



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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11/3/2016 10:09:40 AM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Natural Resources**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-15**
RULE NAME **Permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, or commercial nurseries§**
CITE AUTHORITY **20-2-15**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Friday, December 09, 2016 10:00 AM

WRITTEN COMMENTS MAY BE MAILED TO
**Paul R. Johansen
DNR Wildlife Resources Section
324 4th Avenue
South Charleston, WV 25303**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 58-15



Rule Id: 10317



Document: 32062



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

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CITE AUTHORITY **20-2-15**

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Series 15 revises the current Permits to Kill Deer or Other Wildlife Causing Damage to Cultivated Crops, Fruit Trees or Commercial Nurseries Rule. This rule establishes the procedures to be followed for obtaining permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, commercial nurseries and homeowners trees, shrubs and vegetables. The rule will become effective January 1, 2017.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Natural Resources**
RULE TYPE **Procedural** **AMENDMENT TO EXISTING RULE** **Yes** **TITLE-SERIES** **58-15**
RULE NAME **Permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, or commercial nurseries§**
CITE AUTHORITY **20-2-15**

PRIMARY CONTACT

Paul R. Johansen
WV DNR Wildlife Resources Section
324 4th Avenue
South Charleston, STATE ZIP

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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CITE AUTHORITY **20-2-15**

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 as a result of this rule.

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Natural Resources**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-15**
RULE NAME **Permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, or commercial nurseries§**
CITE AUTHORITY **20-2-15**

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0.00	0.00	0.00
PERSONAL SERVICES			
CURRENT EXPENSES			
REPAIRS AND ALTERATIONS			
ASSETS			
OTHER			
ESTIMATED TOTAL REVENUES	0.00	0.00	0.00

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Natural Resources**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-15**

RULE NAME **Permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, or commercial nurseries§**

CITE AUTHORITY **20-2-15**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

No Impact

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

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CITE AUTHORITY **20-2-15**

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.

Numerous technical changes were made to the rule.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 58-15



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Natural Resources**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-15**
RULE NAME **Permits to kill deer or other wildlife causing damage to cultivated crops, fruit trees, or commercial nurseries§**
CITE AUTHORITY **20-2-15**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Minor technical changes were made to clarify the procedures and the eligible types of damage as it relates to WV Code 20-2-15 "Permit to kill deer or other wildlife causing damage to cultivated crops, trees, commercial nurseries, homeowners shrubbery and vegetable gardens; weapon restrictions.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 58-15



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TITLE 58
PROCEDURAL RULE
DIVISION OF NATURAL RESOURCES

SERIES 15
PERMITS TO KILL DEER OR OTHER WILDLIFE CAUSING DAMAGE
TO CULTIVATED CROPS, ~~FRUIT TREES, OR COMMERCIAL NURSERIES~~ AND HOMEOWNER'S SHRUBBERY
AND VEGETABLE GARDENS

§58-15-1. 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 and homeowner's trees, shrubs and vegetable gardens.~~

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

1.3. Filing Date. -- ~~April 20, 1992.~~

1.4. Effective Date. -- ~~May 20, 1992.~~ January 1, 2017.

~~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.~~

§58-15-2. Definitions.

2.1. "Cultivated Crops" means any crop raised or grown under controlled conditions.

2.2. "Natural Resources Police Officer" or "Officer" means a natural resources police officer who is a full-time employee of the Law Enforcement Section of the West Virginia Division of Natural Resources.

2.3. "Wildlife Biologist" means a full-time 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 professional education or related practical experience, is qualified to investigate complaints of nuisance wildlife, threats to public safety by wildlife and crop damage by wildlife.

~~§58-15-2.~~ **§58-15-3. Applicability.**

~~2.1.~~ 3.1. Landowners, lessees or tenants may protect their cultivated crops, fruit trees, ~~or commercial nurseries, homeowner's trees, shrubbery and vegetable gardens~~ 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 W.Va. Code §20-2-15(a).

~~2.2.~~ 3.2. Cultivated crops shall include any crop for which the mechanical removal of weeds is required. Wildlife that cause property damage may be killed or removed at the discretion of an officer or wildlife biologist.

~~§58-15-3.~~ **§58-15-4. Exceptions.**

~~3.1.~~ 4.1. Damage caused by bears, elk ~~or~~ and migratory birds is not covered by these provisions.

~~§58-15-4.~~ **§58-15-5. Authorized Persons.**

~~4.1.~~ 5.1. 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 ~~an~~ officer or his/her wildlife biologist designee. Permittees may kill designated animals only in the immediate vicinity of the permittees' damaged crops. "Immediate Vicinity" shall be determined by the ~~conservation~~ officer or his/her wildlife biologist designee based upon the species in question, neighboring habitat, and other relevant factors and shall be specified in the permit issued.

