

WYOMING GAME AND FISH COMMISSION

CHAPTER 28

REGULATION GOVERNING BIG OR TROPHY GAME ANIMAL OR GAME BIRD DAMAGE CLAIMS

Section 1. Authority. This regulation is promulgated by authority of W.S. §23-1-302, §23-1-304 and §23-1-901.

Section 2. Regulation. The Wyoming Game and Fish Commission hereby adopts the following regulation governing the administration of verified claims filed in accordance with W.S. §23-1-901.

Section 3. Definitions. For the purpose of this regulation, definitions shall be as set forth in Title 23, Wyoming Statutes, and the Commission also adopts the following definitions:

(a) “Authorized hunting seasons” means any hunting season during the twelve (12) month period immediately preceding the date when the claimant filed the verified claim with the Office of the Department that is established by Commission regulation, including Depredation Prevention Hunting Seasons and kill permits, for the harvest of the species of big game animals, trophy game animals, or game birds for which the verified claim was filed.

(b) “Award” means compensation for damage offered to a claimant by the Department.

(c) “Board” means a board of arbitrators.

(d) “Claimant” means any landowner, lessee or agent whose livestock, bees, hives or honey have been damaged or killed by a trophy game animal; or, whose land, growing cultivated crops, stored crops, seed crops, or improvements have been damaged by big game animals or game birds; or, whose grass has been extraordinarily damaged by big game animals or game birds.

(e) “Commercial garden” means a business that grows fruits or vegetables for commercial sale.

(f) “Commercial nursery” means a business that grows or stores trees, shrubs or plants solely for commercial sale and that is required under W.S. § 39-15-106 to be licensed with the Wyoming Department of Revenue to collect and remit sales and use tax.

(g) “Commercial orchard” means a business that grows trees for fruit or nut production for commercial sale.

(h) “Confirmed by the Department or its representative” means the Department or its representative conducted an inspection or investigation of the damage and determined the damage was more likely than not caused by a big or trophy game animal or game bird.

(i) “Consequential damages” means damage, loss, or injury that does not flow directly and immediately from the act of the big game animal, trophy game animal or game bird, but only from some of the consequences or results of such act. Consequential damages include, but are not necessarily limited to, future or anticipated production (except as otherwise provided in this regulation for young of the year livestock), sentimental value, and labor or equipment costs to remove damaged property.

(j) “Damage” means actual damage to land, growing cultivated crops, stored crops, seed crops or improvements that is caused by big game animals or game birds, and sworn by the claimant on the verified

claim to have occurred; or, extraordinary damage to grass that is caused by big game animals or game birds and sworn by the claimant on the verified claim to have occurred; and, actual damage to livestock or bees including honey and hives, that is caused by trophy game animals and sworn by the claimant on the verified claim to have occurred. Damage shall not include damage to other real or personal property including, but not necessarily limited to: other vegetation or animals; motor vehicles; structures; damages caused by animals other than big game animals, trophy game animals or game birds; diseases; lost profits; consequential damages; or, any other damages whatsoever that are not specified in this regulation.

(k) "Disinterested arbitrator" means an elector residing in the county where the damage occurred, who is capable of making a reasoned and unbiased decision based on evidence presented to the Board by the claimant and the Department.

(l) "Extraordinary damage to grass" means the loss or harm as proven by the landowner, lessee, or agent that significantly exceeds the usual, customary or average use of non-cultivated grass plants of the Family Graminae.

(m) "Game warden" means game warden or damage control warden.

(n) "Growing cultivated crops" means crops or other vegetation that are grown on privately owned or leased land and harvested or utilized annually for commercial sale or to feed livestock, or for human consumption. "Growing cultivated crops" can include grasses and legumes maturing for harvest, small grains, row crops and vegetables, plants grown in commercial nurseries, commercial orchards, commercial gardens, and native hay meadows that are managed for hay or livestock forage. If the crop is not harvested or utilized annually, it is not a growing cultivated crop unless it requires more than one (1) year to become established and ready for harvest. "Growing cultivated crops" do not include rangelands managed for livestock forage, or products of nurseries, orchards, and gardens that are not intended for commercial sale.

