



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Natural Resources TITLE-SERIES: 58-15

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Permits to Kill Deer Or Other Wildlife Causing
Damage to Cultivated Crops, Trees, Commercial
Nurseries and Homeowner's Shrubbery, Vegetable
Gardens And Other Property

CITE STATUTORY AUTHORITY: §20-2-15

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/28/2020 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Wendy L. Greene

ADDRESS: 324 4th Avenue, Room 343
South Charleston, WV 25303

EMAIL: [dnrcments@wv.gov](mailto:dnrcomments@wv.gov)

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Series 15 revises the current Permits to Kill Deer or Other Wildlife Causing Damage to Cultivated Crops, Fruit Trees or Commercial Nurseries Rule. This rule establishes the procedures to be followed for obtaining permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, commercial nurseries and homeowners trees, shrubs and vegetables. The rule will be revised to address damage to other property as well.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

As it relates to WV Code 20-2-15 "Permit to kill deer or other wildlife causing damage to cultivated crops, trees, commercial nurseries, homeowners shrubbery and vegetable gardens: weapon restrictions, Section (b) . causing property damage, additional language is added to address damage to other property. Other modifications to the rule include language relating to the appropriate disposal of animals, disposition of unused nonseasonal tags, licensing requirement for designated shooters, and exemption to wanton waste law for disposal of big game taken on damage permits.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no change anticipated to the revenue of the state as a result of this rule.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no change anticipated to special revenue accounts as a result of this rule.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There is no change anticipated to the economic impact on the state or its residents as a result of this rule.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No impact. The primary modification is to include "other property", in addition to damage caused to cultivated crops, trees, commercial nurseries and homeowner's shrubbery and vegetable gardens, as permitted under section (b) of WV Code 20-2-15. Other modifications to the rule include language relating to the appropriate disposal of animals, disposition of unused nonseasonal tags, licensing requirement for designated shooters, and exemption to wanton waste law for disposal of big game taken on damage permits.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Wesley H White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 58
PROCEDURAL RULE
DIVISION OF NATURAL RESOURCES

SERIES 15
PERMITS TO KILL DEER OR OTHER WILDLIFE CAUSING DAMAGE
TO CULTIVATED CROPS, TREES, COMMERCIAL NURSERIES AND HOMEOWNER'S SHRUBBERY, ~~AND~~
VEGETABLE GARDENS AND OTHER PROPERTY

§58-15-1. General.

1.1. Scope and Purpose. -- The purpose of these regulations is to establish the procedures for obtaining permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, commercial nurseries and homeowner's trees, shrubs, ~~and~~ vegetable gardens and other property.

1.2. Authority. -- W. Va. Code §20-2-15.

1.3. Filing Date. -- ~~November 3, 2016~~.

1.4. Effective Date. -- ~~February 2, 2017~~.

§58-15-2. Definitions.

2.1. "Cultivated Crops" means any crop raised or grown under controlled conditions.

2.2. "Natural Resources Police Officer" or "Officer" means a natural resources police officer who is a full-time employee of the Law Enforcement Section of the West Virginia Division of Natural Resources.

2.3. "Wildlife Biologist" means a full-time employee of the Wildlife Resources Section of the West Virginia Division of Natural Resources who, by reason of ~~his/her~~ his or her knowledge of wildlife biology, acquired through professional education or related practical experience, is qualified to investigate complaints of nuisance wildlife, threats to public safety by wildlife and crop damage by wildlife.

§58-15-3. Applicability.

3.1. ~~Landowners, lessees or tenants may protect their cultivated crops, fruit trees, commercial nurseries, homeowner's trees, shrubbery and vegetable gardens from destruction, damage or loss from the direct or indirect feeding, nesting, burrowing, building, trampling or other damage causing activities of deer or other wildlife as provided by W.Va. Code §20-2-15(a).~~ Landowners, lessees, or tenants may report to the Division the destruction, damage, or loss of their cultivated crops, fruit trees, commercial nurseries, homeowner's trees, shrubbery, vegetable gardens, and other property caused by the direct or indirect feeding, nesting, burrowing, building, trampling, or other damage causing activities of deer or other wildlife.

3.2. ~~Wildlife that cause property damage may be killed or removed at the discretion of an officer or wildlife biologist.~~ Authorization provided to kill or remove wildlife that cause property damage is made at the discretion of a natural resources police officer or his or her wildlife biologist designee.

§58-15-4. Exceptions.

4.1. Damage caused by bear, elk, and migratory birds is not covered by these provisions.

§58-15-5. Authorized Persons.

5.1. Persons authorized to kill deer or other wildlife under these provisions shall include only the landowner, lessee, tenants, or persons previously designated by the owner and approved by ~~an~~ natural resources police officer or ~~his/her~~ his or her wildlife biologist designee. Permittees may kill designated animals only in the immediate vicinity of the permittees' damaged crops or damaged property. "Immediate Vicinity" shall be determined by the natural resources police officer or ~~his/her~~ his or her wildlife biologist designee based upon the species in question, neighboring habitat, and other relevant factors and shall be specified in the permit issued.

§58-15-6. Procedure.

