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Sequence Number: 07-07-09
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File Date: 07/10/2009
Effective Date: 10/08/2009

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Wildlife
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (for additional chapters, copy and paste table)

Chapter Number	Chapter Title
1660-01-25	Rules and Regulations Governing Special Elk Take Permits
Rule Number	Rule Title
1660-01-25-.01	Special Elk Take Permit

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

Amendment

Rule 1660-01-25-.01 Special Elk Take Permit, is amended by deleting paragraph (1) in its entirety and inserting a new paragraph (1) to read as follows:

- (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 the percentage of the proceeds prescribed by law to administer the sale or transfer.

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

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown	✓			
Mike Chase	✓			
Johnny Coleman	✓			
Jim Fyke				✓
Ken Givens				✓
Jeffrey H. Griggs	✓			
Mike Hayes	✓			
Jeff McMillin	✓			
Mitchell S. Parks	✓			
Julie Schuster	✓			
Todd A. Shelton	✓			
Eric Wright	✓			
Danya Welch	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 6/18/2009, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/27/2009

Notice published in the Tennessee Administrative Register on: 05/01/2009

Rulemaking Hearing(s) Conducted on: (add more dates). 06/18/2009



Date: 6/22/09

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 6/22/09
Notary Public Signature: Lisa Crawford
My commission expires on: 8/23/11

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.

RE Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General
7-2-09
Date

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Filed with the Department of State on: 7/19/09
Effective on: 10/12/09 10/08/2009
Tre Hargett
Tre Hargett
Secretary of State

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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 shall 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 1660-01-25-.01
Rules and Regulations Governing Special Elk Take Permits
Special Elk Take Permit

New	_____
Amendment	<u> X </u>
Repeal	_____



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



Attached hereto are the public comments and response thereto.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 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;

The Commission does not anticipate significant impact to small businesses in Tennessee. The rule establishes different procedures for obtaining special season permits and should not affect current business activities.

(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;

The Commission anticipates no record keeping associated with this rule.

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

The Commission anticipates no probable effect to small businesses.

(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 Commission is unaware of alternatives to the proposed rule and does not believe the rule as proposed would be burdensome to small businesses.

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

The Commission is not aware of any federal or state counterparts to this rule.

(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.

The Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

Additional Information Required

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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 amendment in paragraph (1) amends the percentage that a non-profit wildlife conservation organization can retain to administer the sale or transfer of a Special Elk Take Permit. The percentage is changed to a non-specific amount, with the upper limit to be no more than the percentage prescribed by law.

- (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;

TCA 70-1-206 grants authority to the Tennessee Wildlife Resources Commission (TWRC) to promulgate rules and regulations. TCA 70-2-219 authorizes the TWRC to promulgate competitive guidelines for the issuance of a Special Elk Take Permit.

- (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;

The Tennessee Wildlife Resources Agency and non-profit wildlife conservation organizations that may participate in fund raising activities to support Tennessee's elk management program are affected most directly by this rule. The Tennessee Wildlife Resources Agency is urging adoption of this rule.

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

We are not aware of any opinions of the attorney general or any judicial ruling that directly relate to this 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;

We do not anticipate any significant fiscal impact to the Agency, local or state revenues as a result of this rule amendment to 1660-01-25-.01.

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

Greg Wathen, Chief of Wildlife, possesses substantial knowledge and understanding of this rule.

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

Nat Johnson, TWRA Assistant Director, will explain the rule at the scheduled meeting of the Government Operations Committees.

- (H) Office address and telephone number 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.

A need to change the maximum percentage to a non-specific number to be prescribed by law prompted the promulgation of this rule amendment.