

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #8 ☐

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Filing Date

FILED

2002 JUL 26 P 2:03

OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
Effective Date

**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: BOC, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

DATE EMERGENCY RULE WAS ORIGINALLY FILED: MAY 24, 2002

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO       

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES        NO       

DATE OF FIRST EMERGENCY AMENDMENT: JULY 26, 2002

SERIES NUMBER OF RULE: 47

TITLE OF RULE:       

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

Use additonal sheets if necessary

  
Authorized Signature

**SCANNED**

**TITLE 58  
LEGISLATIVE RULE  
DIVISION OF NATURAL RESOURCES**

**SERIES 47  
PROHIBITIONS WHEN HUNTING AND TRAPPING**

**SUMMARY**

This rule outlines the prohibitions when a person is hunting and trapping. The purpose of this emergency rule change is to prohibit the use of bows that are modified or manufactured to hold a bow at full draw except for those persons that are certified by their physician to be physically unable to hold a bow at full draw without the use of a manufactured or modified bow that is designed to hold the bow at full draw.

**TITLE 58**  
**LEGISLATIVE RULE**  
**DIVISION OF NATURAL RESOURCES**

**SERIES 47**  
**PROHIBITIONS WHEN HUNTING AND TRAPPING**

**CIRCUMSTANCE**

For a number of years the Division of Natural Resources permitted the use of modifications to bows even though there were different interpretations of the law on their uses. In order to address those different interpretations, the Division of Natural Resources is seeking changes in the current rule to clarify what is and is not permitted. These changes were presented to the Director's Physically Challenged Advisory Board for their consideration and the board endorsed the proposed changes unanimously. These changes are needed in order to accommodate physically challenged hunters.

## FISCAL NOTE FOR PROPOSED RULE

Rule Title: Prohibitions When Hunting and Trapping

Type of Rule      X   Legislative               Interpretive               Procedural

Agency    DIVISION OF NATURAL RESOURCES - LT. COLONEL W. B. DANIEL

Address    ROOM 839, BLDG. 3, CAPITOL COMPLEX

CHARLESTON, WEST VIRGINIA 25305

TELEPHONE NUMBER 558-2784

### 1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

### 2. Explanation of above estimates:

Costs to implement this rule are negligible and the changes were incorporated in the June 2002 printing of the hunting and trapping booklets.

### 3. Objective of these rules:

This emergency rule is being filed to clarify what is and is not permitted for bow hunting and establish a provision that will permit certain disabled persons to used a bow that has been modified or manufactured to hold the bow at full draw.

**Rule Title:** Prohibitions When Hunting and Trapping

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**4. Explanation of overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government:**

None

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:**

This rule change will provide additional recreational opportunities for physically challenged hunters, thereby increasing the economic impact to the State. Potentially likely to increase license sales. The added income to the Division of Natural Resources is negligible.

**C. Economic Impact on Citizens/Public at Large:**

The average hunter spends about sixty dollars a day on food and lodging while visiting the State.

**Date:** July 26, 2002

**Signature of Agency or  
Authorized Representative:**



Ed Hamrick, Director

## EMERGENCY RULE QUESTIONNAIRE

DATE: May 24, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Natural Resources  
Bldg. 3, Capitol Complex  
Charleston, WV. 25305 (304) 558-2784

EMERGENCY RULE TITLE: Prohibitions When Hunting and Trapping

1. Date of Filing May 24, 2002

2. Statutory authority for promulgating emergency rule:

§20-1-7(30)

3. Date of filing of proposed legislative rule: July 26, 2002

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This filing amends a current rule: 58-47

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

Staff legal counsel interpreted the current rule on bows to mean that hunters may not use bows that have been modified or manufactured to hold a bow at full draw. In order to accommodate the physically challenged hunter, this rule needs to be in place before the fall hunting season.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

NOT APPLICABLE

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Interpretation of the current rule prohibits any person to use a bow that is modified or manufactured to hold a bow at full draw. In some instances physically challenged individuals would not be capable of participating in the archery season unless they were permitted to use a draw lock or other device that would aid them in holding the bow at full draw. This rule will provide for a permit to be issued by the DNR for a modified bow.

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**TITLE 58  
LEGISLATIVE RULE  
DIVISION OF NATURAL RESOURCES**

**FILED**

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**SERIES 47  
PROHIBITIONS WHEN HUNTING AND TRAPPING**

OFFICE OF THE SECRETARY OF STATE

**EMERGENCY RULE**

**§58-47-1. General.**

1.1. Scope and Purpose. -- This rule establishes prohibitions in the pursuit or taking of wildlife within the boundaries of this State.

