

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: §20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES XX 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 NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



JOHN B. RADER, DIRECTOR

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

OFFICE OF THE CLERK OF THE VIRGINIA
SECRETARIAT OF STATE

**SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING**

§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 Defining The Terms To Be Used Concerning All Hunting and Trapping Regulations (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.

3.1.1. 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. 3-8: It is illegal to use tree stands, except for portable tree stands, on public lands.

3.11. 3-9: 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. 3-10: It is illegal for any person to feed bears.

3.13. 3-11: 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.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

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Delegate Mark Hunt, Co-Chairman
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April 18, 1999

Joseph A. Altizer, Associate Counsel
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Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lt. Colonel W.B. Daniel
Division of Natural Resources
Building 3, Room 669
Capitol Complex

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Prohibitions When Hunting and Fishing, 58CSR47**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Prohibitions When Hunting and Trapping, 58CSR47

PERTINENT DATES

Filed for public comment: July 31, 1998

Public comment period ended: August 31, 1998

Filed following public comment period: September 8, 1998

Filed LRMRC: September 8, 1998

Filed as emergency:

Fiscal Impact: None

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SECRETARY OF STATE
VIRGINIA

SEP 31 3 50 PM '98

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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Subsection 3.8 is new. It states that 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.

Subsection 3.9 is new. It provides that it is illegal to hunt between one-half hour after sunset and one-half 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.

AUTHORITY

Statutory authority: W.Va. Code, §20-1-7(30), which provides, in part, as follows:

§20-1-7.

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

...(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.