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(Plus all the volunteer
help we can get)

April 28, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: DIVISION OF NATURAL RESOURCES

RULE: NEW RULE, SERIES 67, LIFETIME HUNTING, TRAPPING AND FISHING LICENSES

DATE FILED AS AN EMERGENCY RULE: APRIL 1, 1999

DECISION NO. 2-99

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

OFFICE OF THE
SECRETARY OF STATE
APR 28 3 33 PM 1999
FILED

A handwritten signature of Ken Hechler in cursive script.

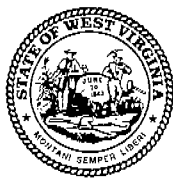
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EMERGENCY RULE DECISION
(ERD 2-99)

AGENCY: DIVISION OF NATURAL RESOURCES
RULE: NEW RULE, SERIES 67, LIFETIME HUNTING, TRAPPING AND FISHING LICENSES

FILED AS AN EMERGENCY RULE: APRIL 1, 1999

- par. 1 The Division of Natural Resources (DNR) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a 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-3-15a].
- 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 April 1, 1999 and with the LRMRC April 1, 1999.
- 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 §20-2B-7(b) reads:

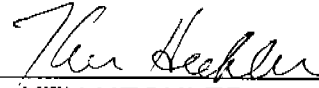
The director shall propose a legislative rule for promulgation in accordance with §29A-3 of this code, setting the fees for the lifetime licenses. The rule shall provide that the fee for any resident who has not reached his or her second birthday shall be one half of the adult fee set under the rule: Provided, That the rule first proposed for promulgation under this section may be promulgated as an emergency rule under the provision of §29A-3-15 of this code.
- 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(f) defines "emergency" as follows:

(f) 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 of Natural Resources is directed by SB 74 to file an emergency rule that establishes a financially sound fee structure for the prices of lifetime hunting, trapping and fishing licenses.
- 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(f). . . mandated by the Legislature

par. 14

This decision shall be cited as Emergency Rule Decision 2-99 or ERD 2-99 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

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FILED

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