

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2014 JUL 30 A 11:54

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: DOC, DNR, Wildlife Resources Section TITLE NUMBER: 58

CITE AUTHORITY: 20-2-7 and 20-2-50a

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 41

TITLE OF RULE BEING AMENDED: Wildlife Damage Control Agents

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

TITLE 58  
LEGISLATIVE RULE  
DEPARTMENT OF COMMERCE  
DIVISION OF NATURAL RESOURCES

SERIES 41  
WILDLIFE DAMAGE CONTROL AGENTS RULE

SUMMARY:

Series 41 revises the current Wildlife Damage Control Agents Rule. This rule establishes standards to govern the licensing, training, and operations of wildlife damage control agents in West Virginia. Revisions to this rule include: the allowance of electronic means to check traps, re-testing requirements, language to address the handling of animals which have bitten an individual, as well as numerous editorial and nomenclature changes.

CIRCUMSTANCES:

This rule has been in effect since 1996 and there are numerous sections which need to be clarified and/or edited as well as language to address the issues described above.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Series 41, Wildlife Damage Control Agents

Rule Title: \_\_\_\_\_  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency: Division of Natural Resources, Wildlife Resources Section  
 Address: 314 4th Avenue  
So. Charleston, WV 25303  
 Phone Number: 304-558-2771 Email: billie.j.shearer@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There is no change anticipated to the administrative expenditures and/or revenues as a result of this rule.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Series 41, Wildlife Damage Control Agents

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

- 3. Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

No impact anticipated.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Revisions to this rule include: 1) Change from Bureau of Commerce to Department of Commerce; 2) Language which permits wildlife damage control agents to use electronic means to check on the status of traps; 3) Minor change to address recent change in name of "conservation officer" to Natural Resource Police Officer; 4) Language to require a 30-day waiting period for applicants to retest; 5) Modification to require agents to follow DNR provided bat exclusion guidelines; 6) Modification to address handling of animals in which a person has been bitten or exposed to the animal; and 7) Minor nomenclature changes and editorial changes.

Date: 7-30-2014

Signature of Agency Head or Authorized Representative

John L. Zup

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 7/29/14

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DOC, DNR, Wildlife Resources Section  
324 4th Avenue  
So. Charleston, WV 25303

LEGISLATIVE RULE TITLE: ~~Wildlife Damage Control Agents~~

1. Authorizing statute(s) citation 20-2-7 and 20-2-50a

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
6/23/14

b. What other notice, including advertising, did you give of the hearing?  
No public hearing was held. There was a 30-day comment period.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
7/23/14

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X                          No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

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f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Curtis I. Taylor, Chief  
DNR Wildlife Resources Section  
324 4th Avenue  
So. Charleston, WV 25303

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g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

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b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a



July 17, 2014

Mr. Curtis Taylor, Chief  
Division of Natural Resources  
Wildlife Resources Section  
324 4<sup>th</sup> Avenue  
South Charleston, WV 25303

Mr. Taylor,

I write on behalf of the National Pest Management Association (NPMA) – the only national trade group representing professional pest management companies – in support of the pending revisions to the existing Wildlife Damage Agents Rule (Title 58, Series 41). Specifically, we commend the Division of Natural Resources (DNR) for including a provision in the proposal permitting wildlife damage control agents to check traps remotely by electronic means in lieu of a daily physical trap check.

Founded in 1933, NPMA has 6,000 U.S. members who manage pests such as ants, bed bugs, cockroaches, mosquitoes, nuisance birds and wildlife, rodents, stinging insects, stored product pests and termites in a variety of residential, commercial and institutional settings. An increasing number of member companies in West Virginia and throughout the country offer nuisance wildlife management services, and now regularly respond to calls from consumers to trap and/or exclude animal pests such as squirrels, chipmunks, raccoons, woodchucks, skunks, and opossum.

Wildlife damage control agents will benefit greatly from the pending rulemaking as being able to comply with the state's daily trap check requirement using remote trapping technology will save time and fuel costs while still ensuring the trapped animal is treated humanely. Indeed, the proposed rule strikes the perfect balance between protecting the welfare of the trapped animal, allowing for increased operator efficiency and reducing consumer costs. As you are likely aware, the Pennsylvania enacted a law last year allowing nuisance wildlife control operators to use electronic means as a way to check traps in compliance with the state's trap check requirement. Ohio's nuisance wild animal control operator regulations also permits the use of such technology, as do other states

Page Two  
July 17, 2014  
Mr. Curtis Taylor

NPMA applauds DNR for embracing electronic remote trap technology and wholehearted supports the rulemaking's adoption and implementation. Please do not hesitate to contact me at [gharrington@pestworld.org](mailto:gharrington@pestworld.org) or (703) 352-6762 if you wish to discuss this matter in more detail

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Harrington". The signature is written in a cursive, flowing style.

