

## DEPARTMENT OF AGRICULTURE

### Animal Industry Division

## RULES PERTAINING TO THE CONTROL OF DEPREDATING ANIMALS

### 8 CCR 1201-12

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### 1.00 DEFINITIONS

- A. "Agricultural product" means any plants or animals produced in farming or ranching, including, but not limited to, horticultural, floricultural, viticultural, aquacultural, forestry and vegetable products, dairy, livestock, bees and honey.
- B. "Agricultural resource" means any natural resource relevant to agriculture, including, but not limited to, land, water and the conveyances of water, soil, and growing plants.
- C. "Animal" means coyotes, foxes, bobcats, bears, mountain lions, wolves, beavers, muskrats, raccoons, opossums, and striped skunks, as set forth at § 35-40-100.2(1), C.R.S.
- D. "At risk" means any animal, as defined in § 35-40-100.2(1), C.R.S., that has been designated by the Parks and Wildlife Commission as endangered, threatened, or at risk, pursuant to § 35-40-100.2(1.5)(a), (b), and (c), C.R.S.
- E. "Carcass" means the dead body of an animal, or parts thereof, to include meat and internal organs, but not to include hide, bone or other inedible portions.
- F. "Commissioner" means the Colorado Commissioner of Agriculture or an employee of the Department as designated by the Commissioner.
- G. "Coursing dog" means a dog that pursues primarily by sight.
- H. "CPW" means the Colorado Division of Parks and Wildlife.
- I. "Decoy dog" means a dog used to distract or lure depredating animals.
- J. "Department" means the Colorado Department of Agriculture.
- K. "Drag" means an object attached to a trap to retard the movement of a trap and to detain an animal.
- L. "Employee" means a person hired or retained by, or under a written or oral contract or cooperative agreement with, a property owner, operator, or lessee to perform services of any kind. An employee may include, among others, the Wildlife Services, the Department, or any other government agency.
- M. "Feral Swine" means any species or hybrid of species from the family Suidae (European boar, Eurasian boar, Russian boar, feral hog) or the family Tayassuidae (Javelina and peccary), which possesses one or more morphological characteristic distinguishing it from domestic swine including, but not limited to, an elongated snout, visible tusks, muscular shoulders with small hams and short loins, coarse hair, or a predominant ridge of hair along its back. For the purposes of these regulations, any swine running at large which possesses one or more of the above

characteristics, may be presumed to be a feral hog, unless a person has received actual notice that the swine has escaped containment and its return is actively sought.

- N. "Group of animals" means more than a singular animal but not more than a local depredating population of that species. This definition shall not be construed to include an entire species.
- O. "Guard dog" means a dog utilized to protect livestock.
- P. "Historically occurred" means damage that has occurred within the past five years by the same species of depredating animal to the same agricultural product or agricultural resource in a given geographic area.
- Q. "Identified designee" means a person as specified in Section 2.00, who is authorized by the property owner, operator, or lessee to control depredating animals.
- R. "Leghold trap" means any mechanical device with jaws designed to catch an animal by the leg or foot.
- S. "Lethal snare" means a snare, as specified in Section 3.00 B.3, designed to kill an animal upon capture.
- T. "Lethal trap" means a trap, such as a body-gripping trap, designed to kill an animal upon capture.
- U. "Livestock" means cattle, sheep, goats, swine, mules, poultry, horses, alternative livestock as defined in § 35-41.5-102(1), C.R.S., and such domesticated animals as fox, mink, marten, chinchilla, beaver, and rabbits, and all other animals raised or kept for profit.
- V. "Mechanical foot snare" means a snare that possesses a mechanically activated device that assists in tightening the loop around the foot or leg of an animal.
- W. "Necessary to prevent" means when due to the proximity and known conduct or behavior of the depredating species, damage is likely to occur to agricultural products.
- X. "Non-lethal snares" and "non-lethal traps" mean devices not intended to kill the target depredating animal.
- Y. "Non-target" means an animal of a species not intended to be taken.
- Z. "Pan tension" means the amount of pressure required to activate a leghold trap as measured at the center of the pan.
- AA. "Passive foot snare" means a nonmechanically powered snare, placed near the ground, that is intended to restrain a depredating animal by the leg or foot.
- BB. "Predicide" means a state and federally registered pesticide, but shall not include repellents.
- CC. "Snare" means a kind of trap consisting of a loop that pulls tight and is intended to restrain or kill an animal.
- DD. "Stake" means a device that anchors a trap in place.
- EE. "Trailing dog" means a dog that pursues primarily by smell.
- FF. "Wildlife Services" means the U. S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

