

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

DO NOT MARK IN THIS BOX

FILED

1991 AUG 20 AM 9:31

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

*Aug. 21, 1991*  
*Effective.*

NOTICE OF AN EMERGENCY RULE

Department of Commerce, Labor  
and Environmental Resources,  
Division of Natural Resources

AGENCY: \_\_\_\_\_ TITLE NUMBER: 47

CITE AUTHORITY: West Virginia Code §20-1-7(30)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES\_\_\_\_, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 11A

TITLE OF RULE BEING FILED AS AN EMERGENCY: Regulations Defining the  
Terms to be Used Concerning All Hunting and Trapping Regulations

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached

Use Additional Sheets If Necessary.

*J. Edward Hamrick III*  
J. Edward Hamrick III  
Director

*2170*

## FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Regulations Defining the Terms to be Used Concerning All Hunting and Trapping Regulations.

Type of Rule: XX Legislative Interpretive

OFFICE OF WEST VIRGINIA  
PROCEDURAL STATE

Agency: Department of Commerce, Labor and Environmental Resources Division of Natural Resources.

Address: Building 3, State Capitol Complex, Charleston, West Virginia 25305

1. Effect of Proposed Rule	Increase \$	ANNUAL		Current \$	FISCAL YEAR	
		Decrease \$			Next \$	Thereafter \$
Personal Services						
Current Expense						
Repairs and Alterations						
Equipment						
Other						

NO CHANGE

2. Explanation of Above Estimates: These regulations define terms to be applied to all rules concerning the regulation of hunting and fishing within the boundaries of this State. No new administrative expenses are anticipated.

3. Objectives of These Rules: The objective of this rule is to define terms that are commonly used when drafting, revising, or reading regulations that concern hunting and trapping.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: No impact.

B. 1. Economic Impact on Political Subdivisions: No impact.

2. Economic Impact on Specific Industries: No impact.

3. Economic Impact on Specific Groups of Citizens: No impact.

C. Economic Impact on Citizens/Public at Large: No impact.

  
J. Edward Hamrick III  
Director

Date: August 12, 1991

DATE: August 12, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Commerce, Labor and Environmental Resources,  
Division of Natural Resources.

FILED  
1991 AUG 20 AM 9 38  
OFFICE OF THE SECRETARY OF STATE  
COMMONWEALTH OF VIRGINIA

EMERGENCY RULE TITLE: "Regulations Defining the Terms to be Used Concerning All Hunting and Trapping Regulations"

1. Emergency rule was filed on: August 20, 1991
2. Statutory authority for promulgating the emergency rule: West Virginia Code §20-1-7(30)
3. Proposed legislative rule was filed on: August 20, 1991
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule? The emergency rule adopts language that was previously filed as an exempt regulation under W. Va. Code §29A-1-3(c).
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. See discussion under Item 8.
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 federal 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.  
The Division is seeking to divide the hunting and trapping regulations (47 C.S.R. 11) that had previously been filed on August 13, 1990 as a legislatively exempt regulation. The division seeks to only include those provisions falling under the authority of W. Va. Code §29A-1-3(c) in 47 C.S.R. 11. The remainder of the provisions not under the authority of W. Va. Code §29A-1-3(c) are

broken into categories and are being filed as individual regulations that are required to be put through the legislative process. The exempt regulations will become effective immediately upon filing, however, they will lack the provisions that must be legislatively approved. The Division finds it necessary to promulgate these rules as an emergency to provide regulations for the upcoming 91-92 hunting seasons for the safety and welfare of the public and controlled hunting of wildlife within the State of West Virginia.

EMERGENCY RULE

FILED

TITLE 47  
LEGISLATIVE RULES  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES  
DIVISION OF NATURAL RESOURCES

1981 AUG 20 AM 9:38  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 11A  
REGULATIONS DEFINING THE TERMS TO BE USED CONCERNING ALL HUNTING  
AND TRAPPING REGULATIONS

§47-11A-1. General.

1.1. Scope and Purpose. -- These regulations define terms to be applied to all rules concerning the regulation of hunting and trapping within the boundaries of this State.

