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DEPARTMENT OF STATE

NOTICE OF COMMENT PERIOD

ON A PROPOSED RULE


AGENCY: W. Va. Department of Natural Resources

RULE TYPE: Procedural

RULE TITLE: West Virginia Department of Natural Resources,  
Chapter 20, Article 2, Procedural Rules for Obtaining Permits  
to Kill Deer or Other Wildlife Causing Damage to Cultivated  
Crops (Series 83) and Interpretive Rules for Obtaining Permits  
to Kill Deer or Other Wildlife Causing Damage to Cultivated  
Crops (Series 84)

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED  
AND WILL END ON February 12, 1986 AT 5:00 p.m. . WRITTEN  
COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Ron  
Shipley, Special Assistant to the Director, W. Va. Department  
of Natural Resources, 1800 Washington Street, East, Charleston,  
West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
\_\_\_\_\_  
Ronald R. Potesta  
Director

PREAMBLE  
FOR  
RULES RELATING TO CROP DAMAGE PERMITS

PROGRAM: Hunting.

REGULATIONS: West Virginia Code, Chapter 20, Article 2, Procedural Rules for Obtaining Permits to Kill Deer or Other Wildlife Causing Damage to Cultivated Crops (Series 83) and Interpretive Rules for Obtaining Permits to Kill Deer or Other Wildlife Causing Damage to Cultivated Crops (Series 84).

AUTHORITY: West Virginia Code, Chapter 20, Article 15 and Chapter 29A, Article 3.

ACTION: Proposed Rules

TOPIC: Rules for obtaining permits to kill deer or other wildlife causing damage to cultivated crops.

SUMMARY: The Department is proposing regulations concerning interpretations and the procedures an owner must follow to obtain a "crop damage permit" and the Department's methodology for issuance. This rulemaking is being taken pursuant to court order (Burns v. Hertig 84-C15; Tucker County Circuit Court, May 20, 1985). It replaces previous Administrative procedures issued by the Department.

DATES: Comments will be accepted until Monday, February 12, 1986 at 5:00 p.m. Public hearings will be held in Charleston on February 4 at 7:00 p.m. in the Director's Conference Room 674, 1800 Washington Street, East, Charleston, West Virginia and at the Elkins Operations Center, Ward Road, Elkins, West Virginia on February 11 at 7:00 p.m.

CONTACT: All comments should be submitted to the attention of Mr. Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, West Virginia Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305.

PUBLIC HEARING: Public hearings will be held in Charleston on February 4 at 7:00 p.m. in the Director's Conference Room 674, 1800 Washington Street, East, Charleston, West Virginia and the Elkins Operations Center, Ward Road, Elkins, West Virginia on February 11 at 7:00 p.m.

SUPPLEMENTARY INFORMATION: The Department is proposing to promulgate both an interpretive and a procedural rule for implementing the provisions of West Virginia Code Section 20-2-15 relating to crop damage by game animals, game birds and/or furbearers. This will be the first time rules have been promulgated on this code section under the revised Administrative Procedures Act, Chapter 29A, Article 3 of the West Virginia Code. Previously this procedure was covered by the Department's Administrative Procedures, Series VII - General Departmental Policies. The filing of both a procedural rule and an interpretive rule, instead of a combined procedural and interpretive rule, is required by the Secretary of State's policy to not accept combined rules.

The Department's proposed rulemaking is prompted by Judge Hott's decision in the case of Burns v. Hertig, DNR Director et al. Under W. Va. Code Section 20-2-15 the Department must issue special hunting permits to landowners if they sustain "substantial" crop damage from game animals. In his decision the Judge ruled that the current Administrative Procedures did not establish any guidelines to determine how much damage is necessary to trigger this "substantial damage" provision. Consequently, the Judge required DNR to "...establish reasonable standards and guidelines to assist the local conservation officers in determining when there is "substantial damage" under Code 20-2-15, and {he} shall also clarify the "Procedures for Controlling Wildlife Damages", to make it clear what damage triggers the duty of the Conservation Officer to determine the number of animals to be removed or destroyed."

The proposed regulations provide guidance to the conservation officers and defines substantial damage for three categories of crops: (1) cultivated crops; (2) gardens and ornamentals; (3) orchards and Christmas trees.

