

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #7

Do Not Mark In This Box, Filing Date

FILED
JUL 20 11 11 AM '92

Effective Date

Aug 19 _____ 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: DCL&ER, Division of Natural Resources

TITLE NUMBER: 47

CITE AUTHORITY: § 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: 11B

TITLE OF RULE BEING FILED AS AN EMERGENCY: Regulations Concerning Prohibitions When Hunting and Trapping

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS (Use Additional Sheets If Necessary) : See attached.

2.70



J. Edward Hamrick III, Director
Division of Natural Resources



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 22, 1992

RECEIVED
JUL 23 1992

J. Edward Hamrick III, Director
Division of Natural Resources
Building 3, Room 669
Charleston, West Virginia 25305

WATER RESOURCE SECTION

RE: Proposed Rules - Title 47, Series 11A, 11B, 11C, 11D,
11E, 11F, 11G, 11H, 11I, 12A & 13A (Regulations relating
to Wildlife Resources)

Dear Ed:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb
B:RULDNR-W.RUL

**Hunting and Trapping Regulations
47 C.S.R. 11**

Background of Problem Rule Currently in Effect

The existing 47 C.S.R. 11 is a legislative exempt rule which was last placed in effect September 18, 1990. This rule contains the agency's complete Hunting and Trapping regulations, both exempt and non-exempt provisions.

Agency Attempt to Correct Improper Filing of Hunting and Trapping Regulations

To correct this problem the current 47 C.S.R. 11 is being repealed and replaced by a purely exempt 47 C.S.R. 11 and the following non-exempt rules 47 C.S.R. 11A through 11I. Therefore, to have all the hunting and trapping regulations in place for the 1992-1993 seasons, it is necessary for 47 C.S.R. 11A through 11I to be filed as emergency rules and for 47 C.S.R. 11 to be repealed and replaced on the date the emergency 47 C.S.R. 11A through 11I rules become effective.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Regulations Concerning Prohibitions When Hunting and Trapping,
47 C.S.R. 11B

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

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

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$				
Personal Services	\$				
Current Expenses	\$				
Repairs & Alterations	\$			No Change	
Equipment	\$				
Other	\$				

2. Explanation of above estimates: There is no change anticipated to administrative expenses as a result of this rule.

3. Objectives of this rule: The proposed rule establishes the general provisions applicable to hunting and trapping.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. No impact.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. No impact.

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

Date: July 27, 1992

Signature of Agency Head, or Authorized Representative


Director, Division of Natural Resources

Date: July 24, 1992

To: Legislative Rule-Making Review Committee

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

Emergency Rule Title: Regulations Concerning Prohibitions When Hunting and Trapping,
47 C.S.R. 11B

1. Date of filing: July 28, 1992
2. Statutory authority for promulgating the emergency rule: § 20-1-7(30)
3. Date of filing the proposed legislative rule: July 31, 1992 (notice of 30 day comment period.)
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 incorrectly as an exempt rule.
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: N.A.
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 regulation and time limit established therein: N.A.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest: To correctly file the exempt rule the existing exempt series 11 rule containing both exempt and non-exempt provisions must be repealed and replaced. Therefore to have in place for the 92-93 Hunting and Trapping season a complete set of Hunting and Trapping Regulations (exempt and non-exempt rules) it is necessary to file the non-exempt rules as emergency rules.

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

SERIES 11B
REGULATIONS CONCERNING PROHIBITIONS WHEN HUNTING AND TRAPPING
(EMERGENCY RULE)

§ 47-11B-1. General.

1.1. Scope and Purpose. -- These regulations establish prohibitions in the pursuit or taking of wildlife within the boundaries of this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

§ 47-11B-2. Definitions.

2.1. All terms shall have the meaning prescribed in the Code of State Regulations, Title 47, Series 11A (47 C.S.R. 11A).

§ 47-11B-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 such means on private land by the landowner, his resident children or resident parents, or a bona fide resident tenant.

