

Notice of Rulemaking Hearing

Tennessee Wildlife Resources Commission

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the River Terrace Resort and Convention Center, 240 River Road, Gatlinburg, Tennessee, at 9:00 a.m., local time, on the 25th day of October, 2007.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Carolyn Wilson, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204, telephone number (615)781-6594.

For a copy of this notice of rulemaking hearing, contact: Lisa Crawford, Legal Assistant, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, telephone number (615)781-6606.

Substance of Proposed Rules

Chapter 1660-01-25

Rules and Regulations Governing Special Elk Take Permits

New Rule

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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) on or before January 31. The RFP 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 at least five (5) employees 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 management and its conservation objectives.
- (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.

4. Funds received by a conservation organization which conducts any auction or lottery for the Tennessee Wildlife Resources Commission and due the agency shall be paid to the agency within sixty (60) days after the auction and at least thirty (30) days prior to the opening of the season.
5. The conservation organization shall ensure no discrimination against any person on the basis of race, creed, color, national origin, religion, sex, age (except as required by Tennessee lottery statutes), marital status or physical handicap.

(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) Any legal hunting implement that can be used in hunting for elk can be used during the period the license is valid.
- (f) 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.
- (g) 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.

(5) Expenditure of Auction and Lottery Proceeds

- (a) A Project Review Committee ("PRC") shall be established, and shall be made up of a representative from the nonprofit, conservation organization selling an auction or lottery permit, a representative of the agency, and representatives of other conservation organizations as determined by the agency. In addition, other potentially affected land management agencies shall have the opportunity to provide a representative on the PRC at their discretion.

- (b) The agency shall be responsible for annual solicitation of project proposals requesting auction and lottery funding with a deadline no later than April 30th of each year. Funding can potentially be provided to government agencies, including the agency, nonprofit organizations, and private entities for appropriate projects as provided by Tennessee laws. The PRC shall review the project proposals and recommend how auction and lottery proceeds shall be expended. The PRC shall make funding recommendations to the Executive Director no later than May 31st of each year. Project funding shall require approval by the Executive Director or a designee of the Executive Director.
- (6) Accounting of Auction and Lottery Proceeds:
- (a) Each conservation organization receiving an auction or lottery permit for sale shall enter into an agreement with the agency that includes requirements for auction and lottery income and disposition records. Each organization shall maintain records of activities relating to auction and lottery proceeds retained by the organization. Such records shall be available for inspection by the agency at all reasonable times and subject to audit by the state.
 - (b) The agency shall provide the conservation organization with a list of all projects that have been approved for auction and lottery funding each year.
 - (c) Recipients of auction and lottery funds must provide an annual status report to the agency by June 30th for each fiscal year funding is provided. In some cases the agency may also request a comprehensive final report. At a minimum, such reports must provide a summary of accomplishments and results in relation to proposal objectives and a basic accounting of auction and lottery fund expenditures. The agency may request additional follow-up information such as more detailed records of results and expenditures. Failure to provide a satisfactory report or follow-up information can result in termination of auction and lottery funding at the discretion of the agency. The agency shall provide copies of available annual status reports and final reports to the PRC upon request.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2007. (FS 08-32-07; DBIS 717)