

**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**

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: §20-2-22A

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

§29A-3-8

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18A (NEW 18)

TITLE OF RULE BEING AMENDED: BEAR DAMAGE REGULATIONS

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

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS September 10, 1996


CHARLES B. FELTON, JR., DIRECTOR

TITLE 58
PROCEDURAL RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 18

BEAR DAMAGE REGULATIONS

§58-18-1. 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. -- July 12, 1996

1.4. Effective Date. -- September 10, 1996

§58-18-2. Definitions.

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

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

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

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

2.5. "Wildlife Biologist" or "Biologist" means an employee of the Wildlife Resources Section of the West Virginia Division of Natural Resources who, by reason of his/her 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.

§58-18-3. 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 or she may designate a wildlife biologist to investigate on his/her 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 this rule.

§58-18-4. 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 (1) confirmed instance of bear damage in a given locality has been reported to the Division 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 Division 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 Section 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 Section personnel so that biological information can be collected.

4.6. Section personnel are responsible for disposing of any bear destroyed during a bear damage hunt.

4.6.1. Section 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 rules governing the disposal of State property.

§58-18-5. 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 or she must file a Division 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 this rule, 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 Division, and one appraiser will be selected jointly by the property owner and the Division.

5.2.2. The selected appraisers will promptly appraise the loss in accordance with the provisions of Section 6 of this rule.

5.2.3. Each appraiser will record his/her findings on a Division of Natural Resources Bear Damage Appraisal Form, attach the bear damage assessment form that he or she completed, and deliver the completed forms to the property owner.

5.2.4. The property owner must submit his/her 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 this rule.

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 Division, and a person to be selected jointly by the complaining property owner and the officer of the Division.

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 this rule.

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 this rule.

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 this rule, he or she may direct the commission to reconsider its recommendation.

§58-18-6. 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 Division.

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.

FORMS MAY BE OBTAINED FROM SECRETARY OF STATE'S OFFICE

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

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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

APPENDIX C

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.)

