

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

Form #6

Do Not Mark In This Box

FILED

APR 16 1 40 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Natural Resources TITLE NUMBER: 58

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 320

SECTION §64-10-1(h) **PASSED ON** March 10, 1998

**THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS BILL BECOMES EFFECTIVE ON THE
FOLLOWING DATE:** April 16, 1998



John B. Rader, Director

\$2.60

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

**SERIES 56
SPECIAL MIGRATORY BIRD HUNTING**

Promulgation History

Filed May 27, 1997 - Form #2 Notice of Comment Period of a Proposed Rule

Filed July 25, 1997 - Form #3 Notice of Agency Approval of a Proposed Rule & Filing
With Legislative Rule Making Committee

August 19, 1998 - Legislative Rule Making Committee Approved Rule

Filed August 28, 1997 - Form #4 Notice of Rule Modification of a Proposed Rule

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

**SERIES 56
SPECIAL MIGRATORY BIRD HUNTING**

FILED

APR 16 1 41 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§58-56-1. General.

1.1. Scope. -- 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. -- April 16, 1998

1.4. Effective Date. -- April 16, 1998

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 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 (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 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 rule.

3.3. Wanton Waste. A hunter 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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1 Bill-DNR, S

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(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

[Introduced January 30, 1998; referred to the
Committee on Agriculture and Natural Resources
then the Judiciary.]

10 A BILL to amend and reenact section one, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate a legislative rule relating to special
15 migratory bird hunting.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-10-1. Division of natural resources.

4/86

1 (a) The legislative rule filed in the state register
2 on the sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by
5 the division of natural resources to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-seventh day of
8 September, one thousand nine hundred ninety-six, relating
9 to the division of natural resources (fertility control of
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register
12 on the sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 seven, article one, chapter twenty of this code, modified
15 by the division of natural resources to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twenty-seventh day
18 of September, one thousand nine hundred ninety-six,
19 relating to the division of natural resources (prohibitions
20 when hunting and trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register
22 on the sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified
2 by the division of natural resources to meet the objections
3 of the legislative rule-making review committee and
4 refiled in the state register on the twenty-seventh day of
5 September, one thousand nine hundred ninety-six, relating
6 to the division of natural resources (falconry, 58 CSR 65),
7 is authorized.

8 (d) The legislative rule filed in the state register
9 on the twenty-fifth day of July, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 seven, article one, chapter twenty, of this code, modified
12 by the division of natural resources to meet the objections
13 of the legislative rule-making review committee and refiled
14 in the state register on the twenty-eighth day of August,
15 one thousand nine hundred ninety-seven, relating to the
16 division of natural resources (special migratory bird
17 hunting, 58 CSR 56), is authorized.

18

19 NOTE: The purpose of this bill is to authorize the
20 Division of Natural Resources to promulgate a legislative
21 rule relating to Special Migratory Bird Hunting.
22

23 Strike-throughs indicate language that would be
24 stricken from the present law, and underscoring indicates
25 new language that would be added.

Senate Bill No. 325

(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

58-56

[Introduced January 30, 1998; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate a legislative rule relating to special
15 migratory bird hunting.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-10-1. Division of natural resources.

1 (a) The legislative rule filed in the state register
2 on the sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by
5 the division of natural resources to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-seventh day of
8 September, one thousand nine hundred ninety-six, relating
9 to the division of natural resources (fertility control of
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register
12 on the sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 seven, article one, chapter twenty of this code, modified
15 by the division of natural resources to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twenty-seventh day
18 of September, one thousand nine hundred ninety-six,
19 relating to the division of natural resources (prohibitions
20 when hunting and trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register
22 on the sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified
2 by the division of natural resources to meet the objections
3 of the legislative rule-making review committee and
4 refiled in the state register on the twenty-seventh day of
5 September, one thousand nine hundred ninety-six, relating
6 to the division of natural resources (falconry, 58 CSR 65),
7 is authorized.

8 (d) The legislative rule filed in the state register
9 on the twenty-fifth day of July, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 seven, article one, chapter twenty, of this code, modified
12 by the division of natural resources to meet the objections
13 of the legislative rule-making review committee and refiled
14 in the state register on the twenty-eighth day of August,
15 one thousand nine hundred ninety-seven, relating to the
16 division of natural resources (special migratory bird
17 hunting, 58 CSR 56), is authorized.

18

19 NOTE: The purpose of this bill is to authorize the
20 Division of Natural Resources to promulgate a legislative
21 rule relating to Special Migratory Bird Hunting.
22

23 Strike-throughs indicate language that would be
24 stricken from the present law, and underscoring indicates
25 new language that would be added.