1.2. Authority. -- West Virginia Code §20-1-7(30).

1.3. Filing Date. --

1.4. Effective Date. --

§47-11A-2. Definitions.

2.1. "Aggregate" means the total bag or possession limit of similar kinds of game animals or game birds. For example, the possession limit for squirrels is twenty-four (24) after the third day of the open season. This could be ten (10) gray squirrels and fourteen (14) fox squirrels, or fourteen (14) gray squirrels and ten (10) fox squirrels, or any combination of twenty-four (24) squirrels, but not more than a total of six (6) per day nor more than a total of twenty-four (24) in possession.

2.2. "Antlered Deer" means deer having at least one antler that is over three (3) inches in length, as measured from the hairline.

2.3. "Antlerless Deer" means deer having no antler that is over three (3) inches in length, as measured from the hairline.

2.4. "Bait" means shelled, shucked, or unshucked corn, wheat or other grain, or any other feed or edible enticement.

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

2.6. "Bow" means a longbow, recurved bow, or compound bow that is hand-held and hand-drawn.

## EMERGENCY RULE

2.7. "Cub Bear" means a bear less than one year old and is identified by its having upper canine teeth of less than five-eighths ( $5/8$ ) inch in length when measured from the gum.

2.8. "Legal Small Game Hunting Season" means the period commencing on the Saturday prior to the Saturday nearest to October 15 and ending on the last day of February of the following year.

2.9. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

2.10. "Permanently Disabled in the Lower Extremities" means an individual who is paraplegic, who is missing both legs, or who has a disability affecting both legs which requires permanent use of a wheelchair or crutches.

2.11. "Possession Limit" means game taken in this State which is in any way under the control of the hunter (i.e., the total of all game in a vehicle, home freezer, commercial food locker, or other storage place).

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

2.13. "Protected" means no open season (i.e., hunting protected wildlife is illegal at all times).

2.13.1. Protected mammals include: elk and mountain lion and those mammals covered by federal regulations under the Endangered Species Act of 1973, as amended.

All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SPEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

August 21, 1991

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

RULE: Defining Terms to be Used Concerning All Hunting and  
Trapping Regulations

DATE FILED AS AN EMERGENCY RULE: August 20, 1991

DECISION NO. 76-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Aug 21, 1991  
ADMINISTRATIVE LAW DIVISION



KEN HECHLER  
Secretary of State

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## STATE OF WEST VIRGINIA

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#### DECISION

#### EMERGENCY RULE DECISION (ERD 76-91)

AGENCY: Division of Natural Resources  
RULE: New Rule, Series 11A, Regulations Defining the  
Terms to be Used Concerning All Hunting and  
Trapping Regulations  
FILED AS AN EMERGENCY RULE: August 20, 1991

- par. 1 The Division of Natural Resources (DNR) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DNR filed this emergency rule with supporting documents with the Secretary of State August 20, 1991 and with the LRMRC August 20, 1991.

par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §20-1-7(30) reads:

*(30) Promulgate rules and regulations in accordance with the provisions of §29A-1-1 et seq. of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter.*

par. 9 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DNR are as follows:

The Division is seeking to divide the hunting and trapping regulations (47 CSR 11) that had previously been filed on August 13, 1990 as a legislatively exempt regulation. The division seeks to only include those provisions falling under the authority of W. Va. Code §29A-1-3(c) in 47 CSR 11. The remainder of the provisions not under the authority in W. Va. Code §29A-1-39(c) are broken into categories and are being filed as individual regulations that are required to be put through the legislative process. The exempt regulations will become effective immediately upon filing, however, they will lack the provisions that must be legislatively approved. The Division finds it necessary to promulgate these rules as an emergency to provide regulations for the upcoming 91-92

hunting seasons for the safety and welfare of the public and controlled hunting of wildlife within the State of West Virginia.

- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "prevent substantial harm to public interest."
- par. 14 This decision shall be cited as Emergency Rule Decision 76-91 or ERD 76-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Natural Resources, the Attorney General and the Legislative Rule Making Review Commission.



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KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE Aug 21, 1991  
ADMINISTRATIVE LAW DIVISION