



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

NOTICE OF EMERGENCY RULE

RULE TITLE: Procedures for Transporting and
Dealing in Furbearing Animals

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

The attached rule is necessary to control illegal shipments of raw furs, pelts, and skins during the 1986-87 trapping season. Under Chapter 20-2-12 of the West Virginia Code, the Legislature has recognized a need to protect the public interest by vesting in the Director of the Department of Natural Resources the authority to promulgate rules and regulations dealing with the transportation and tagging of wildlife skins. An emergency rule is necessitated by the fact that the upcoming trapping season begins on November 1, 1986, seventy-five days prior to the commencement of the next legislative session.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 11, 1986
ADMINISTRATIVE LAW DIVISION

Ron Shipley
for Ronald R. Potesta
Director

FILED

1986 JUN 11 PM 12:16
OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
SECRETARY OF STATE

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:

EMERGENCY RULE TITLE:

1. Date of filing: June 11, 1986

2. Statutory authority for promulgating the emergency rule: 20-2

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopts new language.

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.

These emergency regulations are needed to help control illegal shipments of raw furs and require more complete reporting of fur purchases during the upcoming trapping season which begins November 1, 1986.

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.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Item 6.

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 20-2
SERIES IV

Title: Procedures for Transporting and Dealing in Furbearing
Animals

Section 1. General

2. General Purpose

3. Procedures

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 20-1
SERIES ~~IV-D~~ 16

FILED
1986 JUN 11 PM 12:15
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Procedures for transporting and dealing in furbearing animals.

Section 1. General

1.1 Scope - To regulate the shipping and selling of furbearing animals taken in the State of West Virginia.

1.2 Authority - These regulations are issued under authority of the West Virginia Code, Chapter 20, Article 2, Section 12.

1.3 Filing Date - June 11, 1986.

1.4 Effective Date - These regulations become effective on the 11th day of June 1986, at 12:01 a.m., and shall remain in effect unless otherwise amended or new regulations are issued by the Director.

Section 2. General Purpose

2.1 To promulgate rules for shipping, transporting, selling, tagging, and reporting by fur dealers of furbearing animals taken in the State of West Virginia.

Section 3. Procedures

3.1 A person may not ship, transport, or carry by any means any raw furs, pelts, or skins of any wild furbearing animal to a point outside of the State unless such shipment has a special free shipping tag visibly attached. Shipping tags must be obtained from the Department of Natural Resources. One part shall be attached to the outside of the package or container and the other part completed and returned to the Department of Natural Resources within 24 hours of shipping the furs out of state.

3.2 The dealer or buyer of raw furs, pelts, or skins of furbearing animals in this State shall prepare and send to the Director a completed fur dealer transaction report as provided by and required by the Director, Department of Natural Resources.

KEN HECHLER
Secretary of State

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Deputy Secretary of State

BARBARA STARCHER
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Special Assistant

(Plus all the volunteer
help we can get)

July 18, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Natural Resources

RULE: ¹³¹⁶ Series 14D Procedures for Transporting and Dealing in Furbearing Animals

DATE FILED AS AN EMERGENCY RULE: June 11, 1986

DECISION NO. 10-86

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.

KEN HECHLER
Secretary of State

FILED
1986 JUL 18 AM 8:51
OFFICE OF THE SECRETARY OF STATE



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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision
(ERD 10-86)

AGENCY: Department of Natural Resources

RULE: Series 14D Procedures for Transporting and Dealing in
Furbearing Animals

DATE FILED AS AN EMERGENCY RULE: June 11, 1986

- par. 1 The Department of Natural Resources (DNR) has filed as an emergency rule a new rule titled Procedures for Transporting and Dealing in Furbearing Animals.
- par. 2 This rule establishes the procedure for shipping, transporting, selling, tagging and reporting by fur dealers of furbearing animals taken in West Virginia.
- par. 3 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. 4 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. 5 (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. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD 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. 7 The Department of Natural Resources has filed this emergency rule with supporting documents with the Secretary of State on June 11, 1986.

par. 8 It is the determination of the Secretary of State that the Department of Natural Resources has complied with the procedural requirements of WV Code §29A-3-15.

par. 9 (B) Statutory Authority -- WV Code §20-2-12 reads in part:

§20-2-12. Transportation of wildlife out of state; penalties.

No person shall at any time transport or have in his possession with the intention of transporting beyond the limits of the state, any species of wildlife or any part thereof killed, taken, captured, or caught within this state: Provided, That a nonresident legally entitled to hunt and fish in this state may take with him personally, when leaving the state, any wildlife that he has lawfully taken or killed, not exceeding, during the open season, the number that any person may lawfully take or kill in any two days. This section shall not apply to persons legally entitled to propagate and sell wild animals, wild birds, fish, amphibians and other forms of aquatic life: Provided, however, That licensed resident hunters and trappers and resident and nonresident fur dealers may transport beyond the limits of the state pelts of game and fur-bearing animals taken during the legal season: Provided further, That hide, head, antlers and feet of a legally killed deer, and the hide, head, skull, organs and feet of a legally killed black bear may also be transported beyond the limits of the state. The director shall have the authority to promulgate rules beyond the limits of the state. The director shall have authority to promulgate rules and regulations in accordance with chapter twenty-nine-a [§29A-1-1 et seq.] of this code, dealing with the transportation and tagging of wildlife and the skins thereof.

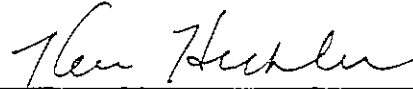
par. 10 It is the determination of the Secretary of State that the Department of Natural Resources has not exceeded its statutory authority by adopting this rule.

par. 11 (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. 12 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. 13 The Department of Natural Resources claims that this rule is to prevent "substantial harm to the public interest."
- par. 14 The facts and circumstances as presented by the Department of Natural Resources are as follows:
- (A) WV Code §20-2-12 requires rules governing transportation and tagging.
 - (B) These rules need to be in place prior to the 1986 hunting season which begins November 1, 1986.
 - (C) The information gained from tagging assists the DNR with enforcement to insure protection for endangered species, curb illegal transportation, measure kills and prevent over-kills.
 - (D) The hunting and trapping industry in West Virginia is a \$175 million dollar business.
- par. 15 As stated in ERD 1-86 par. 19 and 20, economic health is of public interest.
- par. 16 The approaching hunting season for 1986 does establish a deadline as such and "harm" would result from delay until the 1987 season.
- par. 17 The harm may be substantial due to the monies involved in the hunting industry in West Virginia.
- par. 18 A public hearing was held on the rules on July 14, 1986, throughout the state, during which no opposition was voiced toward these rules.
- par. 19 The Secretary of State determines that the Department of Natural Resources has demonstrated the need to make effective this proposal.
- par. 22 It is the decision of the Secretary of State that this proposal by the Department of Natural Resources is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Natural Resources; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 23 This decision shall be cited as Emergency Rule Decision 10-86 or ERD 10-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Natural Resources, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE
FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE July 18, 1986
ADMINISTRATIVE LAW DIVISION

Entered _____