

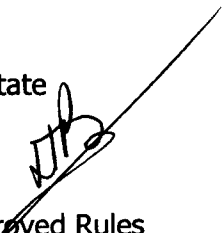
L. Thomas Bulla, Secretary
Department of Commerce
State Capitol
Building 6, Room 525
Charleston, WV 25305-0311

State of West Virginia
Joe Manchin III
Governor

Telephone: (304) 558-2234
Toll Free: (800) 982-3386
Fax: (304) 558-1189
Email: tbulla@wvdo.org
www.boc.state.wv.us

MEMORANDUM

TO: Betty Ireland, Secretary of State

FROM: L. Thomas Bulla, Secretary 

SUBJECT: Approval to File Agency Approved Rules
Division of Natural Resources Series 58

DATE: July 28, 2005

Permission is hereby granted for the Division of Natural Resources to file the following agency approved rules:

58CSR12	Whitewater Rule
58CSR25	Boating Rule
58CSR31	Rules Governing Public Use of West Virginia State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources
58CSR46	Rule Defining the Terms to be Used Concerning All Hunting and Fishing Rules
58CSR52	Wild Boar Hunting
58CSR58	Special Waterfowl Hunting Rule
58CSR64	Miscellaneous Permits and Licenses
58CSR65	Falconry Rules
58CSR67	Lifetime Hunting, Trapping and Fishing Licenses Rules

If you have any questions, please feel free to contact me. Thank you for your assistance in this matter.

LTB:ffh

cc: Brian Helmick, Deputy Secretary
Frank Jezioro, Director

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Natural Resources, Law Enforcement Section
Building #3 Capitol Complex
Charleston, WV 25305

LEGISLATIVE RULE TITLE: ~~58-46 Terms Defining the Terms to be Used Concerning All~~
Hunting & Trapping Rules

1. Authorizing statute(s) citation WV Code 20-1-7(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 22, 2005

b. What other notice, including advertising, did you give of the hearing?
N/A

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 22, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2005

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Major D. E. Murphy, Assistant Chief
Division of Natural Resources
Law Enforcement Section
Capitol Complex Building #3
Charleston, WV 25305
(304) 558-2784

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

June 22 - July 22 2005

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

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

SUMMARY

This rule defines terms used in hunting and trapping rules that are not found elsewhere in the West Virginia Code. There are three new terms being defined and one existing term being amended. They will read as follows:

"An Individual Permanently Disabled in the Lower Extremities" means an individual who is permanently and totally disabled from the waist down and is termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a simple or double amputee of the legs; or a person with any other physical affliction in the lower half of the body which makes it impossible to ambulate successfully and is unable to ambulate without the full-time use of a walker (standard or front-wheeled), two crutches (standard or forearm) or a wheelchair.

NEW: "Amber and red lights" means artificial lights which are amber and red in color. These lights are legally used to hunt coyotes at night during the established season. This provision does not allow the use of laser lights or any telescopic sight that emits a laser light.

NEW: A "trap" is a device that is used to catch and hold animals. A trap may be legally used during the trapping season to catch fur-bearing animals and coyotes and includes leg hold traps, killer type traps, box traps and snares. Legal and illegal traps are further defined in the general Trapping Rule 58CSR53.

NEW: For the purpose of deer hunting, the term "muzzle-loader" means a single shot muzzle-loading firearm having a bore diameter of not less than thirty-eight one-hundredths of an inch.

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

SERIES 46

**RULE DEFINING THE TERMS TO BE USED CONCERNING
ALL HUNTING & FISHING RULES**

CIRCUMSTANCE

This rule defines terms used in hunting and trapping rules that are not found elsewhere in the West Virginia Code. There are three new terms being defined and one existing term being amended. The term that is being amended was recommended by the Physically Challenged Advisory Board, an ad hoc committee that was formed to advise the Director of Natural Resources on disability issues. The new terms being defined are necessary because of legislation passed during the 2005 regular session of the West Virginia Legislature and the lack of a definition of the word "trap". The amended term and the new terms are listed below.

