

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

Do Not Mark In This Box, Filing Date

1992 AUG 29 11:51

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

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____


TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: Wild Turkey Regulations

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.


J. Edward Hamrick III, Director
Division of Natural Resources

2-70



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To correct this problem the current 47 C.S.R. 11 is being repealed and replaced by a purely exempt 47 C.S.R. 11 and the following non-exempt rules 47 C.S.R. 11A through 11I.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: Wild Turkey Regulations, 47 C.S.R. 11F

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: This rule provides for the management of wild turkey within West Virginia.

4. Explanation of Overall Economic Impact of Proposed Rule.

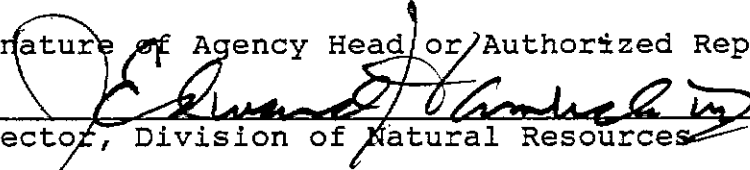
A. Economic Impact on State Government. No impact.

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: Wild Turkey Regulations, 47 C.S.R. 11F

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 11F
WILD TURKEY REGULATIONS
(EMERGENCY RULE)

§ 47-11F-1. General.

1.1. Scope and Purpose. -- The purpose of this regulation is to establish the rules necessary for the management of wild turkey within the boundaries of this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

§ 47-11F-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).

2.2. Game farm or pen-raised turkeys -- Game farm or pen raised turkeys are those birds or their offspring hatched from eggs taken by humans from a wild turkey nest or wild hen turkey raised under human control, and therefore imprinted to humans or other poultry under human control instead of a wild hen.

2.3. Domestic turkey -- A domestic turkey is considered a turkey that normally lives in and about the residences of West Virginians and depends upon humans for habitation, husbandry and/or as their sole source of year round sustenance.

2.4. Wild turkey -- A wild turkey is a turkey from wild native genetic stock living under the control of the laws of nature.

2.5. Release into the wild -- Release into the wild shall mean a release into any area not enclosed by a fence or bounded by other like structure from which under normal circumstances a bird does not escape.

§ 47-11F-3. Wild Turkey Hunting Rules.

3.1. The use of electronic turkey calling devices is prohibited during the wild turkey seasons.

3.2. The use of dogs to hunt wild turkeys is prohibited during the spring wild turkey season.

§ 47-11F-4. Possession, Propagation and Release of Pen-raised Turkeys.

4.1. It shall be unlawful to possess, propagate, or release into the wild, game farm or pen-raised turkeys: Provided, That such existing stock may be possessed until December 31, 1993, but during this period such turkeys shall not be propagated or released into the wild,

4.2. It shall be unlawful to release domestic turkeys into the wild.

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
1900 Kanawha Blvd., East
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

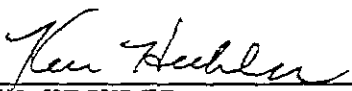
RULE: New Rules, Series 11A, Regs Defining the Terms to be Used
Concerning All Hunting & Trapping Regulations
Series 11B, Prohibitions When Hunting & Trapping
Series 11C, Special Bear Hunting Regs
Series 11D, General Hunting Regs
Series 11E, Deer Hunting Regs
Series 11F, Wild Turkey Regs
Series 11G, 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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(Plus all the volunteer
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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

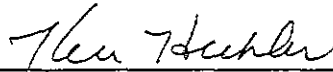
- par. 1 The Natural Resources (DNR) has filed the above new rules as emergency rules.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency 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