6.1. Notification. At the occurrence of damage, the landowner, lessee, or tenant shall notify a local natural resources police officer or Division of Natural Resources district law enforcement office and report ~~his/her~~ his or her name, address, specific location where the damage is occurring, type of damage, and species causing such damage.

6.2. Natural Resources Police Officer Investigation. ~~An~~ A natural resources police officer or ~~his/her~~ his or her wildlife biologist designee shall investigate the alleged damage according to the procedures outlined in this rule, complete the necessary wildlife damage forms and permits, and submit completed forms quarterly to the district wildlife biologist.

~~6.2.a.~~ 6.2.1. When satisfied that the landowner, lessee, or tenant is suffering wildlife damage, ~~an~~ natural resources police officer or ~~his/her~~ his or her wildlife biologist designee may disregard Section 6.3, complete the Wildlife Damage Investigation Report and mail a copy with kill permits and tags to the complainant.

6.3. Determination of Substantial Damage.

~~6.3.a.~~ 6.3.1. Cultivated Crops and Vegetable Gardens. ~~An~~ A natural resources police officer or ~~his/her~~ his or her wildlife biologist designee shall select a starting point in the area the crop or vegetable garden owner indicates damage has occurred and follow along the crop row or a straight line in the case of grain or forage crops. After every five (~~5~~) steps he/she shall record if damage is occurring within a one-step radius of that point. If damage can be found at ~~twenty percent (20%)~~ of the sample points, then there is substantial damage.

~~6.3.b.~~ 6.3.2. Fruit Trees, Homeowner's Trees and Shrubs, and Commercial Nurseries. Damage must occur on ~~twenty percent (20%)~~ of the trees in the portion of the orchard or nursery receiving damage or to ~~twenty percent (20%)~~ of the homeowner's trees and shrubs. To be included in the calculation, browse damage must occur on at least ~~ten percent (10%)~~ of the ends of branches at a height of five (~~5~~) feet and lower.

§58-15-7. Issuance of Permits.

7.1. Upon making a determination of substantial damage pursuant to section 6.3. of this rule, ~~an~~ a natural resources police officer or ~~his/her~~ his or her wildlife biologist designee shall issue a permit identifying the species of wildlife causing the damage and the authorized number of animals which may be taken as follows:

~~7.1.a. 7.1.1.~~ For estimates of five (5) or less animals determined to be causing damage ~~an officer or his/her wildlife biologist designee may allow~~ the permittee may be allowed to kill up to ~~one hundred percent (100%)~~ of the estimated animals.

~~7.1.b. 7.1.2.~~ For estimates of six (6) to ten (10) animals determined to be causing damage ~~an officer or his/her his or her wildlife biologist designee may allow~~ the permittee may be allowed to kill up to ~~eighty percent (80%)~~ of the estimated animals.

~~7.1.c. 7.1.3.~~ For estimates of more than (10) animals determined to be causing damage, ~~an officer or his/her his or her wildlife biologist designee may allow~~ the permittee may be allowed to kill up to ~~fifty percent (50%)~~ of the estimated animals.

7.2. The permittee may not kill more than the number of animals of the designated species of wildlife specified on the permit. No permit will be issued for greater than ~~twenty five (25)~~ animals.

§58-15-8. Duties of Permittees.

8.1. All persons listed as designated shooters must possess a valid West Virginia Hunting license or be exempt from that requirement pursuant to W. Va. Code §20-2-27 or §20-2-28.

8.2. All wildlife taken must be immediately tagged with a non-hunting tag supplied by the Division of Natural Resources prior to being removed from the place of kill. Part of the tag shall be completed and affixed to the carcass and the remaining portion completed and returned to the Division of Natural Resources within ~~forty eight (48)~~ hours following the date of the kill. Any deer found not properly tagged will be confiscated and is grounds for revocation of the permit.

8.3. It is the responsibility of the permittee for lawful removal and disposal of the wildlife killed. Final disposition of any wildlife is to be reported to the issuing natural resources police officer or his or her wildlife biologist designee as required.

8.4. All wildlife lawfully taken under this provision may be transported beyond the boundaries of the State of West Virginia; providing, that anyone transporting wildlife outside of the State of West Virginia is responsible for complying with any state code or rules that may apply to ~~his/her~~ his or her particular circumstance or place of residence.

8.5. The Wildlife Damage Permit and all unused tags must be returned to the issuing natural resources police officer or his or her wildlife biologist designee within five days following expiration of said permit. Failure to comply with this requirement is grounds for denial of future Wildlife Damage Permit requests.

§58-15-9. Reoccurrence.

9.1. If substantial damage continues or reoccurs after removing deer or other wildlife, then ~~an~~ natural resources police officer or his/her his or her wildlife biologist designee may repeat issuing permits provided that the procedures of sections 6 and 7 of this rule are followed, until successive substantial damage ceases.

§58-15-10. Disposition of Wildlife.

10.1. Landowners, lessees, or tenants may retain all wildlife taken.

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10.2. Wildlife not retained by the landowner, lessee, or tenant may be given away with prior approval of ~~an~~ a natural resources police officer or his/her ~~his or her~~ wildlife biologist designee or buried by the permittee.

10.3. Landowners, lessees, tenants, and previously designated permittees are exempt from the provisions of W. Va. Code §20-2-5i et seq. when disposing of any big game lawfully taken in accordance with this rule.