

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED
1988 JUN -6 AM 8 50
OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

RULE TYPE: Procedural; CITE AUTHORITY W. Va. Code §20-2-22a

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 PROPOSED: 18A

TITLE OF RULE BEING PROPOSED: _____

Bear Damage Regulations

DATE OF PUBLIC HEARING: Monday, July 11, 1988 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Director's Conference Room 674
Building 3, State Capitol Complex
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Dept. of Natural Resources

Room 842

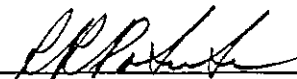
The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

1800 Washington Street, East

Charleston, WV 25305

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



FISCAL NOTE FOR PROPOSED RULES

Rule Title: Bear Damage Regulations

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Natural Resources

Address: 1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$
Personal Services					
Current Expense					
Repairs and Alterations			NO CHANGE		
Equipment					
Other					

2. Explanation of Above Estimates:

This proposal replaces similar, existing DNR Administrative Procedures; therefore, no new administrative expenditures are anticipated.

3. Objectives of These Rules:

This proposal establishes the procedures for presenting and deciding claims of bear damage under W. Va. Code §20-2-22a.

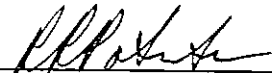
4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: See Chart

B. Economic Impact on Political Subdivisions: NO IMPACT
 Economic Impact on Specific Industries: NO IMPACT
 Economic Impact on Specific Groups of Citizens: See Chart

C. Economic Impact on Citizens/Public at Large: NO IMPACT

Date: June 3, 1988


 Ronald R. Potesta
 Director

Attachment

FILED
1988 JUN 18 10 50

PREAMBLE TO A PROPOSED PROCEDURAL RULE CONCERNING
DAMAGE CAUSED BY BEARS TO LIVESTOCK AND OTHER PROPERTY

STATE AGENCY: Department of Natural Resources
SECRETARY OF STATE

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

AUTHORITY: W. Va. Code §20-2-22a

ACTION: Proposed Rule; Notice of Hearing and Comment Period

DATES: A public hearing on this proposal will be held on July 11, 1988 at 1:00 p.m. in Room 674, Building 3, State Capitol Complex, Charleston; written comments will be received by the Department until 4:30 p.m. on that day.

CONTACT: For further information regarding this filing, please contact Mr. Jeffrey E. Herrold, WV Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305, telephone (304) 348-2761.

SUMMARY: The Department is proposing 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. This proposal would codify and replace existing Department Administrative Procedures on the same subject.

The proposed rule provides procedures for instituting and conducting a bear damage hunt in order to relocate or destroy a miscreant bear. The proposed rule also sets forth procedures for the presentation and review of bear damage claims, including the forms to be submitted by claimants.

BEAR DAMAGE CLAIM PAYMENTS
1984 - 1987

County	1984	1985	1986	1987
Berkeley	262 (1)	0	0	0
Boone	555 (2)	2,115 (14)	1,194 (12)	450 (2)
Braxton	0	115 (1)	706 (3)	273 (1)
Clay	675 (4)	135 (1)	1,041 (4)	2,040 (8)
Fayette	472 (2)	532 (1)	405 (2)	1,423 (7)
Grant	3,076 (5)	1,880 (5)	2,018 (6)	4,070 (9)
Greenbrier	594 (3)	685 (4)	1,782 (5)	2,022 (5)
Hampshire	0	0	718 (3)	2,321 (3)
Hardy	428 (2)	0	0	140 (1)
Kanawha	638 (4)	3,775 (18)	3,482 (22)	4,590 (18)
Lewis	0	550 (1)	0	0
Logan	58 (1)	0	0	1,624 (7)
McDowell	0	987 (4)	0	401 (2)
Mercer	0	0	0	300 (1)
Mineral	0	0	0	1,050 (1)
Mingo	0	106 (1)	0	0
Monroe	0	0	326 (2)	0
Morgan	0	0	124 (1)	0
Nicholas	92 (1)	400 (5)	2,771 (11)	1,526 (10)
Pendleton	3,126 (19)	3,977 (26)	1,162 (6)	7,968 (34)
Pocahontas	8,744 (38)	7,212 (29)	12,621 (40)	11,782 (32)
Preston	0	0	0	995 (4)
Putnam	0	0	20 (1)	0
Raleigh	359 (1)	1,222 (3)	1,703 (6)	5,910 (13)
Randolph	4,981 (28)	6,200 (23)	3,329 (19)	4,797 (27)
Ritchie	200 (1)	0	0	0
Summers	206 (1)	0	144 (1)	200 (2)
Tucker	820 (2)	2,351 (11)	2,078 (8)	1,215 (5)
Upshur	0	300 (3)	200 (1)	0
Wayne	0	0	410 (2)	0
Webster	0	1,000 (1)	825 (3)	443 (4)
Wyoming	0	0	25 (1)	544 (3)
Total	\$24,786 (115)	\$33,542 (151)	\$37,084 (159)	\$56,084 (199)

