

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED  
AUG 20 AM 9:31  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
Aug. 21, 1991  
*Effective Date*

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

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

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

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: Deer Hunting 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

2.80 Use Additional Sheets If Necessary.

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

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Deer Hunting Regulations.

1991 AUG 20 AM 9:35

Type of Rule: XX Legislative Interpretive Procedural

OFFICE OF THE SECRETARY OF 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		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

NO CHANGE

2. Explanation of Above Estimates: The purpose of these regulations are to establish rules that must be complied with when pursuing and taking deer within the boundaries of this State. No new administrative expenditures are anticipated.

3. Objectives of These Rules: The objectives of these rules is to provide for the safety of the hunter and the public and for the proper management of the wildlife resources of this State.


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

FILED

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1991 AUG 20 AM 9:35

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

EMERGENCY RULE TITLE: "Deer Hunting 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

1991 AUG 20 AM 9:35  
OFFICE OF THE  
SECRETARY OF STATE

SERIES 11E  
DEER HUNTING REGULATIONS

§47-11E-1. General.

1.1. Scope and Purpose. -- The purpose of these regulations is to establish rules that are to be complied with when pursuing and taking deer within the boundaries of this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

§47-11E-2. Definitions.

2.1. All terms shall have the meaning prescribed to them in Title 47, Series 11A (47 C.S.R. 11A).

§47-11E-3. Deer Hunting Rules.

3.1. After a person has killed a deer during any of the open seasons established in Title 47, Series 11 (47 C.S.R. 11), he may not participate further in deer hunting (e.g., driving deer) with a bow or a firearm in his possession for the remainder of the day of the kill. A person may pursue his second legal deer, in accordance with the provisions of Title 47, Series 11 (47 C.S.R. 11), on any following day which falls within an open deer season, provided the first deer has been legally checked with a conservation officer or an official game checking station.

3.2. No person may hunt deer with a shotgun using ammunition loaded with more than one solid ball nor with any rifle of less than twenty-five (.25) caliber using rimfire ammunition.

3.3. No person may kill or wound a deer while the deer is in any stream, lake, or pond.

3.4. The hunting of small game is permitted beginning on the fourth day after the opening date of the bucks-only deer season. During this period, a hunter may carry slugs and Number 4 or smaller shot with a shotgun prior to killing a deer.

## EMERGENCY RULE

3.5. In those counties, or portions thereof, open to antlerless deer hunting, the hunting of deer with bow, bear or small game is permitted during the antlerless deer season provided that no hunter, except those having a valid Class N license or those legally participating in bow deer hunting or bear hunting, may be afield with any firearm with solid ball ammunition or shells containing larger than Number 4 shot or, if using a combination rifle-shotgun, with rifle ammunition in his possession. During this period, a hunter may carry slugs and Number 4 or smaller shot with a shotgun prior to killing a deer.

3.6. After killing a deer during any of the open seasons established in Title 47, Series 11 (47 C.S.R. 11), a hunter may not be afield for the remainder of the day of the kill with a firearm with solid ball ammunition or, if using a combination rifle-shotgun, he may not have rifle ammunition in his possession unless he is legally participating in bear hunting.

3.7. It is illegal to hunt small game during the bucks-only deer season with any centerfire rifle, with any rifle of larger than twenty-two (.22) caliber using rimfire ammunition, or with a shotgun using solid ball ammunition in a county that is not open to bucks-only deer hunting.

3.8. A firearm that has been converted into a muzzle-loader by use of a plug may not be used during muzzle-loading firearms deer season.

3.9. When being transported in or on a vehicle, a muzzle-loading firearm will be considered to be unloaded when uncapped or the priming charge is removed from the pan.

3.10. No person may actively participate in the hunting of antlerless deer (e.g., driving deer) unless that person has a Class N license or is otherwise exempt from having a Class N license.

3.11. Applications as prescribed by the director for a Class N license to hunt in a county in which a limited number of Class N licenses are issued must be completed and mailed prior to the deadline date on the application. Only one application may be submitted per individual.

3.12. Purchasers of a Class R or Class RR license must choose a license for either archery deer hunting or firearms deer hunting but may purchase both types of license.

3.13. A Class R archery and Class RR archery license must be purchased prior to the opening day of the archery season. A Class R gun and Class RR gun license must be purchased prior to the opening day of the buck gun season. A Class R or Class RR license

## EMERGENCY RULE

must be signed to be valid.

3.13.1. The Class R and RR archery licenses are valid in those counties open to bucks-only firearms hunting and in those counties not open to bucks-only firearms hunting provided the first archery deer was taken in a county open to firearms deer hunting.

3.14. During a calendar year a hunter may purchase only one Class R or Class RR license for taking a second deer with a firearm. This license entitles the holder to take a second deer in only one of the following seasons:

3.14.1. A second buck may be taken during the bucks-only deer firearm season in counties having a bucks only firearms season the day after legally checking a buck.

3.14.2. If unsuccessful under Section 3.14.1 of these regulations, a second antlerless deer may be taken during the Class N Antlerless deer season, in counties or portions thereof designated by the commission, the day after the first deer taken during the Class N season is legally checked. Counties, or portions thereof, open are published annually by the director.

3.14.3. If unsuccessful under Section 3.14.1 or 3.14.2 of these regulations, a second deer of either sex may be taken during the Muzzle-loading deer season, in counties or portions thereof designated by the commission, the day after the first deer taken during the Muzzle-loading deer season is legally checked. Counties, or portions thereof, open are published annually by the Director.

3.15. A Class R or Class RR license is valid only on the day after the licensee has checked his first deer with a conservation officer or an official game checking station.

3.16. A Class N license is non-transferable.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
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STATE OF WEST VIRGINIA  
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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: Deer Hunting Regulations

DATE FILED AS AN EMERGENCY RULE: August 20, 1991

DECISION NO. 80-91

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

### SECRETARY OF STATE

Charleston 25305

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help we can get)

#### DECISION

#### EMERGENCY RULE DECISION (ERD 80-91)

AGENCY: Division of Natural Resources  
RULE: New Rule, Series 11E, Deer Hunting 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 80-91 or ERD 80-91 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.



KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

Entered THIS DATE Aug 21, 1991  
ADMINISTRATIVE LAW DIVISION