

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2011 JUN 10 PM 4:00

CLERK OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Division of Natural Resources, Wildlife Resources Section 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: 47

TITLE OF RULE BEING AMENDED: Prohibitions when Hunting and Trapping

IF NO, SERIES NUMBER OF 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 11, 2011 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Curtis I. Taylor, Chief  
DNR Wildlife Resources Section  
324 Fourth Avenue  
So. Charleston, WV 25303

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

Angel R. Moore  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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

**SERIES 47  
PROHIBITIONS WHEN HUNTING AND TRAPPING**

**SUMMARY:**

Series 47 revises the current Prohibitions when Hunting and Trapping Rule. Revisions to this rule include modifying the language associated with weapon caliber and shot size restrictions for hunting at night by increasing the maximum caliber size for rifles, pistols and revolvers from .22 caliber rimfire to .22 caliber centerfire, and modifying the maximum shotgun shotshell size from #4 shot to #2 shot. In addition, minor modifications will be made to include "crossbows" in the language pertaining to individuals alighting from a motor vehicle along a public road; and adding the word "possess" to the language pertaining to tagging wildlife which was harvested by another person.

**CIRCUMSTANCES:**

This rule establishes prohibitions in the pursuit or taking of wildlife within the boundaries of the State

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Series 47, Prohibitions When Hunting and Trapping Rule

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Division of Natural Resources, Wildlife Resources Section

Address: 324 Fourth Avenue  
South Charleston, WV 25303

Phone Number: 304-558-2771 Email: billie.j.shearer@wv.gov

**Fiscal Note Summary**

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

There will be a minor positive financial (estimated at \$5,000) impact associated with this rule as a result of the liberalization of caliber sizes which are permitted for the hunting of coyotes at night.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	5,000.00	5,000.00

Series 47, Prohibitions When Hunting and Trapping Rule

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

Minor positive financial impact anticipated.

**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.

This rule makes minor changes to the existing Prohibitions When Hunting and Trapping Rule.

Date: 6-10-11

Signature of Agency Head or Authorized Representative

Angel R. Moore

TITLE 58  
LEGISLATIVE RULE  
DIVISION OF NATURAL RESOURCES 2011 JUN 10 PM 4:00

SERIES 47  
PROHIBITIONS WHEN HUNTING AND TRAPPING  
OFFICE OF THE SECRETARY OF STATE

**§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. -- April 9, 2003.

1.4. Effective Date. -- April 9, 2003.

**§58-47-2. Definitions.**

2.1. "Bow" means a longbow, recurved 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.

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.

2.3. 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 C.S.R. 46.

**§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.a. 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.a. 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.b. 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.a. 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 shotshells containing 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.

3.7.a. Persons legally hunting waterfowl during the muzzleloader deer season may possess nontoxic shot shells containing larger than No. 4 shot, but may not possess solid ball ammunition.

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~~ centerfire, a shotgun using solid ball ammunition or a shotgun using shot shells larger than #4 #2 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 or possess 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, crossbow 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 to take, or attempt to take, any deer, bear or boar by the aid or use of any electronic call.

3.15. 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. A person may apply for a special permit on forms issued by the Division. These forms shall include a section for a licensed physician to certify that the applicant requires a modified bow.

3.15.a. The physician's examination and certification shall be completed within the six months immediately preceding the date of the application.

3.15.b. The applicant shall authorize, by written release, his or her medical provider to disclose to the director of the Division of Natural Resources and the medical provider shall, upon receipt of the written release, disclose to the director of the Division of Natural Resources, that portion of the applicant's medical records which substantiates the applicant's physical impairment qualifying the applicant for the issuance of a special permit for use of a modified bow. The director shall: restrict access to medical records submitted to him or her; maintain the records in a secure locked cabinet; and not share this information with other federal, state or local agencies or entities, or any register or data bank.

3.15.c. This special permit shall 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 20 of the W. Va. Code.