() Total number of claims paid

SOURCE: 1987 Big Game Bulletin, West Virginia Department of Natural Resources, March 1988, Table 8, page 37

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 18A
BEAR DAMAGE REGULATIONS

1988 JUN -6 AM 8 58
SECRETARY OF STATE

FILED

§47-18A-1. General.

1.1. Scope and Purpose. -- This rule establishes the procedures to be followed in presenting and deciding claims of bear damage under W. Va. Code §20-2-22a.

1.2. Authority. -- W. Va. Code §20-2-22a.

1.3. Filing Date. --

1.4. Effective Date. --

§47-18A-2. Definitions.

2.1. "Conservation Officer" or "Officer" means a conservation officer who is a full-time employee of the West Virginia Department of Natural Resources.

2.2. "Director" means the director of the West Virginia Department of Natural Resources.

2.3. "Division" means the Division of Wildlife Resources of the West Virginia Department of Natural Resources.

2.4. "Livestock" means cattle, goats, hogs, poultry, and sheep.

2.5. "Wildlife Biologist" or "Biologist" means an employee of the Division of Wildlife Resources of the West Virginia Department of Natural Resources who, by reason of his knowledge of wildlife biology, acquired through a professional education or related practical experience, is qualified to investigate a bear damage complaint or supervise a bear damage hunt.

2.6. All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

§47-18A-3. Bear Damage Complaint Procedures.

3.1. A property owner or lessee who has suffered damage to real or personal property, including loss occasioned by

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.

APPENDIX A

DEPARTMENT OF NATURAL RESOURCES

BEAR DAMAGE REPORT

Name of Property Owner: _____

Address: _____

Telephone: _____ Social Security Number: _____

Location of Property: _____

County: _____ Date Damage Occurred: _____

Description of Damage: _____

Was the suspect bear hunted? YES NO

Bear killed? YES NO Bear captured? YES NO

Sex: M F Weight: _____ Age: _____

Appraised value: _____
Appraiser #1 Appraiser #2 Appraiser #3

The three completed appraisal forms must be attached to this report and returned to the investigating officer within thirty days of above date.

Investigating Officer: _____

Address: _____ Telephone: _____

Signature of Property Owner

FOR COMMISSION USE ONLY

The above is / is not valid: _____
Signature of Department Representative

The above is / is not valid: _____
Signature of Property Owner

The above is / is not valid: _____
Signature of Third Party

AMOUNT TO BE PAID TO THE PROPERTY OWNER: \$ _____

APPENDIX B

DEPARTMENT OF NATURAL RESOURCES

BEAR DAMAGE APPRAISAL FORM

Name of Property Owner: _____

Address: _____

Location of Property: _____

County: _____ Date Damage Occurred: _____

Item of Property Damaged: _____

Value: \$ _____

Item of Property Damaged: _____

Value: \$ _____

Item of Property Damaged: _____

Value: \$ _____

Item of Property Damaged: _____

Value: \$ _____

Item of Property Damaged: _____

Value: \$ _____

Item of Property Damaged: _____

Value: \$ _____

Item of Property Damaged: _____

Value: \$ _____

TOTAL APPRAISED DAMAGE: \$ _____

Date of Appraisal: _____

Name of Appraiser: _____

Address: _____

Telephone: _____

Signature: _____

(Attach your completed bear damage assessment form(s) to this form.)