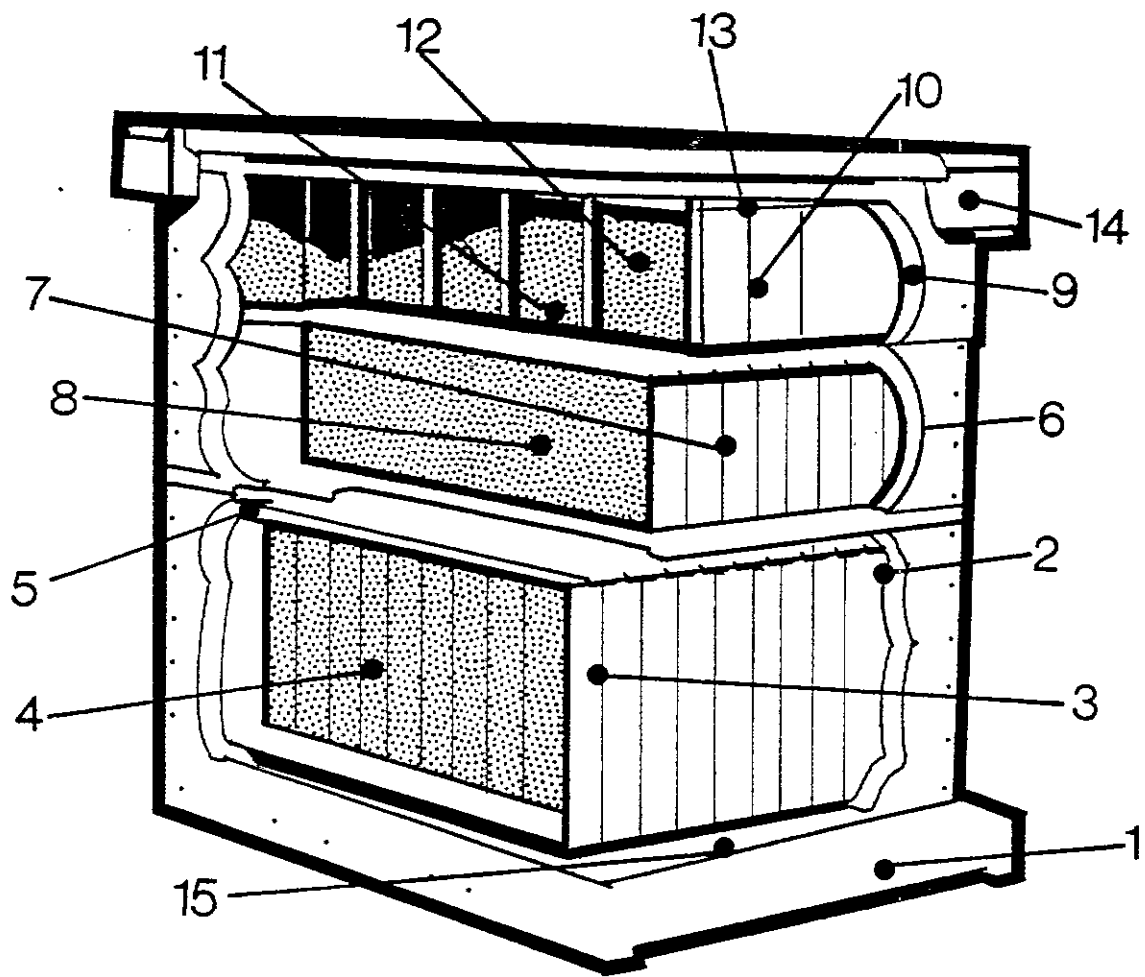
DEPARTMENT OF NATURAL RESOURCES
BEEHIVE BEAR DAMAGE ASSESSMENT FORM

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	\$ _____

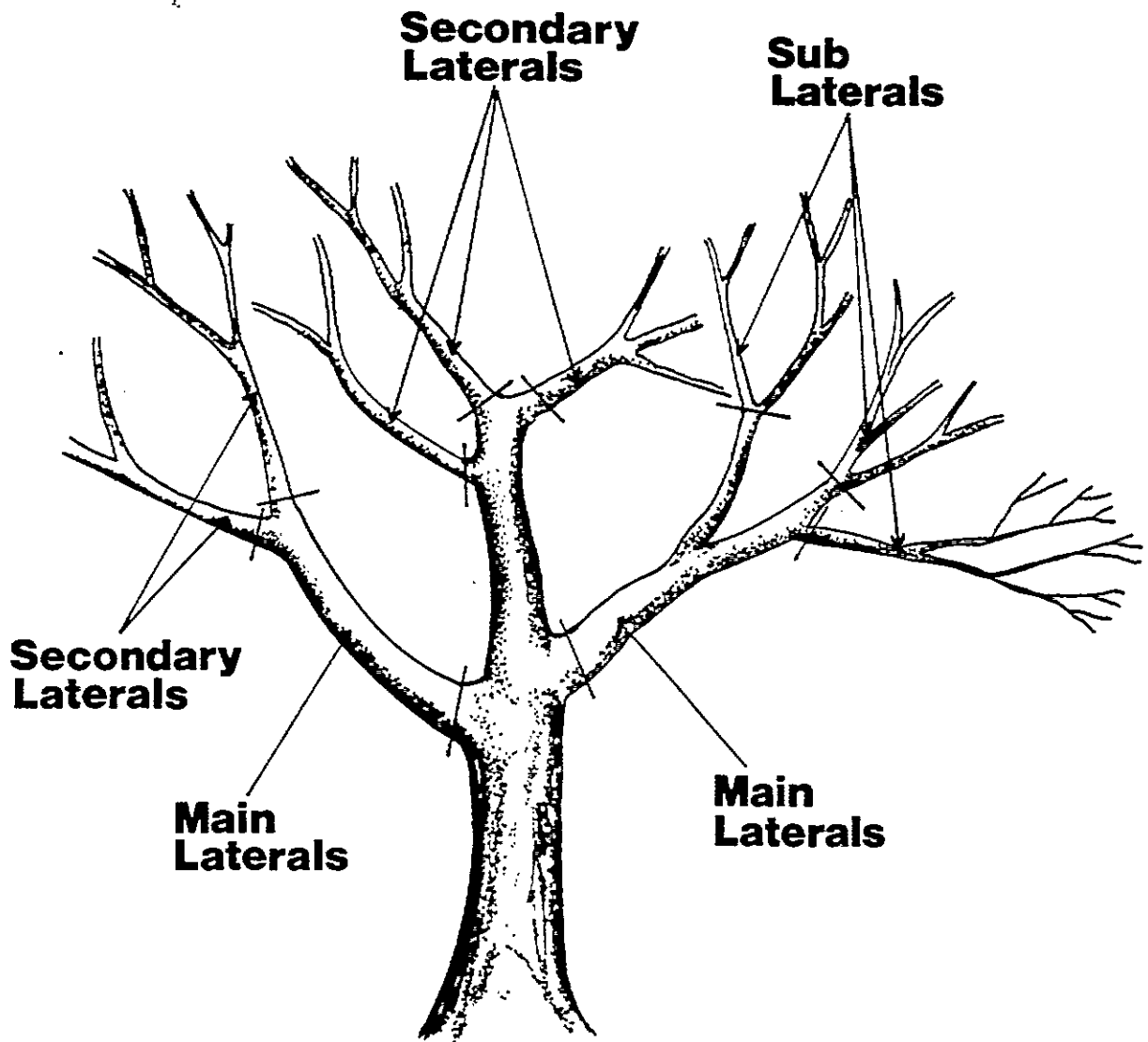
Total Amount Claimed: \$ _____

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 7 years old	\$100/head	\$ _____
_____	Adult over 7 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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA
SECRETARY OF STATE

WB

(Plus all the volunteer
help we can get)

TO: BILL DANIEL

AGENCY: NATURAL RESOURCES

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 3, 1996

THE ATTACHED RULE 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: 18 TITLE: 58 NATURAL RESOURCES

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *WB Daniel*
TITLE OF PERSON SIGNING: *Deputy Chief, Law Enforcement*
DATE: *10/22/96*

* 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.