## **2.00 IDENTIFIED DESIGNEES**

### **A. Qualifications and restrictions**

- (1) An identified designee shall be an individual who meets the following requirements:
  - (a) Such person shall possess a valid small game or furbearer license issued by the CPW; and
  - (b) Any such person must have received written authorization from the property owner, operator or lessee to control depredating animals. Any such authorization shall: contain the designee's name; contain the name of the property owner, operator or lessee; identify the target depredating animal(s); and specify the time period and geographic area in which the identified designee is authorized to take control measures; and
  - (c) An identified designee shall not pay, nor shall the property owner, operator, or lessee accept payment from an identified designee, for the right to act as an identified designee. Nothing herein prohibits the property owner, operator, or lessee from paying an identified designee for services.
- (2) Wildlife Services, the Department, or any other government agency shall not be an identified designee.

### **B. Control of Black Bear and Mountain Lion**

No identified designee may take black bear or mountain lion without prior authorization from the Commissioner as set forth in Section 7.00 E below.

## **3.00 CONTROL OF DEPREDATING ANIMALS EXCEPT BLACK BEARS AND MOUNTAIN LIONS**

If the methods specified below are utilized to take a depredating animal, the corresponding restrictions apply.

### **A. Leghold traps – if leghold traps are used, the following requirements apply:**

- (1) The jaws of leghold traps must be padded.
- (2) An owner or lessee of a parcel of private property, or the employees of such owner or lessee, may use leghold traps on his parcel of private property so long as the following conditions are met as provided by § 33-6-207 (1), C.R.S.:
  - (a) The property is primarily used for commercial livestock or crop production; and
  - (b) The use of the methods otherwise prohibited by § 33-6-203, C.R.S., occurs only on the property; and
  - (c) Such use does not exceed one thirty-day period per year for each parcel of private property; and
  - (d) The owner or lessee can present on-site evidence to CPW that ongoing damage to livestock or crops has not been alleviated by the use of methods other than those prohibited by § 33-6-203, C.R.S.

- (3) Leghold traps may not be used within 30 feet of either side of a public trail easement across private lands.
- (4) Chain length requirements for leghold traps set on land are as follows:
  - (a) When anchored by a stake, a chain of 3 feet or less must be utilized.
  - (b) When used with a drag, a chain of 6 feet or less must be utilized.
- (5) Pan tension requirements - For leghold traps size #3 or larger the required minimum pan tension shall be 3.5 pounds.

B. Snares – if snares are used, the following requirements apply:

- (1) An owner or lessee of a parcel of private property, or the employees of such owner or lessee, may use snares on his parcel of private property so long as the following conditions are met as provided by § 33-6-207(1), C.R.S.:
  - (a) The property is primarily used for commercial livestock or crop production; and
  - (b) The use of the methods otherwise prohibited by § 33-6-203, C.R.S., occurs only on the property; and
  - (c) Such use does not exceed one thirty-day period per year for each parcel of private property; and
  - (d) The owner or lessee can present on-site evidence to CPW that ongoing damage to livestock or crops has not been alleviated by the use of methods other than those prohibited by § 33-6-203, C.R.S.
- (2) Non-lethal snares with stops shall be set appropriately for the target depredating animal to minimize non-target catches, with a swivel outside the loop and must break away at a maximum of 350 pounds of pull. When used to capture coyotes, stops shall be placed on the snare cable to prevent the loop from closing to a circumference of less than 10.5 inches. For all other depredating animals, stops shall be placed on the snare cable to prevent the loop from closing to a circumference of no less than 8 inches.
- (3) Lethal snares must break away at a maximum of 350 pounds of pull and must be effective in expeditiously killing the animal caught.
- (4) Snares may not be used within 30 feet of either side of a public trail easement across private lands. Lethal snares may be placed on game trails where there is evidence of the target animal(s) and when they are placed where they are not readily accessible to non-target species.