"An Individual Permanently Disabled in the Lower Extremities" means an individual who is permanently and totally disabled from the waist down and is termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a simple or double amputee of the legs; or a person with any other physical affliction in the lower half of the body which makes it impossible to ambulate successfully and is unable to ambulate without the full-time use of a walker (standard or front-wheeled), two crutches (standard or forearm) or a wheelchair.

NEW: "Amber and red lights" means artificial lights which are amber and red in color. These lights are legally used to hunt coyotes at night during the established season. This provision does not allow the use of laser lights or any telescopic sight that emits a laser light.

NEW: A "trap" is a device that is used to catch and hold animals. A trap may be legally used during the trapping season to catch fur-bearing animals and coyotes and includes leg hold traps, killer type traps, box traps and snares. Legal and illegal traps are further defined in the general Trapping Rule 58CSR53.

NEW: For the purpose of deer hunting, the term "muzzle-loader" means a single shot muzzle-loading firearm having a bore diameter of not less than thirty-eight one-hundredths of an inch.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rule Defining the Terms to be Used Concerning all Hunting & Trapping Rules

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: Bldg. 3, Capitol Complex
Charleston, WV 25305

Phone Number: (304) 558-2784 Email: davemurphy@wvdnr.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will have no fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	<i>2006</i> Increase/Decrease (use "-")	<i>2007</i> Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		0.00	
Personal Services		0.00	
Current Expenses		0.00	
Repairs & Alterations		0.00	
Assets		0.00	
Equipment		0.00	
Other		0.00	
2. Estimated Total Revenues		0.00	

Rule Title: Rule Defining the Terms to be Used Concerning all Hunting & Trapping Rules

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There will be no fiscal impact.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

None

Date: 7-29-05

Signature of Agency Head or Authorized Representative
Brian Helms

58CSR46

RECEIVED
05 JUL 29 AM 11:41
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

§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.

58CSR46

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

2.8. "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. For the purpose of deer hunting, the term "muzzle-loader" means a single shot muzzle-loading firearm having a bore diameter of not less than thirty-eight one-hundredths of an inch.

2.9. "An Individual Permanently Disabled in the Lower Extremities" means an individual who is permanently and totally disabled from the waist down and is termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a simple or double amputee of the legs; or a person with any other physical affliction in the lower half of the body which makes it impossible to ambulate successfully and is unable to ambulate without the full-time use of a walker (standard or front-wheeled), two crutches (standard or forearm) or a wheelchair.

2.10. "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. "Prevailing Time" means either Eastern Standard Time or Eastern Daylight Time as established by the United States Congress.

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

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

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

2.14. "Public Lands" means lands owned, leased, licensed to managed under cooperative agreement with or under the control of the State of West Virginia ~~or the Federal government~~ Division of Natural Resources for wildlife management purposes.

2.15. "Amber and red lights" means artificial lights which are amber and red in color. These lights are legally used to hunt coyotes at night during the established season. This provision does not allow the use of laser lights or any telescopic sight that emits a laser light.

2.16. A "trap" is a device that is used to catch and hold animals. A trap may be legally used during the trapping season to catch fur-bearing animals and coyotes and includes foot hold traps, killer type traps, box traps, and snares. Legal and illegal traps are further defined in the General Trapping Rule 58CSR53.

58CSR46

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

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Division of Natural Resources, Law Enforcement Section
Building #3 Capitol Complex
Charleston, WV 25305

LEGISLATIVE RULE TITLE: ~~58-46 Terms Defining the Terms to be Used Concerning All~~
Hunting & Trapping Rules

1. Authorizing statute(s) citation WV Code 20-1-7(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 22, 2005

b. What other notice, including advertising, did you give of the hearing?
N/A

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 22, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2005

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Major D. E. Murphy, Assistant Chief

Division of Natural Resources

Law Enforcement Section

Capitol Complex Building #3

Charleston, WV 25305

(304) 558-2784

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A