West Virginia Procedural Rules  
Department of Natural Resources  
Chapter 20-2  
Series 83.

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SECRETARY OF STATE

Section 1. Scope and Authority

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.

1.2 Authority. These regulations are promulgated under the authority of the West Virginia Code Chapter 20, Article 2, Section 15 and Chapter 29A, Article 3.

1.3 Effective Date. These regulations will be effective 30 days after filing.

1.4 Filing Date. These regulations were filed on \_\_\_\_\_.

Section 2. Procedure

2.1 Notification. At the occurrence of damage, the landowner, lessee or tenant shall, in person or by telephone, notify the local conservation officer or district law enforcement office and report his name, address, specific location where damage is occurring, type of damage and species causing such damage.

2.2 Conservation Officer Investigation. The conservation officer or his wildlife designee shall investigate the alleged damage according to the following procedures and complete the necessary wildlife damage forms and permits, and submit completed forms quarterly to the district game biologist.

2.3 Determination of Damage.

2.3.1 Cultivated crops. The conservation officer or his wildlife designee shall select a starting point in the area the crop 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 steps he shall record if damage is occurring within a one-step radius of that point. If damage can be found at 20% of the sample points, then there is substantial damage.

2.3.2 Gardens and Ornamentals. Total crop damage equalling 20% or more.

2.3.3 Orchards and Christmas Trees. Damage must occur on 20% of the trees in the portion of the orchard receiving damage. To be included in the calculation, browse damage must occur on at least

10% of the ends of branches at a height of 5 feet and lower.

### Section 3 Issuance of Permits

3.1 Upon making a determination of substantial damage pursuant to Section 2.3, the conservation officer or his wildlife designee shall issue a permit for the number of animals as follows:

3.1.1 For estimates of 5 or less animals determined to be causing the damage, the conservation officer or his wildlife designee may allow the permittee to kill up to 100% of the estimated animals.

3.1.2 For estimates of 6-10 animals determined to be causing damage, the conservation officer or his wildlife designee may allow the permittee to kill up to 80% of the estimated animals.

3.1.3 For estimates of more than 100 animals determined to be causing damage, the conservation officer or his wildlife designee may allow the permittee to kill up to 50% of the estimated animals.

3.2 The permittee may not kill more than the number of animals specified on the permit. No permit will be issued for greater than 25 animals.

### Section 4 Duties of Permittees

4.1 All animals taken must be immediately tagged with a non-hunting tag supplied by the Department of Natural Resources. Part of the tag shall be affixed to the carcass and the remaining portion returned to the Department of Natural Resources within 48 hours following the date of kill.

4.2 No animals taken under this provision may be transported beyond the boundaries of the State of West Virginia.

### Section 5 Reoccurrence

5.1 If substantial damage continues or reoccurs after removing deer, then the conservation officer or his wildlife designee may repeat issuing permits provided that the procedure of Section 4.2 are followed, until successive substantial damage ceases.

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NOTICE OF PUBLIC HEARING

ON A PROPOSED RULE

AGENCY: West Virginia Department of Natural Resources

RULE TYPE: Interpretive

RULE TITLE: W. Va. Dept. of Natural Resources, Chapter 20,  
Article 2, Procedural Rules for Obtaining Permits to Kill Deer  
or Other Wildlife Causing Damage to Cultivated Crops (Series  
83) and Interpretive Rules for Obtaining Permits to Kill Deer  
or Other Wildlife Causing Damage to Cultivated Crops (Series  
84)

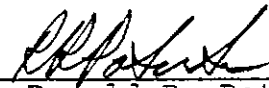
A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT  
7:00 p.m. ON February 4 at 1800 Washington  
Street, East, Room 674, Charleston, West Virginia AND AT  
7:00 p.m. ON February 11 AT Elkins Operations Center, Ward Road,  
Elkins, West Virginia 26241

COMMENTS ARE LIMITED TO: ORAL        WRITTEN        BOTH XX

COMMENTS MAY ALSO BE MAILED TO: Mr. Ron Shipley, Special  
Assistant to the Director, Director's Office of Regulatory  
Affairs, Dept. of Natural Resources, 1800 Washington Street,  
East, Charleston, West Virginia 25305

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT  
THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER  
TO FACILITATE A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesta  
Director