

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

Form #7

Do Not Mark In This Box  
Filing Date

FILED

2002 MAY 24 P 2:35

WEST VIRGINIA  
SECRETARY OF STATE

Effective Date  
July 3, 2002

**NOTICE OF AN EMERGENCY RULE**

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

CITE AUTHORITY: W. Va. CODE 20-1-7 (30)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 46

TITLE OF RULE BEING AMENDED: Rule Defining The Terms To Be Used Concerning All  
Hunting and Trapping Rules

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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:

Use additional sheets if necessary

  
Authorized Signature

SCANNED

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

**SERIES 46  
RULE DEFINING THE TERMS TO BE USED  
CONCERNING ALL HUNTING AND TRAPPING RULES**

**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. These differences caused the Division of Natural Resources to seek changes in the current rules that clears up the confusion. These changes were presented to the Director's Physically Challenged Advisory Board for their consideration and the board endorsed the proposed change unanimously. These changes are needed in order to accommodate physically challenged hunters. The emergency filing of Title 58, Series 46 will be accompanied by an emergency filing of Title 58, Series 47.

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

**SERIES 46  
RULE DEFINING THE TERMS TO BE USED  
CONCERNING ALL HUNTING AND TRAPPING RULES**

**SUMMARY**

This rule defines terms that are used in all other hunting and trapping rules. The purpose of this emergency rule change is to define the terms "Bow" and "Modified Bow". This change is necessary in order to accommodate persons that are certified by a physician to be physically unable to hold a bow at full draw without the use of a modification to a longbow, recurve bow or a compound bow.

## FISCAL NOTE FOR PROPOSED RULE

**Rule Title:** Rule Defining the Terms to be Used Concerning All Hunting and Trapping Rules

**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
<b>ESTIMATED TOTAL COST</b>	0	0	0	0	0
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

### 2. Explanation of above estimates:

Costs to implement this rule are negligible and the changes can be incorporated in the next 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 to hold the bow at full draw.

**Rule Title:** Rule Defining The Terms to be Used Concerning All Hunting and Trapping Rules

**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. Potential, likely, increase in 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:** May 24, 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: Rule Defining the Terms to be Used Concerning All 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: June 17, 2002 - Approximate date

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This filing amends a current rule:  
58-46

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. 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. In some instances physically challenged individuals may not be capable of participating in the archery season unless they were permitted to use a draw lock of other device that would aid them in holding the bow at full draw.

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**PHYSICALLY CHALLENGED ADVISORY  
BOARD MEETING  
MARCH 13, 2002**

**MINUTES**

The Physically Challenged Advisory Board meeting was held on Wednesday, March 13, 2002, at 6:00 p.m. in the Division of Natural Resources Conference Room #674, Charleston, West Virginia. The following individuals were in attendance:

**PHYSICALLY CHALLENGED ADVISORY BOARD MEMBERS**

Randy Benear, Chairman (Presiding)  
Arthur Mullins  
Rick Shinault  
Roger Weir  
Pete Cuffaro  
Jim Jeffers

**DIVISION OF NATURAL RESOURCES**

Director Ed Hamrick  
Lt. Col. W. B. Daniel, Law Enforcement  
Scott Warner, Wildlife  
Jena Webb (Recording Secretary)

**CALL TO ORDER**

The meeting was called to order by Chairman Randy Benear at approximately 6:00 p.m. All board members were present at this meeting with the exception of Gary Bowers.

**ELECTION OF NEW CHAIRMAN**

Mr. Benear opened the floor for nominations of a new chairman of this advisory board. Mr. Shinault nominated the current vice-chairman, Pete Cuffaro. The nomination was seconded by Mr. Jeffers. Nominations were closed and all were in favor of Mr. Cuffaro becoming the new chairman.

## **ALLOW ONE ABLE BODIED PERSON TO FISH WITH A DISABLED PERSON IN THE CLASS Q FISHING AREAS**

Mr. Cuffaro stated that when a Class Q license holder goes fishing at a handicapped fishing area the able bodied person that goes with them should be able to fish with them.

After a brief discussion about the issue it was decided that the Wildlife and Law Enforcement Sections would work together to come up with their thoughts on this proposal and report back to the group.

Mr. Cuffaro asked that he be informed of any feedback on this issue.

## **INCLUDE THE DISABLED ON YOUTH DEER HUNTING DAYS**

Mr. Cuffaro proposed that Class Q license holders be included on Youth Deer Hunting Days. After discussion the group supported said proposal and the Division of Natural Resources agreed to present it to the Natural Resources Commission.

