

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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FILED

JUN 6 1 30 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Bureau of Commerce, Div. of Natural Resources TITLE NUMBER: 58

RULE TYPE: Legislative; CITE AUTHORITY 20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11B

TITLE OF RULE BEING AMENDED: Prohibitions When Hunting and Trapping

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 14, 1995 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Bernard F. Dowler, Chief

Wildlife Resources Section

Bldg. 3, Room 812

Capitol Complex

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3-40

Circumstances Concerning Changes to
PROHIBITIONS WHEN HUNTING AND TRAPPING

Agency: Department of Commerce, Division of Natural Resources

Rule: Title 58, Series 11B, Prohibitions When Hunting and Trapping

Circumstance: Due to an inadvertent deletion the rule does not specify when an area is considered to be baited, therefore the definition of baiting is incomplete.

Removes prohibitions against hunting with certain firearms between one-half hour after sunset and one-half hour before sunrise.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Prohibitions When Hunting and Trapping
 Type of Rule: Legislative Interpretive Procedural
 Agency: Division of Natural Resources
 Address: State Capitol Complex
Building 3, Room 812
1900 Kanawha Blvd.
Charleston, WV 25305

1. Effect of Proposed Rule

| | ANNUAL | | | FISCAL YEAR | |
|-----------------------|----------|----------|---------|-------------|------------|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| PERSONAL SERVICES | | | | | |
| REPAIRS & ALTERATIONS | | | | | |
| EQUIPMENT | | | | | |
| OTHER (LICENSE FEES) | | | | | |

2. Explanation of above estimates:
N/A

3. Objectives of these rules:
Establishes the general provisions applicable to hunting and trapping

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impacts on State government.
None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.
None

C. Economic Impact on citizens/Public at Large.
None

Date: 6/5/95



Charles B. Felton, Jr.
 Director

Summary of a Proposed Rule Concerning
PROHIBITIONS WHEN HUNTING AND TRAPPING

The proposed rule the establishes the general provisions applicable to hunting and trapping. Changes in the proposal establish: the species that may not be taken by the aid of baiting and describes when an area is considered to be baited; and removes prohibitions against hunting with certain firearms between one-half hour after sunset and one-half hour before sunrise.

TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 11B
PROHIBITIONS WHEN HUNTING AND TRAPPING

§58-11B-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. -- West Virginia Code §20-1-7(30).

1.3. Filing Date. --

1.4. Effective Date. --

§58-11B-2. Definitions.

2.1. All terms have the meaning prescribed in the rule defining the terms to be used concerning all Hunting and Trapping Regulations (47 C.S.R.11A).

§58-11B-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, chemical 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 must 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 hunt, catch, take, kill, injure, or pursue a wild animal or wild bird by means of falconry or hawking.

3.6. The use or possession of a fully automatic, rifle, shotgun, or pistol is prohibited while hunting or pursuing wildlife at any time.

3.7. 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 ~~deer~~, bear, migratory bird, protected bird, protected mammal, or wild boar.

3.7.1 No person may take, or attempt to do so, the species under Subsection 3.7 of these regulations, by the aid of baiting. The Director considers an area to be baited for 10 days after the removal of the bait.

3.8. 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 those persons 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.

3.9. No person may use tree stands, except for portable tree stands, on public lands.

3.10. No person may transport wildlife or parts thereof, 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 killing the wildlife:

3.10.1. The hunter's signature, address, hunting license number (if required), official game checking tag number (if required), date of kill, species, number, and/or quantity of wildlife.

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

~~3.12. It is illegal to hunt between $\frac{1}{2}$ hour after sunset to $\frac{1}{2}$ hour before sunrise with a bow or centerfire firearm or any firearm using larger than .22 caliber rimfire ammunition or shotguns using solid ball ammunition or shot shell containing larger than No. 4 shot.~~