

**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 2:32

OFFICE WEST VIRGINIA
SECRETARY OF STATE
Effective Date

JULY 2, 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: 47

TITLE OF RULE BEING AMENDED: Prohibitions When Hunting and Trapping

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:


Authorized Signature

Use additional sheets if necessary

SCANNED

\$4.60

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

**SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING**

SUMMARY

This rule outlines the prohibitions when a person is hunting and trapping. The purpose of this emergency rule change is to prohibit the use of modified bows except for those persons that are certified by their physician to be physically unable to hold a bow at full draw without the use of a modification to their bow.

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

**SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING**

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. Those differences caused the Division of Natural Resources to seek changes in the current rule to clarify what is and is not permitted. These changes were presented to the Director's Physically Challenged Advisory Board for their consideration and the board endorsed the proposed changes unanimously. These changes are needed in order to accommodate physically challenged hunters. The emergency filing of this rule will be accompanied by an emergency filing of Title 58, Series 46.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Prohibitions When Hunting and Trapping

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
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

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: Prohibitions When Hunting and Trapping

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:

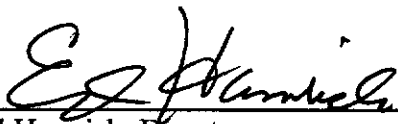
This rule change will provide additional recreational opportunities for physically challenged hunters, thereby increasing the economic impact to the State. Potential, likely, increase in license sales. The added income to the Division of Natural Resources is negligible.

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: Prohibitions When 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:

58-47

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

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 or other device that would aid them in holding the bow at full draw.

**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
DIVISION OF NATURAL RESOURCES**

FILED

**SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING
EMERGENCY RULE**

2002 MAY 24 P 2:33

OFFICE WEST VIRGINIA
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. --

1.4. Effective Date. --

§58-47-2. Definitions.

2.1. All terms in this rule have the meaning prescribed in the ~~Division of Natural Resources rule, Regulations~~ Code of State Rules, §58-46, Rules Defining The Terms To Be Used Concerning All Hunting and Trapping Regulations (58 C.S.R. 46) Rules.

§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.

3.1.1. 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, 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.

3.3.2. 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 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.

3.6.1. It is illegal to take, or attempt to take, the species listed under Subsection 3.6 of this rule, by the aid of baiting. 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 and lead or steel 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.

3.8. 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, a shotgun using solid ball ammunition or a shotgun using shot shells larger than #4 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 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 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 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. 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.

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

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

3.14.3. 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 chapter twenty of the West Virginia Code.