1.2. Authority. -- W. Va. Code §20-1-7(30)

1.3. Filing Date. --

1.4. Effective Date. --

**§58-47-2. Definitions.**

2.1. "Bow" means a longbow, recurved bow, or compound bow that is hand-held, and hand-drawn and held at full draw without the aid of any mechanical device. Triggering devices or release aids are legal.

2.2. "Modified Bow" means a longbow, recurve bow, or compound bow that has been modified or manufactured to hold the bow at full draw to accommodate a physical impairment of the user.

~~2.1.~~ 2.3. All other terms in this rule have the meaning prescribed in the Code of State Rules, §58-46, Rules Defining The Terms To Be Used Concerning All Hunting and Trapping Rules.

**§58-47-3. Prohibitions.**

3.1. Hunting is prohibited in State Parks and wildlife refuges, in safety zones in State Forests, and in safety zones in State Wildlife Management Areas.

3.1.1. Federal regulations prohibit hunting in Harpers Ferry National Historical Park.

3.2. Notwithstanding the provisions of W. Va. Code §20-2-5(2), woodchucks may be controlled by digging them out, cutting them out or smoking them out on private land by the



landowner, his or her resident children or resident parents, or a bona fide resident tenant.

3.3. Except as provided in Subdivisions 3.3.1 and 3.3.2 of this rule, it is illegal to use poisons, chemicals, or explosives in taking any furbearing animal, game animal, game bird, protected bird, or protected mammal.

3.3.1. Woodchucks may be controlled by poison, chemicals or explosives on private land by the landowner, his or her resident children or resident parents, or a bona fide resident tenant during the period commencing each year on April 1 and ending on September 30.

3.3.2. Redwing blackbirds, grackles, pigeons, starlings, brownheaded cowbirds and English sparrows may be controlled by chemicals registered with the West Virginia Department of Agriculture and the United States Environmental Protection Agency when prescribed and authorized by the director in writing. Authorized users shall follow avicide label instructions and take all possible precautions in order to protect nontarget species of wildlife.

3.4. It is illegal to hunt from, or by means of, a motorized watercraft unless the motor has been completely shutoff and the watercraft's progress from the motor has ceased.

3.5. It is illegal to use or possess a fully automatic, rifle, shotgun, or pistol while hunting or pursuing wildlife at any time.

3.6. It is illegal to catch, capture, take, or kill, or attempt to do so, by seine, net, bait, trap, deadfall, snare, or like device of any kind, any bear, migratory bird, protected bird, protected mammal, or wild boar.

3.6.1. It is illegal to take, or attempt to take, the species listed under Subsection 3.6 of this rule, by the aid of baiting. The Director considers an area to be baited for 10 days after the removal of the bait.

3.7. It is illegal for a person to have in his or her possession solid ball ammunition and lead or steel shot larger than No. 4 during the muzzleloading season, except for a person legally hunting bear or legally hunting deer with a muzzleloader firearm. The use of .22 caliber rimfire for small game hunting is legal during the muzzleloading season.

3.8. It is illegal to use any solid ball ammunition during the two week bucks only deer season in those counties that are closed to bucks only hunting.

3.9. It is illegal to hunt between ½ hour after sunset and ½ hour before sunrise with a pistol, revolver or rifle larger than .22 caliber rimfire, a shotgun using solid ball ammunition or a shotgun using shot shells larger than #4 shot.

3.10. It is illegal to use tree stands, except for portable tree stands, on public lands.

3.11. It is illegal to transport wildlife or parts of wildlife, which were killed by another hunter unless the wildlife is accompanied by a paper or tag filled out in plain English bearing the following information from the hunter that killed the wildlife: The hunter's signature, address, hunting license number (if required), official game checking tag number (if required), the date of kill, the species, and the number, and/or quantity of wildlife.

3.12. It is illegal for any person to feed bears.

3.13. It is illegal to shoot at wildlife with either a bow or firearm after alighting from a motor vehicle along any public road or highway, unless the shooter is at least 25 yards from the motor vehicle.

3.14. It is illegal for any person to use a modified bow for the purpose of hunting or fishing unless he or she possesses a special permit to do so issued by the director. Application will be on forms issued by the Division of Natural Resources. These forms will include a section for a licensed physician to certify that the applicant requires a modified bow.

3.14.1. The physician's examination and certification must have been completed within the six months immediately preceding the date of the application.

3.14.2. The applicant must authorize, by written release, an examination of all medical records regarding the applicant's impairment.

3.14.3. This special permit must be accompanied by a valid resident or non-resident Statewide hunting and/or fishing license unless otherwise exempted from the license requirements as provided in chapter twenty of the West Virginia Code.