

KEN HECHLER
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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(Plus all the volunteer
help we can get)

August 12, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Agriculture

RULE: Amendments, Series 1, Animal Disease Control

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: June 26, 1991

FILED AS FIRST EMERGENCY AMENDMENT: August 8, 1991

DECISION NO. 69-91

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 12, 1991
ADMINISTRATIVE LAW DIVISION

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DECISION EMERGENCY RULE DECISION (ERD 69-91)

AGENCY: Agriculture
RULE: Amendments, Series 1, Animal Disease Control
FILED AS AN EMERGENCY RULE: August 8, 1991

- par. 1 The Department of Agriculture (Department) has filed the above new rule as an emergency.
- 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(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 Department filed this emergency rule with supporting documents with the Secretary of State August 8, 1991 and with the LRMRC August 8, 1991.

par. 7 It is the determination of the Secretary of State that the Department 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 §19-9-2 reads:

par. 9 It is the determination of the Secretary of State that the Department 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 Department are as follows:

This rule is necessary for the immediate preservation of the public health and welfare. This rule establishes requirements for the importation of Cervidae (deer and elk) into this state that will prohibit the importation of tuberculosis with these animals. This will protect all animals in this state, including cattle and the wild deer herd. In addition this will protect the health of humans, as TB is transmissible from these animals to humans.