Gene Harrington  
Vice President, Government Affairs

TITLE 58  
LEGISLATIVE RULE  
BUREAU DEPARTMENT OF COMMERCE  
DIVISION OF NATURAL RESOURCES

SERIES 41  
WILDLIFE DAMAGE CONTROL AGENTS

FILED

2014 JUL 30 A 11: 54

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§58-41-1. General.**

1.1. Scope and Purpose. -- This legislative rule establishes standards to govern the licensing, training, and operations of wildlife damage control agents in West Virginia.

1.2. Authority. -- W. Va. Code § 20-2-7 and § 20-2-50a.

1.3. Filing Date. -- ~~May 10, 1996.~~

1.4. Effective Date. -- ~~August 8, 1996.~~

**§58-41-2. Definitions.**

2.1. "Wildlife Damage Control Agent" or "Agent" means a person who is licensed by the Division of Natural Resources and who is authorized to take and dispose of wildlife found to be creating a nuisance in or around homes, businesses and other places where the presence of wildlife may be a nuisance.

2.2. Wildlife Damage Control means the act of taking, harassing, restraining, disposing or otherwise interfering with wildlife as listed in Subdivisions ~~7.1.7., 7.1.8., and 7.1.9.~~ 7.1.g., 7.1.h., and 7.1.i. of this rule and as defined in W. Va. Code §20-1-2.

2.3. "Director" means the Director of the Division of Natural Resources.

2.4. "Division" means the Division of Natural Resources.

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

**§58-41-3. Licensing.**

3.1. A person seeking a wildlife damage control license shall complete a written application on forms supplied by the Director. Completed applications shall be submitted to the district headquarters of the Law Enforcement Section, Division of Natural Resources. All applications shall contain the following information:

~~3.1.1.~~ 3.1.a. The name of the applicant, and the applicant's address, telephone number, date of birth, social security number and state business tax number.

~~3.1.1.a.~~ 3.1.a.1. An applicant must be eighteen (18) years of age or older to be issued a wildlife damage control license.

~~3.1.2.~~ 3.1.b. In the event the applicant is a corporation, partnership, firm, business or other commercial entity, club, organization or association, the name, address and telephone number of all officers is required. Each agent engaged in wildlife damage control must be individually licensed.

~~3.1.3.~~ 3.1.c. The applicant must demonstrate his or her knowledge of wildlife damage control procedures, laws, rules, and policies through the satisfactory completion of a written test.

3.1.c.1. Applicants who do not achieve the minimum score required for the satisfactory completion of the written test are required to wait a minimum of thirty (30) days prior to re-testing.

3.2. A wildlife damage control license is valid for a period of one calendar year and must be renewed annually.

~~3.2.1.~~ 3.2.a. The Division shall test all agents at five (5) year intervals upon application for license renewal.

3.3. The license is not transferable.

#### **§58-41-4. Annual Fee.**

4.1. The Division shall charge an annual fee of fifty dollars (\$50) for issuance of a wildlife damage control license to agents who charge a fee for their services.

~~4.1.1.~~ 4.1.a. A corporation, partnership, firm, business or other commercial entity, club, or organization having multiple agents may license each agent annually for twenty percent (20%) of the license fee after payment of the initial fifty dollar (\$50) license fee.

4.2. The Division shall waive the fifty dollar (\$50) annual fee for employees of a municipal or other government agency, when the employee is acting as an agent for the agency.

#### **§58-41-5. Background Check.**

5.1. Upon receipt of a completed application, the ~~district conservation~~ natural resource police officer in the district of the applicant's residence, shall determine if the applicant has, within the last five (5) years, been convicted of a violation of any federal or state statute or rule or regulation which is related to the activity for which the license is sought. ~~If he or she~~ the district natural resource police officer determines that a violation exists, the Division shall not issue a wildlife damage control license for a period of at least five (5) years after the violation.

