

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

Do Not Mark In This Box, Filing Date

FILED

OCT 8 2 57 PM '92

Effective Date

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOV 12, 1992

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: DCL&ER, Division of Natural Resources TITLE NUMBER: 47

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 28, 1992

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE: YES NO

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: _____

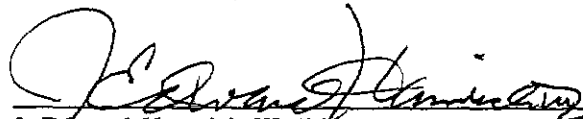
SERIES NUMBER OF RULE: 11D TITLE OF RULE: _____

General Hunting Regulations

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS

(Use Additional Sheets If Necessary): The amendment was published in the 1992-93 Hunting and Trapping Regulation brochure and inadvertently omitted from the emergency rule. These changes will also make the rule read the same as what will be going through the rule making.



J. Edward Hamrick III, Director
Division of Natural Resources

2.60

FISCAL NOTE FOR PROPOSED RULE

Rule Title: General Hunting Regulations 47 C.S.R. 11D
Type of Rule: X Legislative ___ Interpretive ___ Procedural
Agency: Division of Natural Resources
Address: Building 3, State Capitol Complex, Charleston, West Virginia

1. Effect of Proposed Rule	<u>ANNUAL</u>		<u>FISCAL YEAR</u>		
	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 hunting provisions necessary for the safety of the public and other hunters and for the proper management of the States wildlife.
4. Explanation of Overall Economic Impact of Proposed Rule.
- A. Economic Impact of 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: October 8, 1992

Signature of Agency Head or Authorized Representative



Director, Division of Natural Resources

DATE:

TO: Legislative Rule-Making Review Committee

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

LEGISLATIVE RULE TITLE: General Hunting Regulations

1. Authorizing statute (s) citation: 20-1-7(30)
- 2.a. Date filed in State Register with Notice of Hearing: July 28, 1992 (Written Comments Only)
- 2.b. What other notice, including advertizing, did you give of the hearing?
None
- 2.c. Date of hearing (s): N/A
- 2.d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments:
Attached: _____ No comments received X
- 2.e. Date agency approved proposed Legislative Rule filed in State Register following public hearing:
- 2.f. Name and telephone of agency contact: Jim Ruckel, 558-2771
3. If the statute under which the rule was promulgated and submitted requires certain finding and determinations to be made as a condition precedent to their promulgation:
 - 3.a. Date on which a notice of the time and place of hearing for the taking of evidence and a general description of the issues to be decided was filed in the State Register: N/A
 - 3.b. Date of hearing: N/A
 - 3.c. Date the required findings and determinations together with reasons therefor were filed in the State Register: N/A
 - 3.d. Findings and determinations, and reasons (attached).

PREAMBLE TO A PROPOSED RULE
CONCERNING
GENERAL HUNTING REGULATIONS

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

REGULATION: Title 47, Series 11D, "General Hunting
Regulations."

SUMMARY: The proposed rule received no written comments
prior to 4:00 p.m., August 31, 1992.

FILED

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

SERIES 11D
GENERAL HUNTING REGULATIONS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 47-11D-1. General.

1.1. Scope and Purpose. -- The purpose of this regulation is to establish general hunting regulations that will provide for the safety of the hunter and the proper management 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. --

§ 47-11D-2. Definitions.

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

§ 47-11D-3. General Hunting Rules.

3.1. A long bow or compound bow may be substituted for a firearm during any season for which firearms are legal except during the muzzle-loading firearms deer season.

3.2. Each person killing a bear or wild boar found in a wild state must immediately after removing its entrails, but in any event within one hour and before transporting or removing the carcass in any manner from where it was killed, complete and attach a game tag. The tag must bear, in plain English, the name and address of the hunter, the date and county where the game was killed, and, unless he is legally exempted from the licensing requirements of this State, the license number of the hunter.

3.3. No person under the age of fifteen (15) years may hunt or chase wild animals or wild birds on the lands of another unless he is accompanied by a licensed adult who remains in a position near enough to him to render advice and assistance.

3.4. Only bows, single-shot muzzle-loading firearms, or shotguns loaded with T or smaller shot may be used to hunt wildlife within the boundaries of the Green Bottom Wildlife Management Area.

3.5 The hunter must deliver each deer or wild turkey to a conservation officer or an official game checking station for checking and retagging within 24 hours of the close of the respective season.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

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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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

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
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered

THIS DATE Aug. 19, 1992
ADMINISTRATIVE LAW DIVISION