(o) "Hearing" means a procedurally correct arbitration hearing as described in Section 9 of this Regulation that shall be conducted in such manner as to afford the claimant and the Department the opportunity to present, examine, and cross-examine all witnesses and other forms of evidence presented to the Board.

(p) "Hives" means an artificial structure designed and constructed specifically for housing bees.

(q) "Improvements" means a valuable addition made to real estate to increase the productivity or value of land, including fences and man made structures erected or windbreaks or shelterbelts planted on privately owned or leased land to enhance or improve crop or livestock production or grazing management or as a protection for livestock. Improvements shall not include windbreaks or shelterbelts, if they are not planted solely to enhance or improve crop production or grazing management or as a protection for livestock.

(r) "Investigated by the Department" means an inspection determined by the Department to be a reasonable assessment of the damage caused by big or trophy game animals or game birds.

(s) "Kill permit" means a permit authorized by a Game and Fish Commissioner and the Chief Game Warden granting authority to take big game animals, trophy game animals or game birds that are causing substantial damage to property.

(t) "Land" means soil on privately owned or leased land.

(u) "Lessee" means a person who leases fee title land or State land for agricultural purposes.

(v) "More likely than not" means evidence reasonably tending to support the conclusion. Evidence that is competent, relevant, and material, and which to a rational and impartial mind naturally leads, or involuntarily leads to conclusion for which there is valid, just and reasonable substantiation.

(w) "Office of the Department" means the Wyoming Game and Fish Department, 5400 Bishop Blvd, Cheyenne, Wyoming 82006-0001 or the Wyoming Game and Fish Department, 3030 Energy Lane, Casper, Wyoming 82604.

(x) "Permitted hunting during authorized hunting seasons" means permitted hunting as described in Section 5 of this regulation.

(y) "Promptly served upon each party" means within ten (10) days following the arbitration hearing, the Board shall serve a written copy of its decision to the Office of the Department and the claimant.

(z) "Property" means livestock or bees, land, growing cultivated crops, stored crops including honey and hives, seed crops, improvements or grass that has been extraordinarily damaged.

(aa) "Reasonable expense charges" means compensation given to an arbitrator while performing duties as an arbitrator that is the same compensation rate afforded to State employees by State statute for per diem and vehicular mileage; and, actual expenses incurred by the arbitrator and documented by receipt including, but not necessarily limited to, telephone calls, paper supplies, and mail service.

(bb) "Reasonable service charges" means reimbursement in the amount of one hundred dollars (\$100.00) per day for performing duties as an arbitrator.

(cc) "Seed crops" means any crop intentionally planted, managed, and grown in accordance with accepted agricultural practices on privately owned or leased land for the production of seed for future propagation, and that is harvested annually by manual or mechanical means. If the crop is not harvested annually, it shall not be classified as a seed crop unless the crop normally requires an establishment period of longer than one (1) year to be harvested or unless the crop is alfalfa seed or crested wheat grass seed.

(dd) "Stored crops" means crops that have been harvested and saved or stored for future use in accordance with accepted agricultural practices.

(ee) "Supervisor" means Regional Wildlife Supervisor.

(ff) "Value of livestock" means the monetary value of individual livestock on the date the verified claim was filed with the Office of the Department based upon the fair market value on that date for like livestock at a rate substantiated by a livestock sales barn or other credible written valuation of the livestock provided by the claimant. However, the monetary value of young of the year livestock on the date the verified claim was filed with the Office of the Department shall be based upon the fair market value on that date for like livestock at the weaning weight substantiated by a livestock sales barn or other credible written valuation of the livestock provided by the claimant.

(gg) "Verified claim" means a Trophy Game Animal Damage Claim Affidavit or a Big Game Animal or Game Bird Damage Claim Affidavit that has been signed by the claimant and sworn to be accurate before a person authorized to administer oaths, that has been filed with the Office of the Department and contains all information required in Section 10 of this regulation.

