

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: §20-2-15

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 15

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 20, 1992

April 17, 1992
Date

Director, Division of Natural Resources

250



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Charleston, WV 25305-0770

RECEIVED
OCT 19 1992

DIV. OF NATURAL RESOURCES
OFFICE OF ENVIRONMENTAL &
REGULATORY AFFAIRS

TO: Frank Pleurie

AGENCY: Division of Natural Resources

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE 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: 15 TITLE: 47 Division of Natural Resources

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: [Signature]

DATE: 12-23-92

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

TITLE 47
PROCEDURAL RULES
DIVISION OF NATURAL RESOURCES

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

§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. -- April 20, 1992.

1.4. Effective Date. -- May 20, 1992.

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.

RESULTS OF
PUBLIC HEARING/COMMENT
FOR
47 C.S.R. 15
(Procedural Rule)

FILED
1992 APR 20 PM 2:32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1. Attendance at public hearing: Comment period only.
2. Comments received: No comments received.
3. Amendments made to the proposed rule as a result of comments or other information received: None.
4. Reasons for those amendments: N.A.