

Rulemaking Hearing Rules  
of the  
Tennessee Wildlife Resources Agency

New Rule

Chapter 1660-01-25  
Rules and Regulations Governing Special Elk Take Permits

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1660-01-25-.01 Special Elk Take Permit

1660-01-25-.01 Special Elk Take Permit

- (1) The Executive Director of the agency is authorized to issue one Special Elk Take Permit to a 501(c)(3) nonprofit wildlife conservation organization, for the purposes of generating funds for the enhancement of the agency's elk management program. An organization that receives a Special Elk Take Permit may sell or otherwise transfer the permit through any legal means available. All the proceeds of the sale must be used in Tennessee for the elk program on projects approved by the agency except that, notwithstanding any other provision of the law to the contrary, the organization may utilize no more than ten percent (10%) of the proceeds to administer the sale or transfer.
- (2) Requirements for issuance of Special Elk Take Permits:
  - (a) The Tennessee Wildlife Resources Commission shall authorize the Executive Director of the agency to issue not more than one Special Elk Take Permit in any one license year to take one elk per permit. The Executive Director shall allow the sale of one permit through auction to the highest bidder or to a person selected through a random drawing for the holder of a lottery ticket by an incorporated, nonprofit organization dedicated to the conservation of wildlife.
  - (b) The agency shall issue a Request for Proposals (RFP), which shall comply with the standards and guidelines established by the State of Tennessee.
  - (c) Nonprofit 501(c)(3) organizations dedicated to the conservation of wildlife are eligible to submit proposals for a Special Elk Take Permit. Proposals shall be submitted to the agency in compliance with applicable state laws and regulations.
  - (d) The Executive Director of the agency shall appoint a committee of the agency to examine the RFPs and make recommendations to the Executive Director in accordance with state guidelines following the close of the application period. The Executive Director may reject any application that does not conform to the requirements of this section. In selecting an organization, the Executive Director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the organization for promotional and administrative costs relative to the funds obtained from auctioning the permit; and the organization's previous involvement with elk conservation.
  - (e) Upon approval of a proposal, the nonprofit organization awarded the Special Elk Take Permit shall enter into a contract agreement with the agency. The contract agreement shall comply with all contracting standards and guidelines established by the State of Tennessee.

- (f) The nonprofit organization must agree, in writing, to the following: (a) to transfer all proceeds within sixty (60) days following the auction or drawing for the lottery and at least thirty (30) days prior to the opening of the season, and (b) to provide the agency with the name, address, and the physical description of the individual to whom the Special Elk Take Permit is issued.

(3) Conduct of the Auction or Lottery

- (a) Any organization selected to conduct a permit auction or lottery for the Tennessee Wildlife Resources Commission shall abide by the following rules:

1. All auctions and lotteries shall be carried out in accordance with applicable Tennessee and Federal laws and the laws of the state where such auction or lottery is held.
2. Unless their hunting license privilege is revoked or under suspension pursuant to the law of any state or country, any person, without regard to resident status or citizenship, is eligible to bid at competitive auction or to participate in any lottery authorized by the Commission.
3. Except as provided herein, auction and lottery permits are non-transferable and shall be issued only to the winner of a lottery or the highest bidder at an auction. The highest bidder in any auction may give the permit as a gift to another person provided written designation of such person is received by the Executive Director at least thirty (30) days prior to the opening of the season. Further, the Executive Director may authorize a transfer of an auction or lottery permit prior to the opening of the season due to death or medical incapacity of the holder of any auction or lottery permit.

- (b) Competitive Auction

1. Conduct the competitive auction at a location reasonably accessible to prospective bidders.
2. Advertise the location, date and starting time of the auction in at least two Tennessee papers with statewide circulation. Also, announce the auction through at least two conservation or wildlife oriented magazines with nationwide circulation. Such advertisement shall be accomplished at least thirty (30) days in advance of the auction.
3. Provide appropriate Tennessee hunting regulations and other information to potential bidders and other interested parties at least ten (10) days prior to the auction upon a request basis and to any in attendance immediately prior to and during the auction.
4. Make award to the highest bidder, but maintain a record of the second highest bidder in case of payment default or other contingency.
5. Conduct the auction in accordance with auction procedures established and announced at the start of the auction, including, but not limited to, re-bidding procedures. In the case of any dispute, the auctioneer shall make the final determination as to the highest competitive bid. In the event of a tie, the auctioneer may reopen the bidding of those two bidders to determining

the highest bidder. The auctioneer has the sole discretion to advance the bidding and may reject a nominal or fractional advance over the preceding bid. The auctioneer may refuse any bid for reasonable cause.