Section 4. Damage to Livestock by Trophy Game Animals. Except as specified in subsection (a) of this section, the Department shall only offer payment for damage to individual livestock confirmed by the

Department or its representative as having been injured or killed by a trophy game animal.

(a) In geographic areas determined by the Department to have terrain, topography, and vegetative characteristics that influence the ability of the claimant and Department to find missing calves and sheep that are believed to have been damaged as a result of a trophy game animal, the Department shall utilize the methods, factors and formulas in this subsection to determine the amount to compensate any landowner, lessee or agent for calves and sheep missing as a result of damage caused by a trophy game animal.

(i) Any claimant whose verified claim is for missing sheep or calves believed to have been damaged as a result of a trophy game animal, shall include on his verified claim the total known death loss, including missing animals, for the sheep or calves for the grazing season together with the number of such losses known to be due to causes other than damage by a trophy game animal.

(ii) Notwithstanding the use of the formulas in this section, the Department shall not offer compensation for more than the total known death loss less the number of such losses known to be due to causes other than damage by a black bear, grizzly bear, mountain lion, or gray wolf in those areas where gray wolves are classified as trophy game animals in accordance with Commission regulation. In order to utilize any formula, the Department or its representative must have confirmed the claimant had at least one (1) calf or one (1) sheep injured or killed by a trophy game animal.

(A) Calves and sheep in areas occupied by grizzly bears. To determine the amount of compensation due to a claimant for calves and sheep believed to be missing as a result of being damaged by a black bear, grizzly bear, or mountain lion in areas occupied by grizzly bears, the Department shall utilize the following formula:

(I) Number of individual calves or sheep confirmed by the Department or its representative killed by a black bear, grizzly bear, or mountain lion multiplied by three and one-half (3.5) multiplied by the value of livestock equals the amount of compensation.

(II) Sheep in areas not occupied by grizzly bears. To determine the amount of compensation due to a claimant for sheep believed to be missing as a result of being damaged by a black bear or mountain lion in areas not occupied by grizzly bears, the Department shall utilize the following formula:

(III) Number of individual sheep confirmed by the Department or its representative killed by a black bear or mountain lion multiplied by three (3) multiplied by the value of livestock equals the amount of compensation.

(iii) Sheep in areas set forth by Commission regulation where gray wolves are classified as trophy game animals. To determine the amount of compensation due to a claimant for sheep believed to be missing as a result of being damaged by gray wolves, in areas occupied by wolves, the Department shall utilize the following formula:

(A) Number of individual sheep confirmed by the Department or its representative killed by a gray wolf multiplied by seven (7) multiplied by the value of livestock equals the amount of compensation.

(iv) Calves in areas set forth by Commission regulation where gray wolves are classified as trophy game animals. To determine the amount of compensation due to a claimant for calves believed to be missing as a result of being damaged by gray wolves, in areas occupied by gray wolves, the Department shall utilize the following formula:

(A) Number of individual calves confirmed by the Department or its representative killed by gray wolves multiplied by seven (7) multiplied by the value of livestock equals the amount of compensation.

(b) Veterinary costs for the treatment of individual livestock that have been injured by a trophy game animal shall be considered up to a maximum amount that is not to exceed the value of the livestock injured, only in cases where a licensed veterinarian believes the individual livestock in question had a reasonable chance to survive and return to a productive state. If the individual livestock died as a result of an injury inflicted by a trophy game animal, even though the livestock received veterinary care, payment shall only be made up to a maximum of the value of the livestock.

Section 5. Permitted Hunting During Authorized Hunting Seasons.

