

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

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2012 JUL 19 PM 3:07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Dept. of Commerce, Div. of Natural Resources, Wildlife Resources Section TITLE NUMBER: 58

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: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Angel R. Moore
Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 9, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DOC - DNR - Wildlife Resources Section
324 Fourth Avenue
So. Charleston, WV 25303

LEGISLATIVE RULE TITLE: Prohibitions when Hunting and Trapping

1. Authorizing statute(s) citation 20-1-7(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 30, 2012

b. What other notice, including advertising, did you give of the hearing?
No public hearing was held. There was a 30 day comment period which was also advertised in a statewide News Release.

c. Date of Public Hearing(s) or Public Comment Period ended:
June 29, 2012

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

n/a

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

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

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

**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. This rule prescribes those prohibitions in the pursuit or taking of wildlife within the boundaries of this State. Three revisions to this rule which were approved during the 2011 Legislative Session were inadvertently omitted when additional modifications to the rule were submitted for consideration and subsequently approved during the 2012 Legislative Session. The omissions are underlined in the attached rule and include: Section 3.7 – technical correction (adding the word “or”); Section 3.12 – technical clarification (adding the words “at any time”); and Section 3.16 – adding the language (It illegal to bait or feed any wildlife on public land between September 1 and December 31 and during the spring gobbler seasons). In addition, two minor technical errors (section 3.3 and 3.5) were corrected.

CIRCUMSTANCES:

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Series 47, Prohibitions when Hunting and Trapping

Rule Title: _____
 Type of Rule: Legislative Interpretive Procedural
 Agency: Dept. of Commerce, 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 is no change anticipated to the administrative expenditures as a result of this rule.

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.

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

Series 47, Prohibitions when Hunting and Trapping

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.

No impact.

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.

Language which was submitted and subsequently approved during the 2011 Legislative Session was inadvertently omitted from the Series 47 "Prohibitions when Hunting and Trapping" Rule which was modified and subsequently approved during the 2012 Legislative Session. The attached legislative rule reflects the current language (filed by the Secretary of State's Office on 4/30/12) with those changes which were inadvertently omitted as well as correcting minor technical errors (Section 3.3 and 3.5).

Date: 7/18/12

Signature of Agency Head or Authorized Representative

Angel R. Moore

FILED

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

2012 JUL 19 PM 3:08

**SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING**

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. -- ~~April 30, 2012.~~

1.4. Effective Date. -- ~~April 30, 2012.~~

§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 "Trap" is a device that is used to catch and hold animals. A trap may be legally used during the trapping season to catch fur-bearing animals and coyotes. The term includes leg foot hold traps, killer type or body gripping traps, box traps, encapsulating traps and snare. Legal and illegal traps are further defined in the Division's Rule, General Trapping, 58CSR53.

2.4. All other terms in this rule have the meaning prescribed in the Code of State Rules, §58-46, Defining The Terms Used In All Hunting and Trapping, 58CSR46.

§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 3.3.1a and 3.3.2b 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 or 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 centerfire, a shotgun using solid ball ammunition or a shotgun using shot shells larger than #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 at any time.

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.

3.16. It is illegal to bait or feed any wildlife on public land between September 1 and December 31 and during the spring gobbler seasons.