

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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1988 JUL 22 PM 1:09

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: W. Va. Code §20-2-22a

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

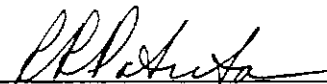
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 18A

TITLE OF RULE BEING ADOPTED: _____

Bear Damage Regulations

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 1, 1988



**PREAMBLE TO AN ADOPTED PROCEDURAL RULE CONCERNING
DAMAGE CAUSED BY BEARS TO LIVESTOCK AND OTHER PROPERTY**

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JUL 22 PM 1:09
OFFICE OF REG. AND CL.
SECRETARY OF STATE

STATE AGENCY: Department of Natural Resources

REGULATIONS: Title 47, Series 18A, "Bear Damage Regulations"

AUTHORITY: W. Va. Code §20-2-22a

ACTION: Adopted Rule

SUMMARY: The Department is adopting a new rule concerning the procedures that are to be followed in presenting and deciding claims of bear damage under Section 20-2-22a of the West Virginia Code. The new rule provides procedures for instituting and conducting a bear damage hunt in order to relocate or destroy a miscreant bear and also sets forth procedures for the presentation and review of bear damage claims, including the forms to be submitted by claimants.

RESPONSE TO COMMENTS: A public hearing on this rule was held on July 11, 1988 in Charleston and written comments were received by the Department until 4:30 p.m. on that day. One individual attended the public hearing to present oral comments on the proposed rule; written comments were received from two individuals. All three commenters focussed upon the the Livestock Bear Damage Assessment Form at the end of the proposed regulations:

Comment: One commenter stated that the Department has paid up to \$120/head for prime ewes. The payment has now been set at \$100/head and should be returned to \$120/head. The same commenter also recommended that cattle damage payments be raised to \$80/100# for calves and \$75/100# for yearlings.

Response: The Department believes that the values set by the Livestock Bear Damage Assessment Form represent fair, just compensation for losses. In fact, the values set are consistently greater than current fair market values. Maximum values to be paid claimants for livestock losses caused by black bears were derived from the West Virginia Department of Agriculture's Bulletin No. 18 entitled "West Virginia Agriculture Statistics 1987" based upon the five-year average value adjusted for market fluctuations. Additional information and recommendations concerning sheep values were obtained from Mr. Ken Haid, a sheep specialist with the West Virginia Department of Agriculture, Moorefield Field Office. As market conditions change in the future, the Department is prepared to adjust livestock loss compensation values through the amendment of these rules.

Comment: The assessed value on culled sheep is set at \$25/100# for animals over four years of age. All three commenters strongly urged the Department to increase this age to seven years because most ewes remain productive at least through their seventh year.

Response: The Department accepts the commenters' request.

SERIES 18A
BEAR DAMAGE REGULATIONS

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the injury to or death of livestock or the unborn issue thereof, caused by an act of a bear may complain to any conservation officer for the protection against such bear.

3.1.1. Bear damage involving beehives must be reported to a conservation officer within forty-eight (48) hours of its occurrence.

3.1.2. Bear damage involving fruit trees must be reported to a conservation officer within forty-eight (48) hours of its occurrence.

3.1.3. Bear damage involving livestock must be reported to a conservation officer within seventy-two (72) hours of its occurrence.

3.1.4. Bear damage involving miscellaneous real or personal property must be reported to a conservation officer within forty-eight (48) hours of its occurrence.

3.2. Upon receipt of a bear damage complaint, a conservation officer will immediately proceed to investigate the circumstances giving rise to such complaint.

3.2.1. If a conservation officer is unable to personally investigate a complaint, he may designate a wildlife biologist to investigate on his behalf.

3.3. The offal of all livestock killed by a bear will be removed or buried by the property owner immediately after the completion of the complaint investigation conducted under Section 3.2 of these regulations.

§47-18A-4. Bear Damage Hunts.

4.1. If a bear damage complaint is found to be justified, the investigating conservation officer or wildlife biologist may, together with the property owner and other residents, proceed to hunt and destroy or capture and relocate the bear which is determined to have caused the property damage.

4.1.1. The investigating officer or biologist may organize a hunt only if more than one confirmed instance of bear damage in a given locality has been reported to the Department within a thirty-day period.

4.1.2. Upon confirmation of the first report of bear damage in a given locality, the investigating officer or biologist will determine the hunters who will be utilized in the event that a bear damage hunt is conducted. Such

hunters will be immediately contacted by the Department in order that a prompt response can be made should the need for a hunt arise.

4.1.3. A bear damage hunt may not be organized in cases where the confirmed bear damage occurred within the boundaries of a United States Forest Service Grazing Area.

4.2. If a bear damage hunt is organized, the investigating officer or biologist may summon or use dogs to effectuate the hunting and destruction or capture of the suspect bear.

4.2.1. The investigating officer or biologist may restrict the number of dogs that may be used in a hunt.

4.2.2. The investigating officer or biologist may restrict the number of hunters who may participate in a hunt.

4.3. The investigating officer or biologist must supervise the hunting party and remain in the area of the chase during a bear damage hunt.

4.3.1. One member of the hunting party may be designated by the investigating officer or biologist as the person in charge of the hunt.