(a) A landowner shall not be eligible to receive an award for damage caused by big game animals, trophy game animals, or game birds unless the landowner has permitted hunting during authorized hunting seasons for the species for which the verified claim has been filed on his privately owned or leased land and adjoining Federal or State land within the herd unit in which the damage occurred in accordance with this section. For an award to be allowed, the landowner shall permit hunting during authorized hunting seasons delineated in subsection (i)(A) if the species of big game animals, trophy game animals, or game birds for which the verified claim was filed were present on the landowner's privately owned or leased land and adjoining Federal or State land during authorized hunting seasons delineated in subsection (i)(A). If the species of big game animals, trophy game animals, or game birds for which the verified claim has been filed were not present on the landowner's privately owned or leased land and adjoining Federal or State land during the authorized hunting seasons as delineated in subsection (i)(A), for an award to be allowed the landowner shall permit hunting during authorized hunting seasons delineated in (i)(B) and (i)(C) if requested by the Department. The landowner shall permit hunting during authorized hunting seasons delineated in (i)(B) and (i)(C) without access fees to hunters or the Department.

(i) Authorized hunting seasons include:

(A) Hunting seasons as established by Wyoming Game and Fish Commission rule and regulation;

(B) Depredation prevention hunting seasons as approved by a District Wyoming Game and Fish Commissioner and the Chief Game Warden; or,

(C) Lethal taking of wildlife through a kill permit as approved by a District Wyoming Game and Fish Commissioner and the Chief Game Warden.

(b) The Department shall determine if the landowner permitted hunting during authorized hunting seasons for the species of big game animals, trophy game animals, or game birds for which the verified claim has been filed. For an award to be allowed, the Department shall have to determine the landowner allowed sufficient numbers of hunters to access his privately owned or leased land and adjoining Federal or State land to harvest more than the number of big game animals, trophy game animals or game birds recruited in the preceding twelve (12) months into the segment of the population responsible for doing damage. The landowner shall contact the game warden to whom he reported the damage to determine how many big game animals, trophy game animals, or game birds meets the requirement of more than the number of big game animals, trophy game animals or game birds recruited in the preceding twelve (12) months into the segment of the population responsible for doing damage. An award may be allowed if the Department determines a reduction in big game animals, trophy game animals or game birds affects the Department's ability to sustain the population at the objective the Commission has established for the herd unit.

Section 6. Notification of Damage and Filing of Damage Claims.

(a) Any claimant who has incurred damage as defined in Section 3 of this Regulation shall report the damage to the nearest game warden, supervisor, or Commission member within fifteen (15) consecutive days following the date damage was discovered. If the claimant intends to take actions that prevent the damage being investigated by the Department, such as harvest of damaged crops or removal of damaged livestock, the claimant shall notify the nearest game warden, supervisor, or Commission member as soon as reasonably possible after discovery of the damage so the damage can be investigated by the Department prior to removal, harvest, modification, or destruction of the damaged property; however, in no case shall the claimant take actions that preclude the damage being investigated by the Department. If the claimant denies or precludes the damage being investigated by the Department, the Department shall deny the verified claim.

(b) The claimant shall present a verified claim in accordance with Section 10 of this regulation to the Office of the Department within sixty (60) consecutive days following the date the last item of damage was discovered.

(i) For verified claims of damage to individual livestock by a trophy game animal, the sixty-day (60) period shall commence from the last date the livestock were present on the grazing allotment or geographic location where the damage occurred;

(ii) For verified claims of damage to bees, honey, and hives by a trophy game animal, the sixty-day (60) period shall commence from the last date damage occurred or from the last date the bees, honey, or hives were present on the location where the damage occurred, whichever date occurs first; and,

(iii) For verified claims of damage to land, growing cultivated crops, seed crops, stored crops, improvements, or extraordinary damage to grass by big game animals or game birds, the sixty-day (60) period shall commence from the last date the growing cultivated crop or seed crop was harvested or the land, stored crops, or improvements were damaged or the extraordinary damage to grass occurred.

(c) If a claimant chooses to appeal the Department's decision regarding a verified claim to the Commission, the claimant shall file a written appeal that is received by the Office of the Department within thirty (30) consecutive days from the date the claimant received the Department's notification of its decision on the verified claim.

(d) The claimant shall have no right of appeal to the Commission of the Department's denial of the claim if based upon the information provided by the claimant in the verified claim, the claimant failed to comply with subsection (a) or (b) of this section. The claimant shall have no right of appeal to the Commission of the Department's decision on a verified claim if the claimant failed to comply with subsection (c) of this section.