Director Hamrick asked Chairman Pete Cuffaro if he would attend the Natural Resources Commission meeting in Flatwoods on April 28, 2002 representing the Physically Challenged Handicapped Advisory Board. Mr. Cuffaro agreed.

Mr. Benear asked if Class Q License holders were included in youth deer hunting days would it be possible to implement it this fall? Director Hamrick stated that the Natural Resources Commission would be able to approve this proposal.

Mr. Weir stated that the Physically Challenged Advisory Board was formed to get physically challenged individuals into more outdoor activities and asked if anyone had tracked information in the past few to years to see if license sales had decreased? Lt. Colonel Bill Daniel stated that license sales had been steady or on a slight increase in the last few years in West Virginia. Mr. Benear asked if it would be possible to have deer checked-in on a Class Q license recorded separately and Director Hamrick replied this could be done easily when the State gets an electronic licensing system.

## **\* COCKING DEVICES FOR THE HANDICAPPED**

A proposal was handed out for the board to review for clarifying the definition of a bow. (Attachment A)

After a lengthy discussion on the proposal Mr. Shinault made a **MOTION** to accept the proposal as written, Mr. Cuffaro seconded the motion and all members were in favor.

## **DIRECTOR'S ISSUES**

Mr. Cuffaro stated that Mr. Bowers should be replaced on the board. Suggestions for a replacement should be given to Director Hamrick.

Mr. Benear made a **MOTION** to adjourn, all were in favor.

## **PROPOSAL**

Change the definition of "Bow" in the current rule (58CSR46) to read as follows:

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

Add a new definition to the rule (58CSR46) to read as follows:

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

Add the following language to the prohibitions while hunting rule (58CSR47):

"No person may use a modified bow for the purpose of hunting or fishing unless he or she possesses a special permit 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.

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

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

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 this chapter."

TITLE 58  
LEGISLATIVE RULE  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES

FILED

MAY 24 P 2:35

SERIES 46  
RULE DEFINING THE TERMS TO BE USED  
CONCERNING ALL HUNTING AND TRAPPING RULES

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

EMERGENCY RULE

**§58-46-1. General.**

1.1. Scope. -- This rule defines terms to be applied to all rules concerning the regulation of hunting and trapping within the boundaries of this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

**§58-46-2. Definitions.**

2.1. "Aggregate" means the total bag or possession limit of similar kinds of game animals or game birds. For example, the possession limit for squirrels is twenty-four (24) after the third day of the open season. This could be ten (10) gray squirrels and fourteen (14) fox squirrels, or fourteen (14) gray squirrels and ten (10) fox squirrels, or any combination of twenty-four (24) squirrels, but not more than a total of six (6) per day nor more than a total of twenty-four (24) in possession.

2.2. "Antlered Deer" means deer having at least one antler that is over three (3) inches in length, as measured from the hairline.

2.3. "Antlerless Deer" means deer having no antler that is over three (3) inches in length, as measured from the hairline.

2.4. "Bait" means shelled, shucked, or unshucked corn, wheat or other grain, or any other feed or edible enticement.

2.5. "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of bait so as to constitute for wildlife a lure, attraction, or enticement to or on any areas where hunters are attempting to take them.

2.6. "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.

~~2.13:~~ 2.7. "Concurrent Hunting" means hunting of the same and/or other species during a legally prescribed season.

~~2.7:~~ 2.8. "Cub Bear" means a bear less than one year old which has upper canine teeth of less than five-eighths (5/8) inch in length when measured from the gum.

~~2.8:~~ 2.9 "Legal Small Game Hunting Season" means the period commencing on the Saturday prior to the Saturday nearest to October 15 and ending on the last day of February of the following year.

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

~~2.9:~~ 2.11. "An Individual Permanently Disabled in the Lower Extremities" means an individual who is permanently and totally disabled from the waist down and is unable to ambulate without the full-time use of a walker, two crutches or a wheelchair.

~~2.10:~~ 2.12. "Possession" means game taken in this State which is in any way under the control of the hunter (i.e., the total of all game in a vehicle, home freezer, commercial food locker, or other storage place).

~~2.11:~~ 2.13. "Prevailing Time" means either Eastern Standard Time or Eastern Daylight Time as established by the United States Congress.

~~2.12:~~ 2.14. "Protected" means no open season (i.e., hunting protected wildlife is illegal at all times).

~~2.12.1:~~ 2.14.1. Protected mammals include: elk and mountain lion and those mammals covered by federal regulations under the Endangered Species Act of 1973, as amended.

~~2.14:~~ 2.15. "Public Lands" means lands owned, leased, licensed to or under the control of the State of West Virginia or the Federal government.

~~2.15:~~ 2.16. All other terms have the meaning prescribed in W. Va. Code §20-1-2.