C. Checking frequencies

- (1) Non-lethal traps and non-lethal snares shall be checked a minimum of 3 times per week: twice, 2 days apart and once, 3 days apart in any seven-day period (any combination of 2-2-3).
- (2) Lethal snares, lethal traps and drowning sets shall be checked a minimum of once every 7 days.

- (3) Any animals found in traps or snares upon checking shall either be released or humanely killed and removed, as set forth in Sections 4.00, 5.00 and 6.00 below.

D. Control method restrictions in kit fox and river otter areas

- (1) To avoid the taking of river otter, trapping in the following areas is prohibited in water, except with body-grip traps with a jaw spread no greater than 7 inches by 7 inches and snares that will not close to less than 16 inches in circumference. Trapping on land in the restricted area is prohibited except with a padded jaw trap or snare that will not close to less than 16 inches in circumference. Leghold traps and snares shall not be used in a drowning set. The areas where such trapping is prohibited are described as follows:
  - (a) That portion of the Gunnison River and 5 miles upstream along each of its tributaries in Montrose and Delta Counties from the Black Canyon of the Gunnison National Monument downstream to that point where the river meets Highway 92; and all lands within 100 yards of the high water line of this portion of the Gunnison River and all tributaries thereof; and
  - (b) That portion of the Piedra River upstream from Navajo Reservoir to the headwaters including East Fork and Middle Fork of the Piedra River in Hinsdale and Archuleta Counties and 9 miles upstream on the First Fork. This restriction includes the following tributaries: Sand Creek, Weminuche Creek, Little Sand Creek, Williams Creek and all lands within 100 yards of the high water line of the above waters; and
  - (c) The Dolores River from the McPhee Reservoir downstream to Bed Rock within 100 yards of the high water line; and
  - (d) The San Juan River from Pagosa Springs downstream to the New Mexico-Colorado border within 100 yards of the high water line.
- (2) To avoid the taking of kit fox, lethal traps and lethal snares, except when used as water or tree sets, are prohibited within the following area: that portion of Delta, Mesa and Montrose Counties bounded on the north by the Mesa-Garfield county line from the Utah state line east to U.S. Interstate 70; bounded on the east by U.S. Interstate 70 from the Mesa-Garfield county line to Colorado State Highway 65; from Colorado State Highway 65 to its junction with the northern boundary of the Grand Mesa Forest and following the boundary line west, south and then east to its junction with Colorado State Highway 65; from Colorado State Highway 65 to its junction with the Gunnison River; from the Gunnison River to Colorado State Highway 347; from Colorado State Highway 347 to its junction with U.S. Highway 50; bounded on the south by U.S. Highway 50 from its junction with Colorado State Highway 347 to the Gunnison River; from the Gunnison River to its junction with the Colorado River; from the Colorado River to the Utah-Colorado border; and bounded on the west by the Utah-Colorado border. All leghold traps and mechanically activated leg snares used within this area shall be set with a tension that requires a minimum of 4 pounds of force to activate the snare or trap.

E. Carcass - if an exposed carcass is used, the following restrictions apply:

Leghold or lethal traps, lethal or non-lethal snares, or M-44 device (a specific predicide device) may not be set within 30 feet of an exposed carcass that is plainly visible from above, except as provided in Section 7.00 C(2).

F. Registered Predicides - if predicides are used, the following restrictions apply:

- (1) An owner or lessee of a parcel of private property, or the employees of such owner or lessee, may use pesticides on his parcel of private property so long as all of the following conditions are met as provided by § 33-6-207(1), C.R.S.:
  - (a) The property is primarily used for commercial livestock or crop production; and
  - (b) The use of the methods otherwise prohibited by § 33-6-203, C.R.S., occurs only on the owner or lessee's property; and
  - (c) Such use does not exceed one thirty-day period per year for each parcel of private property; and
  - (d) The owner or lessee can present on-site evidence to CPW that ongoing damage to livestock or crops has not been alleviated by the use of methods other than those prohibited by § 33-6-203, C.R.S.
- (2) Pesticides may be used by government employees, government certified applicators, or other persons authorized pursuant to the product's label.

