

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FILED

JUN 6 1 25 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

NOTICE OF AN EMERGENCY RULE

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

CITE AUTHORITY: 20-2-11, 20-2-47, 20-2-48

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:


Signature

Use additional sheets if necessary

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.

Summary of a Proposed Rule Concerning
PROHIBITIONS WHEN HUNTING AND TRAPPING

The proposed rule 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.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Prohibitions When Hunting and Trapping
 Type of Rule: X 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:
To conform with federal law and to correct an inadvertent deletion for the definition of baiting.

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



 James B. Felton, Jr.
 Director

SERIES 11B

DATE: 6/5/95

TO: Legislative Rule Making Review Committee

FROM: Division of Natural Resources

EMERGENCY RULE TITLE: Prohibitions When Hunting and Trapping

1. **Date of Filing:** 6/6/95
2. **Statutory authority for promulgating emergency rules:** 29A-1-1 et.seq.
3. **Date of filing of proposed legislative rule:** 6/6/95
4. **Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?** Amends the current rule.
5. **Has the same or similar emergency rule previously been filed?** No.
6. **State, with particularity, those facts and circumstances which make the emergency rule necessary from the immediate preservation of public peace, health, safety or welfare.** The current rule prohibits all species of game from being "baited for hunting." This is contrary to past and current practices for deer hunting. In addition, the definition of a baited area is in noncompliance with federal regulations. Continued noncompliance jeopardizes West Virginia Waterfowl seasons.
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 regulations and time limit established therein.** The Migratory Bird Treat Act and attendant federal regulations (50CFR, §20). The regulations have, and are still in force.
8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.** During the rule making process the inadvertent deletion of paragraph 3.7.1, regarding baiting, causes West Virginia to be in noncompliance with migratory bird regulations established by the federal government. With the exception of deer, the species listed in the rule can not tolerate the more effective hunting method of baiting.

**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 ½ hour after sunset to ½ 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.~~



The Senate of West Virginia
Charleston

May 25, 1995

COMMITTEES:
NATURAL RESOURCES (CHAIRPERSON)
AGRICULTURE
BANKING AND INSURANCE
JUDICIARY
PENSIONS
TRANSPORTATION

ROBERT L. DITTMAR
P.O. Box 176
RAVENSWOOD 26164-0176

The Honorable Ken Hechler
West Virginia Secretary of State
Building #1, State Capitol Complex
Suite 157K
Charleston, West Virginia 25305-0770

Dear Secretary Hechler:

During the 1995 regular legislative session SB 112, a rules bill for the agencies under the Bureau of Commerce, was passed with an error as it relates to Series 11B, "Prohibitions When Hunting and Trapping."

Because this error does not reflect the wishes of the legislature, I am respectfully requesting that you accept an emergency rule (Series 11B) from the Division of Natural Resources which is in keeping with the intent of the legislature.

In addition, it is my understanding the Division of Natural Resources will request that the Governor add this business item to a possible special session of the legislature to be held later this year. Should that occur, the rule-making process for this series will be completed in a more timely fashion.

Your assistance and cooperation in this matter will be greatly appreciated.

Sincerely,

Robert L. Dittmar
Senator

cc: Senate President Tomlin
Director Felton

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAY 30 12 59 PM '95

FILED



HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

SAM LOVE, Chairman
COMMITTEE ON NATURAL RESOURCES
RD # 1, BOX 760
WEIRTON, WV 26062
PHONE (304) 748-4350

May 22, 1995

Other Committees:
Government Organization
Roads & Transportation
Legislative Rule-Making Review

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAY 24 4 16 PM '95

FILED

The Honorable Ken Hechler
West Virginia Secretary of State
Capitol Complex
Charleston, West Virginia 25305-0770

Dear Ken:

During the 1995 regular session SB-112, a rules bill for the agencies under the Bureau of Commerce, was passed with an error as it relates to Series 11B, "Prohibitions When Hunting and Trapping."

Because this error does not reflect the wishes of the Legislature, I am respectfully requesting that you accept an emergency rule (series 11B) from the Division of Natural Resources which is in keeping with the intent of the legislature. I am enclosing the agreed to rule.

In addition, it is my understanding the Division of Natural Resources will request that the Governor add this business item to a possible special session of the legislature to be held later this year. Should that occur, the rule-making process for this Series will be completed in a more timely fashion.

If I can be of further assistance to you, please do not hesitate to contact me at any time.

Sincerely,

Sam Love

CC. Speaker Chambers
Felton

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. --

1.5. Repeal of Former Rule. -- These rules repeal and replace 58 C.S.R. 11B "Prohibitions when Hunting and Trapping" that were filed on May 8, 1995 and became effective on May 9, 1995.

§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).

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