Section 7. Investigation and Payment of Verified Claims.

(a) When investigating damage claims, the Department shall utilize the standard of "more likely than not" in determining whether or not the damage was the result of big or trophy game animals or game birds.

(b) The Department shall consider damage that was discovered by the claimant and reported to the nearest game warden, supervisor or Commission member within fifteen (15) consecutive days after the date the damage was discovered. Any damage that was reported more than fifteen (15) consecutive days after the date it was discovered by the claimant shall not be considered by the Department as damage under this

regulation.

(c) The Department shall investigate the verified claim and either reject the claim or provide for full or partial payment to the claimant within ninety (90) consecutive days following the date the Office of the Department received the verified claim.

Section 8. Reasons for Denial of a Verified Claim.

(a) The Department shall deny the verified claim for any of the reasons specified in this subsection.

(i) The claimant did not report the damage to the nearest game warden, supervisor or Commission member within fifteen (15) consecutive days after the date the damage was discovered. Any damage that was reported more than fifteen (15) consecutive days after the date it was discovered by the claimant shall not be considered by the Department as damage under this regulation.

(ii) The damage was caused by animals or wildlife other than big game animals, trophy game animals, or game birds.

(iii) The big or trophy game animals or game birds causing damage were on the landowner's privately owned or leased land and adjoining Federal or State land during authorized hunting seasons as specified in Section 5(a)(i)(A), and the landowner did not permit hunting in accordance with Section 5(a) of this regulation.

(iv) The big or trophy game animals or game birds causing damage were not on the landowner's privately owned or leased land and adjoining Federal or State land during authorized hunting seasons as specified in Section 5(a)(i)(A), and the landowner would not agree to the Department's implementation of a depredation prevention hunting season as specified in Section 5(a)(i)(B) or insisted on charging an access fee to hunters to participate in a depredation prevention hunting season as specified in Section 5(a).

(v) The big or trophy game animals or game birds causing damage were not on the landowner's privately owned or leased land and adjoining Federal or State land during authorized hunting seasons as specified in Section 5(a)(i)(A), and the landowner would not agree to the Department's implementation of a kill permit as specified in Section 5(a)(i)(C) or insisted on charging an access fee to the Department to implement a kill permit as specified in Section 5(a).

(vi) The verified claim was for property not defined as property in Section 3 of this regulation.

(vii) The claimant was compensated by crop or livestock insurance or a Federal subsidy program for the property damaged to the extent the claimant received compensation under that insurance or program.

(viii) The claimant did not present a verified claim complete with all required information specified in Section 10 of this regulation to the Office of the Department within sixty (60) days after the damage or last item of damage was discovered by the claimant.

(ix) The verified claim was for consequential damages.

(x) Hunting was not permitted during authorized hunting seasons on land in a platted subdivision where the damage occurred due to the actions of a municipal or county ordinance, or homeowners' association covenant prohibiting the discharge of firearms.

(xi) Due to actions of the claimant, the damage was not investigated by the Department.

(xii) The landowner prevented the Department's attempts to mitigate or alleviate the damage through such actions as moving the big or trophy game animals or game birds responsible for the damage or the claimant refused to utilize fencing materials provided by the Department to protect stored crops, including honey and hives.

Section 9. Arbitration.

(a) If the claimant wishes to appeal the Commission's decision regarding a verified claim, the claimant shall file a written call for arbitration with the Office of the Department within ninety (90) consecutive days from the date the claimant received written notice from the Office of the Department of the Commission's decision.

(b) If the claimant calls for arbitration, the claimant and the Office of the Department shall each appoint a disinterested arbitrator within fifteen (15) consecutive days from the date the Office of the Department received the written call for arbitration.

(c) When the claimant and the Office of the Department appoint arbitrators, written notification of the name, mailing address, and telephone number of arbitrators they selected shall be made by each party to the other within fifteen (15) consecutive days from the date the Office of the Department received the written call for arbitration.