G. Dogs - if dogs are used, the following provisions apply:

- (1) Guard dogs and decoy dogs are allowed. Incidental take by these dogs is not unlawful.
- (2) Coursing dogs and trailing dogs are allowed, provided the intent of their use is not for the dogs to kill the target animal. Inadvertent take by these dogs is not unlawful.

H. Aircraft - if aircraft is used, the following restrictions apply:

- (1) Prior to using aircraft, the person who desires to use the aircraft must make a request in writing to the Commissioner. The Commissioner will approve or disapprove the request. In making this decision, the Commissioner shall consider such factors as, but not limited to, the person's expertise in taking depredating animals by aircraft, as well as the geographical location where use is to occur. Any such request shall include proof of landowner permission to fly over and discharge firearms on all property in the defined geographical area.
- (2) Aircraft may only be utilized for taking depredating coyotes, red fox, and feral swine in areas where depredation by these species has historically occurred or is occurring.
- (3) The authorization to use aircraft will expire within a specified period of time, as set by the Commissioner. Renewals are at the discretion of the Commissioner.
- (4) Take shall be reported pursuant to Section 8.00 below.

I. Artificial light - if artificial light is used, the following restrictions apply:

- (1) Artificial light may be used on private land. Artificial light may also be used on public lands when taking depredating animals where depredation has occurred or is occurring, except:
  - (a) During the 24-hour period prior to and during any deer, elk, or pronghorn rifle season and during the 24-hour period prior to and during the opening weekend of any grouse, pheasant, quail, turkey, or waterfowl season, unless prior authorization is obtained from the Commissioner; or
  - (b) In any areas where human safety would be jeopardized.

#### **4.00 CAPTURE OF NON-TARGET ANIMAL OR OTHER SPECIES**

- A. In the event of live capture of a non-target animal or other species that is not a state or federally identified threatened, endangered, at risk or otherwise protected species, the non-injured animal shall be immediately released. An injured animal shall be quickly and humanely killed or transported to a current CPW-licensed wildlife rehabilitator. If the animal cannot be released without human endangerment, the animal shall be quickly and humanely killed.
- B. If the non-target animal is a state or federally identified threatened, endangered, at risk or otherwise protected species, the following provisions apply:
  - (1) If the non-target animal is uninjured and can be released without human endangerment, the animal shall be immediately released.
  - (2) If the non-target animal cannot be released without human endangerment or is injured refer to applicable federal and/or state law pertaining to other disposition, reporting requirements and penalties. For information regarding federal law, contact the assistant regional director for law enforcement of the U.S. Fish and Wildlife Service; for information regarding state law, contact CPW.

#### **5.00 LIVE CAPTURE OF TARGET ANIMALS**

If the target depredating animal is taken alive, the animal shall be quickly and humanely killed, or the animal may be relocated if prior approval has been granted by CPW.

#### **6.00 DISPOSITION OF ORPHANED YOUNG OF DEPREDATING ANIMALS**

- A. If orphaned young of depredating animals are found, they must be transported to a current CPW-licensed wildlife rehabilitator or quickly and humanely killed.
- B. If orphaned black bear cubs are found before August 1st of their birth year, they shall be either transported to a current CPW-licensed wildlife rehabilitator or quickly and humanely killed; those found after August 1st of their birth year shall be left to survive on their own. Take shall be reported pursuant to Section 7.00 F and G below.
- C. If orphaned mountain lions are found with obvious spotting they shall be either transported to a current CPW-licensed wildlife rehabilitator or quickly and humanely killed; those without obvious spotting shall be left to survive on their own. Take shall be reported pursuant to Section 7.00 F and G below.

#### **7.00 CONTROL OF DEPREDATING BLACK BEARS AND MOUNTAIN LIONS**

If the methods specified below are utilized to take a depredating black bear or mountain lion, the corresponding restrictions apply.

- A. Black bears and mountain lions may be taken by means other than those prohibited by § 33-6-203, C.R.S. by the owners of livestock and their families, employees, agents, and identified designees, and by government agencies and employees pursuant to §§ 33-3-106(3) and 33-4-101.3(4), C.R.S., when it is necessary to prevent the black bears or mountain lions from inflicting death or injury to livestock. In the case of black bears or mountain lions, the phrase "necessary to prevent" as it relates to death or injury to livestock, is limited to the specific black bear(s) or lion(s) that is (are) reasonably believed to pose a threat and is (are) in the proximity, and when damage to livestock is likely to occur or has occurred.

