

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

Do Not Mark In This Box, Filing Date

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: 11H

TITLE OF RULE BEING FILED AS AN EMERGENCY: General Trapping 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

2.80



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
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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To correct this problem the current 47 C.S.R. 11 is being repealed and replaced by a purely exempt 47 C.S.R. 11 and the following non-exempt rules 47 C.S.R. 11A through 11I.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: General Trapping Regulations, 47 C.S.R. 11H

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	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 purpose of this regulation is to establish standards that must be complied with when trapping wildlife or furbearing animals within the boundaries of this State.

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: General Trapping Regulations, 47 C.S.R. 11H

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 11H
GENERAL TRAPPING REGULATIONS
(EMERGENCY RULE)

§ 47-11H-1. General.

1.1. Scope and Purpose. -- The purpose of these regulations is to establish standards that must be complied with when trapping wildlife or furbearing animals within the boundaries of this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

§ 47-11H-2. Definitions.

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

§ 47-11H-3. General Trapping Rules.

3.1. Trapping 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 trapping in Harpers Ferry National Historical Park and on federally-owned land within the boundaries of the New River Gorge National River.

3.2. A trapping permit is required for State Wildlife Management Areas. This permit may be obtained from the district game biologist in the district in which the State Wildlife Management Area is situated.

3.3. All traps set during the month of February must be water sets only for the taking of beaver, mink, or muskrat.

3.4. All traps must be checked and tended each calendar day.

3.5. Foot snares are legal when the snare loop is at and horizontal to ground level and does not exceed six and one-half (6-1/2) inches in diameter.

3.6. It is illegal to use or set deadfalls for taking wildlife.

3.7. It is illegal to set or maintain any trap or trapping device on human foot trails or livestock paths.

3.8. It is illegal to set or use traps with an open jaw spread of more than six and one half (6-1/2) inches unless such trap is used under water for beaver.

3.9. It is illegal to use conibear or mohawk type traps for terrestrial trapping. Conibear or mohawk type traps may be used in water sets.

3.10. It is illegal to set or maintain neck or body gripping snares or spring pole snares for terrestrial trapping. Neck or body-gripping snares may be used in water sets.

3.11. It is illegal to use steel jaw traps with any teeth on or attached to them.

3.12. It is illegal to set or maintain any trap, trap set, or snare upon any tree, post, or other natural or man-made object at any point more than three (3) lineal feet from the surface of the earth (whether such surface is water, soil, or rock) measured at a right angle from the surface to the trap or trap set, except as provided in Section 3.13 of these regulations.

3.13. The provisions of Section 3.12 of these regulations do not apply to traps or trap sets that are set or maintained on natural earthen mounds, such as ant hills or muskrat houses, that were constructed without human assistance.

3.14. It is illegal to use animal or bird carcasses, or parts thereof, to lure an animal to a trap set unless such carcasses, or parts thereof, are completely covered and concealed from sight.

3.15. It is illegal to take beaver, fisher, mink, or muskrat by any means other than by trap.

3.16. It is illegal to have in one's possession an untagged bobcat, or fisher hide, or parts thereof, longer than thirty (30) days following the close of the respective trapping season.

3.17. Should any person unintentionally trap and kill more than the limit fixed by Title 47, Series 11 of the Code of State Regulations, "Hunting and Trapping Regulations" (47 C.S.R. 11), as a season possession limit, he must within twenty-four (24) hours thereafter deliver the excess animals to a conservation officer.

3.18. Each trapper must present bobcat or fisher pelts to an official game checking station or a representative of the

Department within thirty (30) days after the close of the trapping season for that animal. A tag provided by the division must be affixed to each bobcat or fisher pelt and remain attached to the skin until such skin has been sold, tanned, or mounted.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
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(Plus all the volunteer
help we can get)

August 19, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Natural Resources

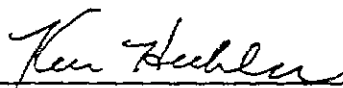
RULE: New Rules, Series 11A, Regs Defining the Terms to be Used
Concerning All Hunting & Trapping Regulations
Series 11B, Prohibitions When Hunting & Trapping
Series 11C, Special Bear Hunting Regs
Series 11D, General Hunting Regs
Series 11E, Deer Hunting Regs
Series 11F, Wild Turkey Regs
Series 11G,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