(d) Within twenty (20) consecutive days after their appointment, the two (2) arbitrators shall appoint a third arbitrator. The two (2) arbitrators selected shall notify both the claimant and the Office of the Department in writing of the name, mailing address, and telephone number of the third arbitrator selected. If the third arbitrator is not appointed within this time period, the judge of the district court of the county or the court commissioner in the absence of the judge shall appoint the third arbitrator upon the application of either arbitrator.

(e) The three (3) arbitrators shall appoint a chairman who shall chair the Board and serve as secretary to carry out the correspondence of the Board.

(f) At least twenty (20) consecutive days before the hearing, the Board shall provide the claimant and the Office of the Department written notice of the time and place in the county when and where the testimony of the claimant and the Department shall be heard and the claim investigated and decided by the Board.

(g) Following the arbitration hearing, the Board shall within ten (10) days provide a written copy of its decision to the Office of the Department and the claimant.

(h) Unless otherwise specified in this section, the Uniform Arbitration Act, W.S. § 1-36-101 et seq. shall apply to the hearing.

(i) The decision of the Board shall become part of the Office of the Department's file and shall be made part of the record in the event of an appeal of the Board's decision and any appeal to district court shall be conducted in conformity with the Uniform Arbitration Act, W.S. §1-36-114(a) or W.S. §1-36-115.

Section 10. Verified Claim Requirements. The verified claim required by W.S. 23-1-901(b) shall be submitted on the form prescribed by the Department. The verified claim shall contain the following

information:

(a) A description of the land on which the damage occurred, including the legal description (section, range, township), the county in which the land is located, and whether the land is privately owned, leased, or federally owned;

(b) Whether the claimant is the landowner, lessee, or agent of the landowner or lessee;

(c) A description of individual livestock, including the number, age class and sex if known, or description of bees, including honey and hives, damaged or killed by a trophy game animal;

(d) A description of the land, growing cultivated crops, stored crops, seed crops, or improvements damaged by a big game animal or game bird; or a description of the grass extraordinarily damaged by a big game animal or game bird;

(e) Competent, relevant and material evidence provided by the claimant that a big game animal, trophy game animal, or game bird caused the damage;

(f) The dates during which damage took place, to include the specific date the damage was discovered by the claimant and the specific date the damage ended;

(g) The amount and value of livestock or property damaged, including all calculations and evidence supporting the value determination;

(h) The species and number, if known, of big or trophy game animals or game birds that caused the damage;

(i) The name of the game warden, supervisor or Commission member to whom the claimant reported the damage and the specific date it was reported;

(j) Information to allow the Department to determine whether or not the landowner permitted hunting during authorized hunting seasons for the species causing damage in accordance with Section 5 of this regulation;

(k) Information as to whether or not an access fee was charged by the claimant for permitting hunting during authorized hunting seasons for the species of big game animal, trophy game animal, or game bird for which the verified claim was filed; the total amount of access fee charged per hunter; and, the total number of hunters permitted to hunt during authorized hunting seasons for the species causing damage;

(l) Information by which the Office of the Department can recognize the claimant signed and swore before a person authorized to administer oaths (notarized) the verified claim to be accurate;

(m) For verified claims for calves and sheep missing as a result of damage by a trophy game animal, the total known death loss, including missing animals, for the sheep or calves for the grazing season together with the number of such losses known to be due to causes other than damage by a trophy game animal;

(n) Information to indicate if all or what portion of the property damaged was compensated for by crop or livestock insurance or a Federal subsidy program to the extent the claimant received compensation under that insurance or program; and,

(o) The claimant may submit additional supporting information, which shall be considered as part of the verified claim.

Section 11. Savings Clause. If any provision of this rule or its application to any person or circumstance is held invalid or in conflict with any other provision of this rule, the invalidity shall not affect other provisions or application of this rule which can be given effect without the invalid provision or applications and to this end the provisions of this rule are severable.

WYOMING GAME AND FISH COMMISSION

By: _____
Jerry Galles, President

Dated: March 13, 2008