- B. Black bears and mountain lions may be shot or live trapped and killed by owners of agricultural products, their families, employees, and approved identified designees in defense of such property as stated in § 33-4-101.3(4), C.R.S.
- C. Traps, Snares, and Predicides
- (1) An owner or lessee of a parcel of private property, or the employees of such owner or lessee, may use traps, snares, or predicides on black bears or mountain lions on his parcel of private property so long as the following conditions are met as provided by § 33-6-207(1), C.R.S.:
- (a) The property is primarily used for commercial livestock or crop production; and
  - (b) The use of the methods otherwise prohibited by § 33-6-203, C.R.S., occurs only on the owner or lessee's property; and
  - (c) Such use does not exceed one thirty-day period per year for each parcel of private property; and
  - (d) The owner or lessee can present on-site evidence to CPW that ongoing damage to livestock or crops has not been alleviated by the use of methods other than those prohibited by § 33-6-203, C.R.S.
- (2) For the purpose of taking depredating black bears or mountain lions, mechanical foot snares may be utilized within 30 feet of a carcass.
- D. Where documented historical damage has occurred, and is occurring, Wildlife Services is authorized to take depredating black bears or mountain lions to allow effective take of the offending animal. This authorization may be modified by the Commissioner through written agreements if such modification facilitates effective control measures.
- E. In the event that the owner of livestock or agricultural products desires to utilize an identified designee in the control of depredating black bears or mountain lions, prior approval shall be obtained from the Commissioner. In making this decision, the Commissioner shall consider such factors as, but not limited to, the person's ability to respond, the person's experience and ability in taking depredating black bears or mountain lions, the geographic location, urgency of the need for control measures, and the circumstances under which control measures are to occur. An identified designee shall not pay, nor shall the property owner, operator, or lessee accept payment from an identified designee, for the right to act as an identified designee. Nothing herein prohibits the property owner, operator, or lessee from paying an identified designee for services.
- F. All take of black bears and mountain lions shall be reported to CPW within 5 days to allow CPW the opportunity to inspect the depredating animal. Said report shall include any information requested by CPW.
- G. For any black bear or mountain lion taken pursuant to these rules and not taken with a valid CPW license during the applicable season, the carcass shall be left where taken, unless delivered pursuant to Sections H or I below. CPW has the responsibility to recover or dispose of the carcass or to allow it to decay.
- H. Owners of agricultural products or resources, their family members, employees, or agents shall not be required to deliver to CPW or to dispose of the parts or carcass of the black bear or mountain lion. CPW may inspect the black bear or mountain lion at the site designated by the owner, the owner's family, employee, or agent. However, CPW may require an identified designee to deliver



to CPW at a reasonable location the carcass or parts of a black bear or mountain lion taken by that identified designee.

I. Owners of agricultural products or resources, their family members, employees, agents and identified designees shall not possess black bears or mountain lions, or the parts thereof, unless taken with a valid CPW license during the applicable season. The following activities shall be permitted up to 5 days after take:

(1) Delivery of the carcass or parts thereof by the person taking the animal to the owner or manager of agricultural products or resources for verification of kill; after verification, the owner or manager shall make the carcass or parts that were delivered available for CPW's recovery and disposal; or

(2) Voluntary delivery of said carcass or parts to the CPW.

J. Black bears or mountain lions may be relocated only by CPW.

## **8.00 REPORTING REQUIREMENTS**

The take of any depredating coyote, red fox, or feral swine by aircraft shall be reported to the Commissioner within 15 days after the authorization to use aircraft expires and shall include, all information requested by the Commissioner.

## **9.00 TAMPERING WITH TRAPS, SNARES, CARCASSES OR OTHER DEVICES**

It shall be unlawful for any person, except Wildlife Services, CPW or the Commissioner, to move, remove, damage, or tamper with any trap, snare, carcass or other device of another that is being utilized to control depredating animals pursuant to these rules.