**§58-41-6. Training.**

6.1. The Director may provide training requirements for wildlife damage control agents.

**§58-41-7. Procedures.**

7.1. The following procedures and restrictions regulate wildlife damage control agents:

~~7.1.1.~~ 7.1.a. The agent is not exempt from compliance with the provisions of other state, local, or federal laws.

~~7.1.2.~~ 7.1.b. The wildlife damage control agent shall identify the offending wildlife, if possible, and recommend methods of control, estimated costs, and advantages and disadvantages of each method. The agent shall explain how much of the problem will be resolved by the recommended methods.

~~7.1.3.~~ 7.1.c. While engaged in wildlife damage control, the agent must obey all hunting and trapping laws and rules with the following exceptions:

~~7.1.3.a.~~ 7.1.c.1. Traps may be set at any time;

~~7.1.3.b.~~ 7.1.c.2. Woodchucks may be controlled by gas cartridges;

~~7.1.3.c.~~ 7.1.c.3. Wildlife dens of authorized species in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule may be disturbed and destroyed. Nests of state and federally protected birds containing eggs or young may be disturbed and destroyed after obtaining appropriate state and federal permits;

~~7.1.3.d.~~ 7.1.c.4. Authorized species of wildlife in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule may be taken by net, bait, or trap;

~~7.1.3.e.~~ 7.1.c.5. Authorized species in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule may be possessed for up to 72 hours during the closed season; ~~and~~

~~7.1.4.f.~~ 7.1.c.6. Wildlife damage control agents may use electronic means to check on the status of a trap while acting pursuant to the authority granted under the license. If the electronic device malfunctions or in any way ceases to provide the wildlife damage control agent with real-time updates on the trap, the wildlife damage control agent shall physically check the trap within 24 hours; and

~~7.1.3.f.~~ 7.1.c.7. Agents may be authorized to use other methods of control as recommended by the district wildlife biologist or district ~~eonservation~~ natural resource police officer.

~~7.1.4.~~ 7.1.d. Agents using restricted use pesticides to take or control wildlife species must be

certified and licensed with the West Virginia Department of Agriculture. Certified pesticide applicators providing wildlife damage control services must possess a wildlife damage control agent license.

~~7.1.5.~~ 7.1.e. Agents shall use ~~leg~~foot-hold traps in municipalities of the type approved by the Director and shall set the traps so as to avoid free roaming pets. If pets are captured the agent shall release them to the owners when the owner can be identified, release them at the site of capture or release them to appropriate county officials. An agent shall immediately release wildlife species not responsible for nuisance or damage.

~~7.1.6.~~ 7.1.f. All trapping devices must have the agent's name and address on a durable plate or tag attached to the trapping device.

~~7.1.7.~~ 7.1.g. A wildlife damage control license authorizes the agent to control problem animals of the following species or groups of species: pigeons (rock dove pigeon), house sparrow, European starling, red-winged blackbird, brown-headed cowbird, grackle, opossum, moles, bats, cottontail rabbit, snapping turtle, snakes, chipmunk, grey squirrel, fox squirrel, red squirrel, southern flying squirrel, woodchuck, muskrat, rats, mice, voles, raccoon, weasels, red fox, gray fox, coyote, mink and striped skunk, provided that the species listed in subdivision ~~7.1.9.~~ 7.1.i. may not be killed, captured, or disturbed. Crow, grackle, red-winged blackbird, and brown-headed cowbird may be controlled under state and federal rules and regulations.

7.1.g.1. Agents shall follow bat exclusion guidelines which have been developed by the West Virginia Division of Natural Resources and which are provided to agents upon issuance of their Wildlife Damage Control Agent license.

~~7.1.8.~~ 7.1.h. An agent may control the following species or groups of species, only with prior approval of the district wildlife biologist and the district ~~conservation~~ natural resource police officer: white-tailed deer, black bear, bobcat, fisher, beaver, otter, wild turkey, wild boar, elk and any species not listed in subdivision ~~7.1.7. and 7.1.9.~~ 7.1.g. and 7.1.i. of this rule. An agent may only take federally protected birds with a U.S. Fish and Wildlife Service depredation permit.