4.3.2. The hunting party will be organized with the understanding that the party will be responsible for having a destroyed bear transported to a road for pick up by Division personnel. The hunting party must also assist the wildlife biologist in moving a tranquilized bear.

4.4. Only the investigating officer or biologist may determine if a bear should be destroyed or tranquilized and relocated, or whether, based upon the animal's size and other clues or circumstances relating to the offense, it appears that the bear being hunted is not the bear that caused the confirmed damage.

4.4.1. If the investigating officer or biologist determines that the bear being hunted is not the suspect animal, the hunt must be disbanded.

4.5. If a suspect bear is destroyed during a hunt which does not include a wildlife biologist, the investigating officer must notify the appropriate Division personnel so that biological information can be collected.

4.6. Division personnel are responsible for disposing of any bear destroyed during a bear damage hunt.

4.6.1. Division personnel shall determine whether the hide, teeth, gall bladder, or other parts of the destroyed bear that may have commercial value will be sold or destroyed. If offered for sale, such parts shall be sold in accordance with applicable State laws and regulations governing the disposal of State property.

§47-18A-5. Bear Damage Claims Procedures.

5.1. When a property owner seeks restitution from the State for damage suffered as the result of an act by a bear, he must file a Department of Natural Resources Bear Damage Report with the director stating whether or not such bear was hunted and destroyed or relocated. If the bear was destroyed, this report must include the sex, weight, and estimated age of the subject bear.

5.2. In filing the report prescribed in Section 5.1 of these regulations, the property owner must also submit an appraisal of the property damage occasioned by the subject bear, duly signed by three (3) competent appraisers, fixing the value of the property lost.

5.2.1. One appraiser will be selected by the property owner, one appraiser will be selected by the Department, and one appraiser will be selected jointly by the property owner and the Department.

5.2.2. The selected appraisers will promptly appraise the loss in accordance with the provisions of Section 6 of these regulations.

5.2.3. Each appraiser will record his findings on a Department of Natural Resources Bear Damage Appraisal Form, attach the bear damage assessment form that he completed, and deliver the completed forms to the property owner.

5.2.4. The property owner must submit his completed Bear Damage Report form, with all of the completed appraisal and assessment forms attached, to the investigating officer within thirty (30) days of the date of damage reported under Section 3.1 of these regulations.

5.3. The property damage appraisal will be ruled upon and the alleged damages examined by a three-member appraisal review commission composed of the complaining property owner, an officer of the department, and a person to be selected jointly by the complaining property owner and the officer of the department.

5.3.1. Upon receipt of the completed forms from the appraisers, the property owner must promptly contact the investigating officer so that a third person can be selected to serve on the appraisal review commission.

5.3.2. Each member of the appraisal review commission will decide if the damage claim is or is not valid.

5.3.2.a. If the appraisal review commission, by unanimous decision, decides that the damage claim is valid, the commission shall recommend a dollar amount to be paid to the property owner based upon the appraisal and assessment forms attached to the Bear Damage Report.

5.3.3. The appraisal review commission will submit the completed Bear Damage Report, with all of the completed appraisal and assessment forms attached, to the director within sixty (60) days of the date of damage reported under Section 3.1 of these regulations.

5.4. Payment of a bear damage claim will be made upon the receipt of a completed Bear Damage Report from the appraisal review commission that recommends payment of a validated claim and complies with the provisions of these regulations.

5.4.1. Bear damage claim payments shall be made in accordance with the provisions of W. Va. Code §20-2-22a.

5.4.2. If the director determines that either the selected appraisers or the appraisal review commission failed to properly comply with the provisions of these regulations, he may direct the commission to reconsider its recommendation.

§47-18A-6. Bear Damage Appraisals.

6.1. In assessing a bear damage loss, the selected appraisers must follow the guidelines set forth on the appropriate bear damage assessment form provided by the Department.

6.2. In cases where pregnant livestock is killed by a bear, the total appraised value will be the sum of the values of the mother and the unborn issue had it been born.

KEN HECHLER
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SECRETARY OF STATE

Charleston 25305

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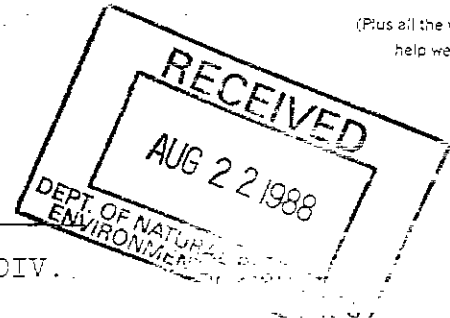
RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Jeff Harold, DNR
FROM: RICH O. HARTMAN, DIR. ADMIN. LAW DIV.
DATE: Aug 19, 1988



THE ATTACHED RULE(S) RECENTLY FILED BY YOUR AGENCY HAVE BEEN ENTERED INTO THE COMPUTER. PLEASE REVIEW AND PROOF AND RETURN WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS PLEASE SIGN THIS MEMO AND RETURN TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE(S) FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

Series 18A

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND ARE CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

✓ THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND NEEDS CORRECTED. THESE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Jeffrey E Harold

TITLE OF PERSON SIGNING: Regulatory Analyst

DATE: August 22, 1988