

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

DO NOT MARK IN THIS BOX

FILED

1991 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: 11H

TITLE OF RULE BEING FILED AS AN EMERGENCY: General Trapping Regulations

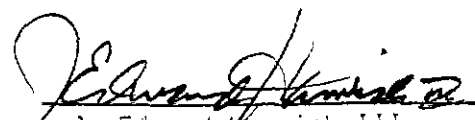
THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached

2.80

Use Additional Sheets If Necessary.


J. Edward Hamrick III
Director

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: General Trapping Regulations.

1991 AUG 20 AM 9:36

Type of Rule: XX Legislative Interpretive Procedural

OFFICE OF WEST VIRGINIA
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			NO CHANGE		
Equipment					
Other					

2. Explanation of Above Estimates: The purpose of these regulations is to establish standards that must be complied with when trapping wild game within the boundaries of this State. No new administrative expenditures are anticipated.

3. Objectives of These Rules: The objectives of this rule are to provide for the safety of the public and the proper management of the State's wildlife resources.

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 9:34

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

OFFICE OF THE SECRETARY OF STATE

EMERGENCY RULE TITLE: "General Trapping 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 9:34
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 11H
GENERAL TRAPPING REGULATIONS

§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 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.

EMERGENCY RULE

- 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 "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

EMERGENCY RULE

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

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
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Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
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: General Trapping Regulations

DATE FILED AS AN EMERGENCY RULE: August 20, 1991

DECISION NO. 83-91

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".

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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Secretary of State

MARY P. RATLIFF
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DECISION

EMERGENCY RULE DECISION (ERD 83-91)

AGENCY: Division of Natural Resources
RULE: New Rule, Series 11H, General Trapping 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 83-91 or ERD 83-91 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 OFFICE OF
THE SECRETARY OF STATE

THIS DATE Aug 21, 1991
ADMINISTRATIVE LAW DIVISION

Entered _____