~~7.1.9.~~ 7.1.i. The following species or group of species shall not be controlled by wildlife damage control agents: migratory birds (except as listed in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule), salamanders, frogs, toads, turtles (except as listed in subdivision ~~7.1.7.~~ 7.1.g. of this rule), skinks, ~~Eastern mountain lion (Felis concolor),~~ Eastern ribbon snake (Thamnophis sauritus sauritus), mountain earth snake (Virginia valeriae pulchra), corn snake (Elaphe guttata guttata), Northern pine snake (Pituophis melanoleucus melanoleucus), ~~Eastern king snake (Lampropeltis getulus getulus getula getula),~~ long-tailed shrew (Sorex dispar), pygmy shrew (Sorex hoyi), ~~N~~northern water shrew (Sorex palustris), eastern small-footed myotis (Myotis ~~subulatus leibii~~), ~~N~~northern long-eared bat (Myotis septentrionalis), Indiana bat (Myotis sodalis), Rafinesque's big-eared bat (~~Pleotus~~ Corynorhinus rafinesquii), Virginia big-eared bat (~~Pleotus~~ Corynorhinus townsendii virginianus), ~~N~~northern flying squirrel (Glaucomys sabrinus), Allegheny woodrat (Neotoma Magister), rock vole (Microtus chrotorrhinus), prairie vole (Microtus ochrogaster), golden mouse (Ochrotomys nuttalli), ~~E~~eastern harvest mouse (Reithrodontomys humulis), meadow jumping

mouse (*Zapus hudsonius*), least weasel (*Mustela nivalis*), Eastern spotted skunk (*Spilogale putorius*), or threatened, ~~or endangered~~ or candidate species as designated by the Endangered Species Act of 1973, as amended.

#### **§58-41-8. Disposition of Nuisance Wildlife.**

8.1. The agent shall euthanize in a humane manner, or liberate at the site of capture, any nuisance wildlife which are captured alive. The agent shall not relocate and release any captured wildlife without the prior approval of the district wildlife biologist.

~~8.1.1. 8.1.a.~~ The sale, trade, barter or donation of any live or dead wildlife or parts of wildlife taken under this license is prohibited. In the event the trapping or hunting season for the particular species is open and the agent has the appropriate hunting and trapping license, the agent may retain the carcass or parts of the carcass up to the legal season limit. The agent shall dispose of carcasses which are not used in a manner consistent with state and local laws and regulations.

8.2. The agent shall coordinate with the district wildlife biologist concerning the disposition and handling of diseased animals. ~~In the event that any person has been bitten or exposed to a diseased animal the agent shall immediately notify the West Virginia Department of Health and Human Resources.~~

8.3. The agent shall collect and provide the Division of Natural Resources information on the health or biology of nuisance wildlife upon request and with guidelines provided by the district wildlife biologist.

8.4. If any person is bitten or exposed to an animal during the disposition of nuisance wildlife, the agent shall immediately notify the West Virginia Department of Health and Human Resources - local health department in the county in which the incident occurred, and the district wildlife biologist. The agent shall retain the animal and/or carcass for disease testing purposes and coordinate directly with the West Virginia Department of Health and Human Resources.

#### **§58-41-9. Records and Reports.**

9.1. The following records and reports are required:

~~9.1.1. 9.1.a.~~ All agents shall keep daily records on all investigated wildlife damage complaints. The records shall include the date of the investigations, the name of the complainant, the number and species of animals involved, the type of damage, the disposition of the complaint, and such other information as the Director may require. Records of all wildlife taken shall be available for inspection by a conservation officer at any reasonable time.

~~9.1.2. 9.1.b.~~ An annual report shall be filed with the Law Enforcement Section, Division of Natural Resources, at the end of each calendar year. The report shall be on forms supplied by the Director and shall accompany the application for renewal of the animal damage control license. The Division shall not renew the animal damage control license until such time as a satisfactory annual

report is received. The report shall include such information as required by the Director and shall be complete and legible.

**§58-41-10. Revocation and Suspension.**

10.1. A wildlife damage control license may be revoked at any time, by the Director, for failure to comply with the conditions of the license. The Director may upon receiving one or more complaints in a year from persons seeking assistance regarding unsatisfactory or unethical performance by a licensed wildlife damage control agent suspend the license for a period determined by the Director. A person whose license has been suspended may request a formal hearing within thirty (30) days before a review board to show cause why the license should not be suspended. The review board will be composed of three (3) people - one appointed by the Director of the Division of Natural Resources, one appointed by the Chief of the Wildlife Resources Section, and one appointed by the Chief of the Law Enforcement Section. The decision of the review board is final.

**§58-41-11. Liabilities.**

11.1. The Division of Natural Resources is not liable for any action, lack of action, damage, or injuries caused or suffered by the wildlife control agent.