

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1992 FEB 14 PM 2:51
OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Department of Commerce, Labor
and Environmental Resources,
AGENCY: Division of Natural Resources TITLE NUMBER: 47

RULE TYPE: Procedural; CITE AUTHORITY §20-2-15

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 PROPOSED: Series 15

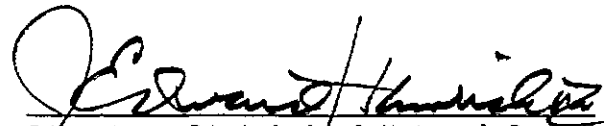
TITLE OF RULE BEING PROPOSED: Permits to Kill Deer and Other Wildlife
Causing Damage to Cultivated Crops, Fruit Trees, or Commercial Nurseries

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 16, 1992 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Office of Environmental & Regulatory Affairs
WV Division of Natural Resources
Capitol Complex
Building 3, Room 712
Charleston, WV 25305

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


Director, Division of Natural Resources

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3.20

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SECRETARY OF STATE

MEMORANDUM OF CONSENT


MEMORANDUM TO: J. Edward Hamrick III, Director
Division of Natural Resources

FROM: John M. Ranson, Secretary
Department of Commerce, Labor,
and Environmental Resources

SUBJECT: Consent to File Agency Proposed Regulations

The following regulations have my approval to be proposed pursuant to the Administrative Procedures Act set forth under Chapter 29A of the West Virginia Code [W. Va. Code §29A et seq.].

<u>Title</u>	<u>Series</u>	<u>Name</u>
47	15	Permits to kill deer and other wildlife causing damage to cultivated crops, fruit trees , or commercial nurseries.
47	49	Revocation of hunting and fishing licenses.


John M. Ranson
Secretary

2/7/92
Date



STATE OF WEST VIRGINIA
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

Capitol Complex, Building 3
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Telephone (304)348-2754

GASTON CAPERTON
Governor

J. EDWARD HAMRICK III
Director

ANN A. SPANER
Deputy Director

Memorandum

To: John M. Ranson, Secretary
Department of Commerce, Labor
and Environmental Resources

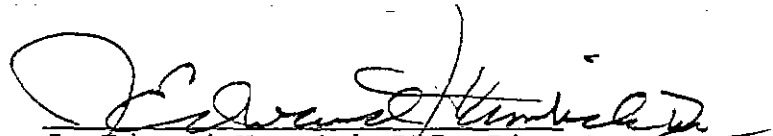
From: J. Edward Hamrick III, Director
Division of Natural Resources

Date: January 22, 1992

Subject: Division Approval of Proposed Rules and Request for
Department Consent to File.

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The proposed rules listed on the enclosed "MEMORANDUM OF CONSENT" have my approval to be proposed pursuant to the West Virginia Administrative Procedures Act. Your approval is requested.


J. Edward Hamrick III, Director
Division of Natural Resources

FISCAL NOTE FOR PROPOSED RULE FILED

1992 FEB 14 PM 2:51

Rule Title: Permits to kill deer and other wildlife causing damage to cultivated crops, fruit trees or commercial nurseries. 47CSR15A

SECRETARY OF STATE

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: Building 3, State Capitol Complex, Charleston, West Virginia

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expenses					
Repairs & Alterations					
Equipment					
Other					

2. Explanation of above estimates: 47CSR15A and 47CSR15B, procedural and interpretive rules respectively, have been combined into 47CSR15 a procedural rule. In addition changes were made to facilitate processing of permits and disposal of animals along with a few minor technical corrections. As a result some small, but unquantifiable, reduction in program operating expenses may occur and no new or increased funding is being proposed.

3. Objectives of this rule: Improve services to individuals being impacted by wildlife damage, combine rules and technical cleanup.

4. Explanation of Overall Economic Impact of Proposed Rule.
- A. Economic Impact on State Government.
Possibly a slight decrease in program operating expenses.
 - B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.
May result in less wildlife crop damage.
 - C. Economic Impact on Citizens/ Public at Large.
May result in less wildlife crop damage.

Date: January 31, 1992

Signature of Agency Head or Authorized Representative

 Director, Division of Natural Resources

PREAMBLE TO A PROPOSED RULE
CONCERNING
GROUNDWATER PROTECTION ACT FEE SCHEDULE

AGENCY: Department of Commerce, Labor, and Environmental Resources; Division of Natural Resources.