~~§58-15-5.~~ **§58-15-6. Procedure.**

~~5.1.~~ 6.1. Notification. At the occurrence of damage, the landowner, lessee, or tenant shall, ~~in person or by telephone,~~ notify ~~the~~ a local ~~conservation~~ officer or district law enforcement office and report his/her name, address, specific location where the damage is occurring, type of damage, and species causing such damage.

~~5.2.~~ 6.2. ~~Conservation~~ Natural Resource Police Officer Investigation. ~~The conservation~~ An officer or his/her wildlife biologist designee shall investigate the alleged damage according to the ~~following~~ procedures outlined in this rule, complete the necessary wildlife damage forms and permits, and submit completed forms quarterly to the district ~~game~~ wildlife biologist.

~~5.2.1.~~ 6.2.a. When satisfied that the landowner, lessee, or tenant is suffering wildlife damage, ~~the~~ conservation ~~an~~ officer or his/her wildlife biologist designee may disregard Section ~~5.3~~ 6.3, complete the Wildlife Damage Investigation Report and mail a copy with kill permits and tags to the complainant.

~~5.3.~~ 6.3. Determination of Substantial Damage.

~~5.3.1.~~ 6.3.a. Cultivated Crops and Vegetable Gardens. ~~The conservation~~ An officer or his/her wildlife biologist designee shall select a starting point in the area the crop or vegetable garden 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/she 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.~~ 6.3.b. Fruit Trees, Homeowner's Trees and Shrubs, and Commercial Nurseries. Damage must occur on twenty percent (20%) of the trees in the portion of the orchard or nursery receiving damage or to twenty percent (20%) of the homeowner's trees and shrubs. 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.

~~§58-15-6.~~ **§58-15-7. Issuance of Permits.**

~~6.1.~~ 7.1. Upon making a determination of substantial damage pursuant to Section ~~5.3~~ 6.3 of ~~these~~ regulations ~~this rule,~~ ~~the conservation~~ an officer or his/her wildlife biologist designee shall issue a permit identifying the species of wildlife causing the damage and ~~for~~ the number of animals as follows:

~~6.1.1.~~ 7.1.a. For estimates of five (5) or less animals determined to be causing damage, ~~the conservation~~ an officer or his/her wildlife biologist designee may allow the permittee to kill up to one hundred percent (100%) of the estimated animals.

~~6.1.2.~~ 7.1.b. For estimates of six (6) to ten (10) animals determined to be causing damage, ~~the conservation~~ an officer or his/her wildlife biologist designee may allow the permittee to kill up to eighty percent (80%) of the estimated animals.

~~6.1.3.~~ 7.1.c. For estimates of more than (10) animals determined to be causing damage, ~~the conservation~~ an officer or his/her wildlife biologist designee may allow the permittee to kill up to fifty percent (50%) of the estimated animals.

~~6.2.~~ 7.2. The permittee may not kill more than the number of animals of the designated species of wildlife specified on the permit. No permit will be issued for greater than twenty-five (25) animals.

~~§58-15-7.~~ **§58-15-8. Duties of Permittees.**

~~7.1.~~ 8.1. All ~~animals~~ wildlife taken must be immediately tagged with a non-hunting tag supplied by the Division of Natural Resources. Part of the tag shall be completed and affixed to the carcass and the remaining portion completed and returned to the Division of Natural Resources within forty-eight (48) hours (~~48 hours~~) following the date of the kill.

~~7.2.~~ 8.2. ~~No animals~~ All wildlife lawfully taken under this provision may be transported beyond the boundaries of the State of West Virginia; providing, that anyone transporting wildlife outside of the State of West Virginia is responsible for complying with any state code or rules that may apply to his/her particular circumstance or place of residence.

~~§58-15-8.~~ **§58-15-9. Reoccurrence.**

~~8.1.~~ 9.1. If substantial damage continues or reoccurs after removing deer or other wildlife, then ~~the conservation~~ an officer or his/her wildlife biologist designee may repeat issuing permits provided that the procedures of Sections ~~5 and 6 and 7 of these regulations~~ this rule are followed, until successive substantial damage ceases.

~~§58-15-9.~~ **§58-15-10. Disposition of Animals Wildlife.**

~~9.1.~~ 10.1. Landowners, lessees or tenants may retain all ~~animals~~ wildlife taken.

~~9.2.~~ 10.2. ~~Animals~~ Wildlife not retained by the landowner, lessee or tenant may be given away with prior approval of ~~the conservation~~ an officer or his/her wildlife biologist designee or buried by the permittee.