## **10.00 DISSEMINATION OF INFORMATION ABOUT LAWFUL METHODS OF CONTROL**

Owners of agricultural products or resources in Colorado may request from the Department assistance in controlling depredating animals. All persons making such a request shall receive information about preventive measures and lawful non-lethal and lethal methods and devices for the control of such depredating animals. The content, form, and methods of disseminating such assistance and information shall be as directed by the Commissioner and dependent upon adequate staffing and funding.

## **11.00 RESERVED**

## **12.00 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE**

The statements of basis and purpose for some rule changes are no longer in the Department files and are presumably in the state archives.

A. Dates Unknown

### **STATEMENT OF BASIS, PURPOSE AND STATUTORY AUTHORITY**

These amendments are adopted pursuant to the Predatory Animal Control provisions, § § 35-40-100.2 through 115, C.R.S. (1995 and 1996 Supp.)

In 1996, the people of the state of Colorado enacted Section 13 of Article XVIII to the Colorado Constitution, commonly known as Amendment 14, which defines prohibited methods of taking wildlife. The legislature, through SB 97-052, enacted legislation to implement Section 13 of Article XVIII of the State Constitution.

The purposes of these amendments are to incorporate Colorado Constitution Article XVIII, Section 13 and SB 97-052 into the restrictions pertaining to state employees and owners of agricultural products or resources and their families, employees, agents, and identified designees for the control of depredating animals, pursuant to section 35-40-101, C.R.S. (1995 And 1996 supp.); correct errata; and renumber provisions as appropriate.

#### FACTUAL ISSUES ENCOUNTERED WHEN DEVELOPING THESE RULES

Pursuant to SB 97-052, Section 33-6-207(3), the Colorado Commissioner of Agriculture, Department of Agriculture, shall have the authority to adopt and enforce reasonable rules governing trapping, snaring, and poisoning, which rules may include reasonable restrictions on the devices and poisons to be used and the manner of their use.

#### B. September 16, 2013 – Effective November 14, 2013

##### STATEMENT OF BASIS AND PURPOSE

The amendments to these rules are proposed to the Commissioner of the Colorado Department of Agriculture ("Commissioner") for his adoption pursuant to his authority as set forth in the Predatory Animals Act, § 35-40-101(2)(a), C.R.S.

The purpose of the amendments to these rules is to effect the legislative directive to adopt rules for the control of depredating animals.

Notice has been given to local government agencies and organizations that may be affected by this rulemaking.

##### SPECIFIC PURPOSE OF THIS RULEMAKING

Many of the changes to this rule are aesthetic, grammatical, or syntactical. For instance, the Commissioner has provided a clarified title to these rules to remove the non-necessary word "amendment" and to conform the name of the rules to the organic, enabling statute. Additionally, the definitions have been re-numbered to account for the lack of an "A" in the previous version.

Within the definitions, this rule change modifies the definitions of "animal" and "at-risk" to comport with their statutory definitions and to remove references to SB 96-197. Because the Colorado Division of Wildlife has changed its name to the Colorado Division of Parks and Wildlife, the definitions section has been amended to provide a new definition for "CPW" and thus to remove "DOW." Similarly, the term "ADC" for "Animal Damage Control" references an out-dated program that has been replaced by the "Wildlife Services" of the United States Department of Agriculture.

Changes grammatically to the language included an exchange of the relative pronoun "that" for "which" where the pronoun introduced restricted relative clauses. The word "section" was removed in these rules and replaced consistently with its symbol. In other locations where sentences would be more effective with fewer words or more straight-forward language, such changes were made.

The previous rules, in section 7, paragraphs F, G (the second G), and I, text that had been stricken through during the drafting process had subsequently been adopted into the final rule with the strikes-through in the text. This rule change removes all language that had been adopted into the rule with strikes through the language.

As in the definitions, all references to "Division of Wildlife" or "DOW" have been removed and replaced with "Division of Colorado Parks and Wildlife" or "CPW."

The Commissioner received information that the term "Conibear" is a trade-marked term for a particular brand of body-grip trap. To avoid infringing on a trade mark, these rules remove all references to the word "Conibear" and replace that word with language to describe the particular type of body-grip trap.

This rule removes the paragraph regarding the records of the Department, as the Colorado Open Records Act, § § 24-72-202 through 24-72-206, C.R.S., articulate what is and what is not a record open to public inspection.

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**Editor's Notes****History**

Entire rule eff. 11/14/2013.