(c) Lottery

1. Procedures for issuing and collecting lottery tickets and related funds, the location, date and approximate time of a random drawing and all other procedures pertaining to the lottery shall be published and made available upon request at least thirty (30) days prior to any drawing or award.
2. Any lottery drawing shall be conducted at a meeting of a conservation organization open to general public attendance. The location, date and time of such meeting must be advertised at least thirty (30) days in advance.
3. Lottery tickets shall be available for a value of not more than \$25.00 each, and the same name shall not appear on more than one hundred (100) tickets.
4. All tickets shall include a place for a name, address and phone number of the holder and all tickets and stubs shall be numbered. Winner need not be present.
5. The location and time of the drawing as well as the purpose of the lottery and other information pertaining to the lottery shall be printed on each ticket.
6. The lottery permit shall be issued to the person whose name appears on the winning lottery ticket.

(4) Auction and Lottery Permits

- (a) Special Elk Take Permits issued by auction or lottery shall permit the taking of one elk, as defined or specified by unit or season.
- (b) All Special Elk Take Permits issued as a product of a competitive auction or lottery shall be written at the agency headquarters.
- (c) There shall be no refund of any monies collected through auction or lottery.
- (d) Special Elk Take Permits shall be valid on a unit-by-unit basis from the first open season in a unit for September 1 through January 31. Licenses are not valid in units that do not have an open season for elk between September 1 and January 31. An open season is any season in which licenses are issued by the agency by drawing or over the counter for the species.
- (e) Permits will be valid for one year only and only in accordance with applicable provisions of this section and other appropriate regulations of the Tennessee Wildlife Resources Commission, unless otherwise provided herein.
- (f) All wildlife harvested through the use of an auction or lottery permit shall be checked at an authorized big game checking station in accordance with regulations established by the Tennessee Wildlife Resources Commission. Failure to present harvested wildlife for inspection as required by this regulation shall make the licensee ineligible for future licenses for that species in Tennessee.

Statutory Authority: T.C.A. §§70-1-206, 70-2-219

The rulemaking hearing rule amendment set out herein was properly filed in the Department of State on the 22nd day of May, 2008 and will become effective on the 5th day of August, 2008. (FS 05-08-08; DBID 2884)

#### ECONOMIC IMPACT STATEMENT

1. Name of Board, Committee or Council: Tennessee Wildlife Resources Commission

2. Rulemaking hearing date: October 25, 2007

3. Types of small businesses that will be directly affected by the proposed rules:

The Commission does not anticipate any impact to small business as the rule as proposed deals only with nonprofit wildlife conservation organizations.

4. Types of small businesses that will bear the cost of the proposed rules:

The Commission does not anticipate small businesses to incur costs due to the proposed rule.

5. Types of small businesses that will directly benefit from the proposed rules:

The Commission does not anticipate that there will be a significant increase in benefits due to the implementation of the proposed rule, however it is possible that small businesses such as markets that sell licenses for hunting, restaurants close to proposed hunting sites, campgrounds and other lodging accommodations close to hunting sites may benefit from individuals taking advantage of the unique hunting opportunity.

6. Description of how small business will be adversely impacted by the proposed rule:

The Commission does not anticipate any adverse impact from these amendments.

7. Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why those are not being proposed:

The Commission is unaware of any alternative to the proposed rule, and does not believe that the rule as proposed would be burdensome to small business.

8. Comparison of the proposed rule with federal or state counterparts:

Federal: The Commission is not aware of any federal counterpart to this rule.

State: The Commission is not aware of any state counterpart to this rule.