



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY **Natural Resources**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-18**

RULE NAME **Bear damage**

CITE AUTHORITY **20-2-22a**

RULE IS LEGISLATIVE EXEMPT

No

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

20-2-22a

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

Thursday, February 02, 2017

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

Yes

**Joshua L Jarrell -- 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: 58-18



Rule Id: 10316



Document: 33185

TITLE 58
PROCEDURAL RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 18
BEAR DAMAGE REGULATIONS

§58-18-1. General.

1.1. Scope. -- This rule establishes the procedures to be followed in presenting and deciding claims of bear damage, and the issuance of bear damage permits, as well as procedures relating to the organization of bear damage hunts under W. Va. Code §20-2-22a.

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

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

1.4. Effective Date. -- ~~September 10, 1996.~~ February 2, 2017.

§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.~~ 2.1. "Director" means the director of the West Virginia Division of Natural Resources.

2.2. "Division" means 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.~~ 2.3. "Livestock" means cattle, horses, goats, swine hogs, poultry, and sheep, or any other animal of the bovine, equine, porcine, ovine or caprine species, and domestic poultry.

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

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

~~2.5.~~ 2.6. "Wildlife Biologist" or "~~Biologist~~" means ~~an~~ 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 a professional education or related practical experience, is qualified to investigate a bear damage complaint or supervise a bear damage hunt.

~~2.6.~~ 2.7. 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, not excluded in section 5.1 of this rule, 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.~~ 3.1.a. Bear damage involving beehives, fruit trees, livestock or miscellaneous real or personal property must be reported to a an ~~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~~ the officer ~~will~~ shall immediately proceed to investigate the circumstances giving rise to such complaint.

~~3.2.1.~~ 3.2.a. If a ~~conservation~~ the officer is unable to personally investigate a complaint, he or she ~~may~~ shall 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. Issuance of Permits and 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.~~ If the complaint is found to be justified, the officer or designated wildlife biologist may issue a permit to kill the bear that caused the property damage or may authorize the owner and other residents to proceed to hunt, destroy or capture the bear that caused the property damage: Provided, That only the officer or the wildlife biologist may recommend other measures to end or minimize property damage: Provided, however, that if out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

~~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.~~ 4.1.a. A bear damage hunt may not be organized and/or a kill permit may not be issued in cases where the confirmed bear damage occurred within the boundaries of ~~a~~ the United States Forest Service Grazing Area or on a state wildlife management area in which a special land use permit has been issued.

4.2. If a bear damage hunt is organized, the investigating officer or wildlife biologist may summon or use dogs to effectuate the hunting and destruction or capture of the suspect bear.

~~4.2.1.~~ 4.2.a. The investigating officer or wildlife biologist may restrict the number of dogs that may be used in a hunt.

~~4.2.2.~~ 4.2.b. The investigating officer or wildlife biologist may restrict the number of hunters who may participate in a hunt.

4.3. The investigating officer or wildlife biologist ~~must~~ may supervise the hunting party and remain in the area of the chase during a bear damage hunt.

~~4.3.1.~~ 4.3.a. One member of the hunting party may be designated by the investigating officer or wildlife biologist as the person in charge of the hunt.

~~4.3.2.~~ 4.3.b. 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 if deemed necessary. The hunting party must also assist the wildlife biologist in moving a tranquilized bear.

4.4. Only the investigating officer, ~~or~~ wildlife biologist, or person designated to be in charge of the hunt 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.~~ 4.4.a. If the investigating officer, ~~or~~ wildlife biologist or person designated to be in charge of the hunt 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~~ an officer or wildlife biologist, the ~~investigating officer~~ person designated to be in charge of the hunt must notify the appropriate Section personnel so that they can be instructed as to which biological information ~~can~~ will be collected.

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

~~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. When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner shall file a report with the director of the division. A bear damage report shall be completed by an officer or wildlife biologist of the division and shall state whether or not the bear was hunted and destroyed or killed under authorization of a depredation permit and, if so, the sex and weight shall be recorded and a premolar tooth collected from the bear, all of which shall be submitted with the report. The report shall also include an appraisal of the property damage occasioned by the bear fixing the value of the property lost. Bear damage claims will not be accepted for personal and real property which is commonly used for the purposes of feeding, baiting, observing or hunting wildlife, including, but not limited to, hunting blinds, tree stands, artificial feeders, game or trail cameras and crops planted for the purposes of feeding or baiting wildlife.