APPENDIX C

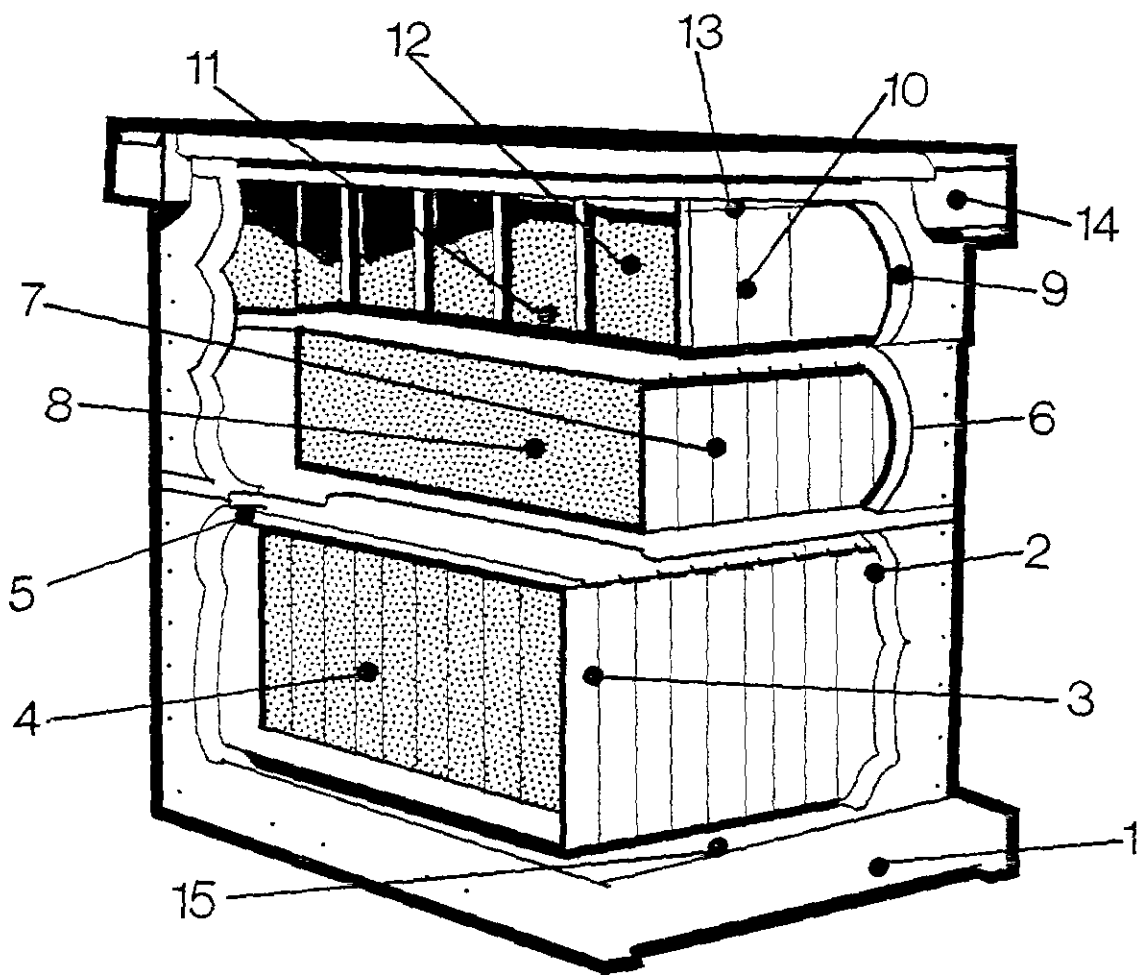
DEPARTMENT OF NATURAL RESOURCES
BEEHIVE BEAR DAMAGE ASSESSMENT FORM

Number of Items Damaged *	Cutaway View Number	Description of Item	Unit Cost	Total Costs
_____	1	Bottom Board	\$5.75	\$ _____
_____	2	Hive Body (Deep Super)	\$8.50	\$ _____
_____	3	Brood Frames	\$3.60 per ten	\$ _____
_____	4	Wire Brood Foundation	\$4.75 per ten	\$ _____
_____	5	Queen Excluder	\$4.00	\$ _____
_____	6	Shallow Super	\$4.55	\$ _____
_____	6a	Illinois Extra Deep Super	\$5.00	\$ _____
_____	7	Shallow Super Frames	\$3.60 per ten	\$ _____
_____	7a	Illinois Frames	\$3.60 per ten	\$ _____
_____	8	Wired Super Foundation	\$2.60 per ten	\$ _____
_____	9 & 10	Half Depth Super w/section holder	\$9.40	\$ _____
_____	11	Half Depth Sections (28 per Super)	\$4.62	\$ _____
_____	12	Thin Super Foundations (28 per Super)	\$4.38	\$ _____
_____	13	Inner Cover	\$5.00	\$ _____
_____	14	Telescoping Cover	\$8.75	\$ _____
_____		3 pound package of honeybees w/queen	\$24.00	\$ _____
_____		Pounds of honey lost	70¢/lb	\$ _____
_____		1 quart of white paint	\$5.00	\$ _____
Total Amount Claimed:				\$ _____

* An item is considered to be damaged only if repair or replacement is required prior to reuse.

DEPARTMENT OF NATURAL RESOURCES
BEEHIVE BEAR DAMAGE ASSESSMENT FORM

Cutaway view of one bee hive with two styles of supers



APPENDIX D

DEPARTMENT OF NATURAL RESOURCES

FRUIT TREE BEAR DAMAGE ASSESSMENT FORM

Number of Trees	Damage Class	Age of Fruit Trees			Total Value
		0-8 years	9-20 years	21+ years	
_____	1 - 9 %	\$5	\$10	\$15	\$ _____
_____	10 - 33 %	\$20	\$32	\$45	\$ _____
_____	34 - 66 %	\$35	\$55	\$75	\$ _____
_____	Over 66 %	\$55	\$85	\$115	\$ _____

