

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

Form #4

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OFFICE OF 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 NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 56

TITLE OF RULE BEING AMENDED: SPECIAL MIGRATORY BIRD HUNTING

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.



ROBERT A. REINTSEMA, COMMISSIONER

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

**SERIES 56
SPECIAL MIGRATORY BIRD HUNTING REGULATIONS-**

§58-56-1. General.

1.1. Scope. -- ~~These~~ This rule establishes regulations when hunting migratory game birds in West Virginia.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Seasons in General. -- All hunting seasons are subject to change under the provisions of W. Va. Code §20-1-7(7). Opening and closing dates are inclusive and time periods are prevailing time unless otherwise noted in ~~these regulations~~ this rule. Sunday hunting is illegal.

§58-56-2. Definitions.

2.1. "Aggregate" means the total bag or possession limit of similar kinds of migratory game birds.

2.2. "Bait" means shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed.

2.3. "Baited Area" means any area where baiting occurs.

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

2.5. "Blind Area" means the area within seventy-five (75) yards of the hunter's assigned blind.

2.6. "Migratory Game Birds" means doves, rails, snipe, and woodcock for which open seasons are prescribed in Section 4 of the Division of Natural Resources Rule, Migratory Bird Hunting Regulations (58 C.S.R 55).

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

§58-56-3. General Migratory Bird Hunting Rules.

3.1. Dual Violation. Violation of any provision of this ~~regulation rule~~ is also a violation of federal migratory bird hunting regulations under 50 C.F.R., Part 20, Subpart H.

3.2. Illegal Methods of Taking Migratory Game Birds.

3.2.1. No person may take migratory game birds with a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10-gauge, punt gun, battery gun, machine gun, fishhook, poison, drug, explosive, or stupefying substance.

3.2.2. No person may take migratory game birds with a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler which is incapable of being removed without disassembling the gun.

3.2.3. No person may take migratory game birds from a sink box (i.e., a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water).

3.2.4. No person may take migratory game birds from or with the aid or use of a motor vehicle, other land conveyance, or an aircraft of any kind.

3.2.5. No person may take migratory game birds from or by means of any motorboat or sailboat unless the motor has been completely shut off or the sail furled and progress from the motor or the sail has ceased.

3.2.6. No person may take migratory game birds by the use or aid of live birds as decoys.

3.2.7. No person may take migratory game birds by the use of records or tapes of bird calls or sounds, or recorded or electrically-amplified imitations of bird calls.

3.2.8. No person may take migratory game birds by concentrating, driving, rallying, or chasing the birds with any motorized land, water, or air conveyance or any sailboat.

3.2.9. No person may take migratory game birds by the aid of baiting, or on or over any baited area. Hunters should be aware that a baited area is considered to be baited for ten (10) days after the removal of the bait, and is not necessary for the hunter to know an area is baited to be in violation of federal regulations and Subsection 3.2 of this ~~regulation rule~~.

3.3. Wanton Waste. A hunter ~~must~~ shall retrieve all migratory game birds killed or crippled, if possible and retain them in his or her custody in the field.

3.4. Tagging. No person may give, put, or leave migratory game birds at any place, or in the custody of another person, unless the birds are tagged by the hunter with the following information:

3.4.1. The hunter's signature;

3.4.2. The hunter's address;

3.4.3. The total number of birds involved, by species; and

3.4.4. The date on which each bird was killed.

3.5. Field Dressing. No person may completely field dress migratory game birds, except doves and band-tailed pigeons, and then transport the birds from the field. The head or one fully-feathered wing must remain attached to all birds while being transported from the field to the hunters home or to a migratory bird preservation facility, as defined in 50 C.F.R. 20.11.

3.6. Shipment. No person may ship migratory game birds unless the package is marked on the outside with the following information:

3.6.1. The name and address of the person sending the birds;

3.6.2. The name and address of the person to whom the birds are being sent; and

3.6.3. The number of birds, by species, contained in the package.

3.7. Importation. For information regarding the importation of migratory game birds killed in another country, hunters should consult 50 C.F.R. 20.61 through 20.66. One (1) fully-feathered wing must remain attached to all migratory game birds being transported between the port of entry and the hunters home or to a migratory bird preservation facility, as defined in 50 C.F.R. 20.11. No person may import migratory game birds killed in any foreign country, except Canada, unless the birds are dressed (except as required in 50 C.F.R. 20.63), drawn, and the head and feet removed. No person may import migratory game birds belonging to another person.

3.8. Migratory Bird Harvest Information Program. No persons, except those legally exempt from purchasing a hunting license, may take or attempt to take migratory game birds in West Virginia after July 1, 1998, unless they are enrolled annually in the Federal Migratory Bird Harvest Information Program as required by federal regulation (50 C.F.R.20.20).

3.8.1. The hunter shall carry current proof of annual enrollment while hunting migratory game birds.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

August 22, 1997

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Gordon Robertson
Department of Natural Resources
State Capitol Complex
Building 3, Room 842
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: ~~Special Migratory Bird Hunting Regulations (58CSR56)~~

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. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Special Migratory Bird Hunting, 58CSR56

PERTINENT DATES

Filed for public comment: May 30, 1997
Public comment period ended: July 1, 1997
Filed following public comment period: July 25, 1997
Filed LRMRC: July 25, 1997
Filed as emergency:

Fiscal Impact: None

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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ABSTRACT

The proposed rule amends a current legislative rule. The amendment provides that those persons who are required to obtain a hunting license may not take or attempt to take migratory game birds in this state after July 1, 1998, unless they are enrolled annually in the Federal Migratory Bird Harvest Information Program as required by federal regulation. The hunter must carry proof of enrollment on his or her person.

AUTHORITY

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

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, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper

and effective enforcement of the provisions of this chapter

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, the amendment is needed if the Division intends to continue migratory bird seasons.

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 minor technical modifications to suggest.