shall determine if a black bear is eligible for rehabilitation and release.

- (5) Transportation of any black bear must be performed in accordance with the mobile facility requirements in T.C.A. § 70-4-405.
 - (6) Injured black bears determined to be non-releasable shall be immediately euthanized.
 - (7) Rehabilitators are not employees or agents of the State of Tennessee for any purpose, including a determination of liability. Therefore, rehabilitators assume all liability for personal injury and/or property damage caused by black bears under the rehabilitator's care and control.
 - (8) Rehabilitators of black bears must legally possess a firearm capable of instantly destroying a deer and/or bear.
 - (9) Releases of rehabilitated black bears shall be determined on a case-by-case basis under the direction of the TWRA, but black bears shall not be held for rehabilitation for longer than one (1) year.
- (u) All wildlife held under the authority of a Rehabilitation Permit cannot be exhibited or brought in contact with the public unless authorized by the Executive Director of the Tennessee Wildlife Resources Agency.
 - (v) Failure to abide by these Rules and any other state and/or federal wildlife regulations may result in lack of approval, non-renewal, or cancellation of TWRA authorization, at the discretion of the Executive Director of the TWRA.
 - (w) An educational center shall be defined as a professionally operated facility, with a full-time staff, whose major responsibility is to conduct approved research or to educate and/or train its clientele in bona fide conservation principles, which include the protection and enhancement of animal populations through professionally accepted wildlife management techniques and principles.
 - (1) Class II and other authorized Classes of wildlife may be utilized at these facilities for educational purposes. Authorization must be obtained annually from the Executive Director of the TWRA if animals are maintained.
 - (2) All regulations of paragraph (4) concerning permit, facility, and care at Rehabilitation Centers apply also for Educational Centers, as applicable. The TWRA shall provide permit applications indicating such pertinent information required.
 - (3) Any program using live wildlife originating from the wild in Tennessee must be done at no charge, which would include an exchange for goods or services.
 - (4) All permitted educators shall conduct a minimum of twelve (12) events each calendar year and report the dates and locations to the Captive Wildlife Coordinator, TWRA by January 31st of each year for the preceding year.

Authority: T.C.A. §§ 70-1-206, 70-4-401, 70-4-404, and 70-4-405.

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: 05/01/2023

Signature: _____



Name of Officer: Torrey S. Grimes

Title of Officer: General Counsel, Tennessee Wildlife Resources Agency

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Tre Hargett
Secretary of State

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