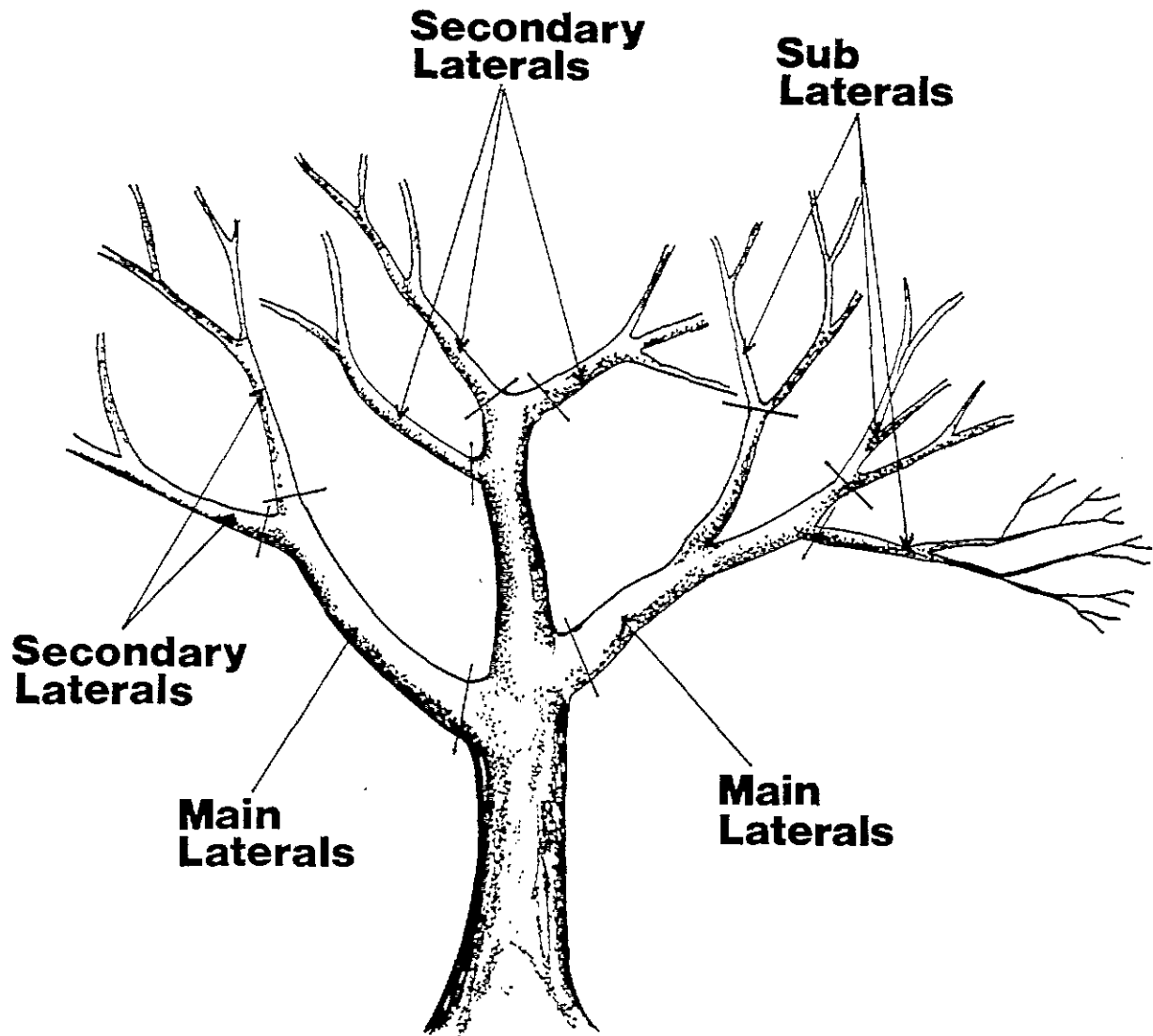
Total Amount Claimed: \$ _____

Dollar values listed include compensation for the current fruit crop destroyed by the bear. Compensation beyond the values listed will require sales receipts or other documentation as proof of production in the current year or previous years.

Definitions of Damage Classes

- 1 - 9 % All branches that were broken or damaged necessitating removal are less than two (2) inches in diameter and no main laterals were broken or damaged necessitating removal.
- 10 - 33 % One or more sublateral branches of two (2) inches in diameter or larger were broken or damaged necessitating removal or up to one-third (1/3) of the main laterals were broken or damaged necessitating removal.
- 34 - 66 % More than one-third (1/3) and up to two-thirds (2/3) of the main laterals were broken or damaged necessitating removal.
- Over 66 % More than two-thirds (2/3) of the main laterals were broken or damaged necessitating removal (i.e., the tree was rendered essentially nonproductive due to the damage caused by the bear).

DEPARTMENT OF NATURAL RESOURCES
FRUIT TREE BEAR DAMAGE ASSESSMENT FORM



APPENDIX E

DEPARTMENT OF NATURAL RESOURCES
LIVESTOCK BEAR DAMAGE ASSESSMENT FORM

Number Killed	Description	Maximum Payment	Total
CATTLE			
_____	Calf	\$65/100#	\$ _____
_____	Yearling or Adult	\$50/100#	\$ _____
_____	Registered Stock	*	\$ _____
GOATS			
_____	Young or Adult	\$40/head	\$ _____
HOGS			
_____	Piglets up to 8 weeks old or up to 50 pounds	\$50/head	\$ _____
_____	Yearling or Adult	\$100/head	\$ _____
POULTRY			
_____	Chicken	35¢/pound	\$ _____
_____	Turkey	48¢/pound	\$ _____
SHEEP			
_____	Lamb	\$80/head	\$ _____
_____	Yearling to 4 years old	\$100/head	\$ _____
_____	Adult over 4 years old	\$25/100#	\$ _____
_____	Registered Stock	*	\$ _____

Total Amount Claimed: \$ _____

* The value of registered stock will be based upon the original bill of sale or other documentation certifying the value of the animal.