5.2. Claims associated with damage to bee hives require a copy of the owner's current apiary certificate of registration as in accordance with the provisions of W. Va. Code §19-13-4. Claims which do not have a current apiary certification of registration as of the date the damage occurred are not eligible for payment from the bear damage fund.

~~5.2. 5.3. 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. The investigating officer will assist the property owner in completing the appropriate forms for claims in which the value is set by the Section based upon current market prices in consultation with state and federal agricultural agencies and in which assessment guidelines and forms have been developed by the Section including, but not limited to, claims associated with corn [grain and silage], fruit trees, livestock and bees. In these situations, three estimates of value are not required.~~

~~5.2.1. 5.3.a. 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. The property owner must submit his/her completed Bear Damage Report form, with the completed assessment form(s) attached, to the investigating officer within thirty (30) days of the date of damage reported under Section 3.1 of this rule.~~

~~5.2.2. 5.3.b. The selected appraisers will promptly appraise the loss in accordance with the provisions of Section 6 of this rule. The investigating officer or biologist of the Division will then approve and submit the completed Bear Damage Report, with all of the completed assessment forms attached, to the director or his/her designee for final review and processing, within sixty (60) days of the date of damage reported under Section 3.1 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. Bear damage reports which are requesting payment in excess of the maximum values established on the Section forms require additional proof justifying the higher values (i.e., a recent bill of sale or increased crop yield certified by the federal government or another agricultural entity).~~

~~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. 5.4.~~ 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. Claims associated with real and personnel property not identified in section 5.3 of this rule will require three estimates of the cost of the damage to be provided with the completed Bear Damage Report form. One appraiser will be selected by the property owner, one appraiser will be selected by the investigating officer, and one appraiser will be selected jointly by the property owner and the Division.

~~5.3.1. 5.4.a.~~ 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. The property damage assessment will be ruled upon and the alleged damages examined by a three-member appraisal review commission composed of the complaining property owner, the investigating officer or biologist of the Division, and a person to be selected jointly by the complaining property owner and the officer of the Division.

~~5.3.2. 5.4.b.~~ Each member of the appraisal review commission will decide if the damage claim is or is not valid.

~~5.3.2.a. 5.4.b.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. The property owner must submit his/her completed Bear Damage Report form, with the completed assessment form attached, to the investigating officer within thirty (30) days of the date of damage reported under Section 3.1 of this rule.

~~5.3.3. 5.4.c.~~ The appraisal review commission investigating officer or biologist of the Division will then submit the completed Bear Damage Report, with all of the completed appraisal and assessment forms attached, to the director or his/her designee for final review and processing within sixty (60) days of the date of damage reported under Section 3.1 of this rule.

5.4.d. Claims will not be accepted for vehicle damage associated with the driver of a vehicle striking a bear on a public highway. Bear damage claims will be processed for bear damaging parked vehicles.

~~5.4. 5.5.~~ 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 and validated claim and which complies with the provisions of this rule.

~~5.4.1. 5.5.a.~~ Bear damage claim payments shall be made in accordance with the provisions of W. Va. Code §20-2-22a. If the director or his/her designee determines that either the property owner, 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.

~~5.4.2. 5.5.b.~~ If the director or his/her designee determines that either the property owner, 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. Bear damage claim payments shall be made in accordance with the provisions of W. Va. Code §20-2-22a. All claims shall be paid in the first instance from the Bear Damage Fund: Provided, That the claimant shall submit accurate information as to whether he or she is insured for the damages caused by the acts of bear on forms prescribed by the director, and all damage claims shall first be made by the claimant against any insurance policies before payment may

be approved from the Bear Damage Fund. Claims for an award of compensation from the Bear Damage Fund shall be reduced or denied in the amount the claimant is actually reimbursed by insurance for the economic loss upon which the claim is based. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be paid from the special revenue account of the division.

5.5.b.1. For those items which are covered under the property owner's insurance policy (i.e, vehicle, crop, homeowners), the property owner is required to submit a copy of his insurance policy to the officer or wildlife biologist, which clearly identifies the insurance deductible.

§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.~~ In cases where pregnant livestock is killed by a bear, the total appraised value will be the sum of the fair market values of the mother and the unborn issue had it been born.

~~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.~~