3.3. Except as provided in Sections 3.3.1 and 3.3.2 of these regulations, 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 such means on private land by the landowner, his resident children or resident parents, or a bona fide resident tenant during the period commencing on April 1 and ending on September 30.

3.3.2. Redwing blackbirds, grackles, pigeons, 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 must follow avicide label instructions and take all possible precautions in order to protect nontarget species of wildlife.

3.4. It shall be illegal to hunt from, or by means of, a motorized watercraft unless the motor has been completely shutoff and its progress therefrom has ceased.

3.5. It shall be illegal to hunt, catch, take, kill, injure, or pursue a wild animal or wild bird by means of falconry or hawking.

3.6. With the exception of hand-held releasing devices, all mechanical devices built into or attached to a bow that will lock the bow at full or partial draw are prohibited, unless otherwise specified by the director.

3.7. The use or possession of a fully automatic, rifle, shotgun, or pistol is prohibited while hunting or pursuing wildlife at any time.

3.8. 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.

3.8.1. No person may take, or attempt to do so, the species under Section 3.8 of these regulations, by the aid of baiting. An area is considered to be baited for ten (10) days after the removal of bait.

3.9. It shall be illegal to have in ones possession solid ball ammunition and lead or steel shot larger than No. 4 during the muzzleloading season, except for those legally hunting bear. The use of .22 caliber rimfire for small game hunting is legal during the muzzleloading season.

3.10. Only portable tree stands may be used on public lands.

3.11. No person may transport wildlife or parts thereof, which were killed by another hunter unless said wildlife is accompanied by a paper or tag filled out in plain English bearing the following information from the hunter killing said wildlife:

3.11.1. The hunter's signature, address, hunting license number (if required), official game checking tag number (if required), date of kill, species, number, and/or quantity of wildlife.



KEN HECHLER
Secretary of State

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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

August 19, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Natural Resources

RULE: New Rules, Series 11A, Regs Defining the Terms to be Used
Concerning All Hunting & Trapping Regulations
Series 11B, Prohibitions When Hunting & Trapping
Series 11C, Special Bear Hunting Regs
Series 11D, General Hunting Regs
Series 11E, Deer Hunting Regs
Series 11F, Wild Turkey Regs
Series 11G, Wild Boar Hunting Regs
Series 11H, General Trapping Regs
Series 11I, Dog Training Regs

DATE FILED AS AN EMERGENCY RULE: July 28, 1992

DECISION NO. 18-92

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.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 19, 1992
ADMINISTRATIVE LAW DIVISION

KEN HECHLER
Secretary of State

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MARY P. RATLIFF
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(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION (ERD 18-92)

AGENCY: Natural Resources
RULE: New Rules, Series 11A, Regs Defining the Terms to be Used Concerning All Hunting & Trapping Regulations
Series 11B, Prohibitions When Hunting & Trapping
Series 11C, Special Bear Hunting Regs
Series 11D, General Hunting Regs
Series 11E, Deer Hunting Regs
Series 11F, Wild Turkey Regs
Series 11G, Wild Boar Hunting Regs
Series 11H, General Trapping Regs
Series 11I, Dog Training Regs

FILED AS AN EMERGENCY RULE: July 28, 1992

- par. 1 The Natural Resources (DNR) has filed the above new rules as emergency rules.
- 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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The filed this emergency rule with supporting documents with the Secretary of State July 28, 1992 and with the LRMRC July 28, 1992.
- 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:
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:
To correctly file the exempt rule the existing series 11 rule containing both exempt and non-exempt provisions must be repealed and replaced. Therefore to have in place for the 92-93 Hunting and Trapping season a complete set of Hunting and

Trapping Regulations (exempt and non-exempt rules) it is necessary to file the non-exempt rules as emergency rules.

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).

par. 14 This decision shall be cited as Emergency Rule Decision 18-92 or ERD 18-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Natural Resources, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered THIS DATE Aug. 19, 1992
ADMINISTRATIVE LAW DIVISION