REGULATION: Title 47, Series 15 "Permits to Kill Deer and Other Wildlife Causing Damage to Cultivated Crops, Fruit Trees or Commercial Nurseries."

ACTION: Filing of a Proposed Rule, Notice of a Thirty Day Public Comment Period.

SUMMARY: The proposed, filed rule provides for combining 47CSR15A and 47CSR15B, procedural and interpretive rules respectively, into a single procedural rule, 47CSR15. In addition changes were made to facilitate processing of permits and disposal of animals along with a few minor technical corrections.

Written comments with postmarks prior to 5:00 p.m. March 8th, 1992 will be accepted. Written comments should be sent to:

Office of Environmental and Regulatory Affairs
WV Division of Natural Resources
Capitol Complex
Building 3, Room 712
Charleston, WV 25305

TITLE 47
PROCEDURAL RULES
DIVISION OF NATURAL RESOURCES

FILED

1982 FEB 14 PM 2:51

SERIES 15
PERMITS TO KILL DEER AND OTHER WILDLIFE CAUSING DAMAGE TO CULTIVATED CROPS, FRUIT TREES, OR COMMERCIAL NURSERIES

OFFICE OF WEST VIRGINIA
STATE

§47-15-1. 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 or commercial nurseries.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces 47 C.S.R. 15A and 47 C.S.R. 15B both of which were filed August 4, 1986 and became effective on September 3, 1986

§47-15-2. Applicability.

2.1. Landowners, lessees or tenants may protect their cultivated crops, fruit trees or commercial nurseries 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 subsection (a), section fifteen, article two, chapter twenty of the West Virginia Code.

2.2. Cultivated crops shall include any crop for which the mechanical removal of weeds is required.

§47-15-3. Exceptions.

3.1. Damage caused by bears or migratory birds is not covered by these provisions.

§47-15-4. Authorized Persons.

4.1. 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 the conservation officer or his wildlife designee. Permittees may kill animals only in the immediate vicinity of the permittees' damaged crops. "Immediate Vicinity" shall be determined by the conservation officer or his wildlife designee based upon the species in question, neighboring habitat, and other relevant factors and shall be specified in the permit issued.

§47-15-5. Procedure.

5.1. 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 the damage is occurring, type of damage, and species causing such damage.

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

5.2.3. When satisfied that the landowner, lessee, or tenant is suffering wildlife damage, the conservation officer may disregard Section 5.3, complete the Wildlife Damage Investigation Report and mail a copy with kill permits and tags to the complainant.

5.3. Determination of Substantial Damage.

5.3.1. 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 (5) steps he 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.

5.3.2. Fruit Trees and Commercial Nurseries. Damage must occur on twenty percent (20%) of the trees in the portion of the orchard or nursery receiving damage. 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.

§47-15-6. Issuance of Permits.

6.1. Upon making a determination of substantial damage pursuant to Section 5.3 of these regulations, the conservation officer or his wildlife designee shall issue a permit for the number of animals as follows:

6.1.1. For estimates of five (5) or less animals determined to be causing damage, the conservation officer or his wildlife designee may allow the permittee to kill up to one hundred percent (100%) of the estimated animals.

6.1.2. For estimates of six (6) to ten (10) animals determined to be causing damage, the conservation officer or his wildlife designee may allow the permittee to kill up to eighty percent (80%) of the estimated animals.

6.1.3. For estimates of more than ten (10) animals determined to be causing damage, the conservation officer or his wildlife designee may allow the permittee to kill up to fifty percent (50%) of the estimated animals.

6.2. The permittee may not kill more than the number of animals specified on the permit. No permit will be issued for greater than twenty-five (25) animals.

§47-15-7. Duties of Permittees.

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

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

§47-15-8. Reoccurrence.

8.1. If substantial damage continues or reoccurs after removing deer or other wildlife, then the conservation officer or his wildlife designee may repeat issuing permits provided that the procedures of Sections 5 and 6 of these regulations are followed, until successive substantial damage ceases.

§47-15-9. Disposition of Animals.

9.1. Landowners, lessees or tenants may retain all animals taken.

9.2. Animals not retained by the landowner, lessee or tenant may be given away with prior approval of the conservation officer or buried by the permittee.