

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: DCL&ER, Division of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY § 20-2-11 and 20-2-47

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 PROPOSED: 23

TITLE OF RULE BEING PROPOSED: Commercial Sale of Wildlife

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



J. Edward Hamrick III, Director
Division of Natural Resources

3.00

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

SERIES 23
COMMERCIAL SALE OF WILDLIFE

§ 47-23-1. General.

1.1. Scope. -- This legislative rule establishes regulations to govern the sale of wildlife raised under licenses issued by the Department killing, taking, trapping, possession, buying, selling, offering to buy or sell, barter, or attempt to take, trap, possess or barter any wildlife, as defined in section 2.3 of this regulation or any other species designated by the director, from the wild, or the eggs of any wildlife or designated species from the wild for commercial purposes pursuant to W. Va. Code §§ 20-2-11, 20-2-47 and 20-2-48.

1.2. Authority. -- W. Va. Code §§ 20-2-11, 20-2-47, and 20-2-48.

1.3. Filing Date. --

1.4. Effective Date. --

§ 47-23-2. Definitions.

2.1. "Facility" means the property on which a person engages in an activity for which one of the licenses listed in Section 2.2 of this regulation is required by statute and includes, but is not limited to, buildings, enclosures, grounds, impoundments, and ponds.

2.2. "Licensee" means a person who has been granted one of the following permits and licenses issued by the Division:

2.2.1. A license for the operation of a private game preserve for the propagation of wild animals or wild birds for commercial purposes (W. Va. Code § 20-2-47). This license authorizes the holder to breed or raise such animals and birds as specified by the license, to sell the wild animals or wild birds, dead or alive, or to sell the eggs of birds in accordance with the provisions of this regulation.

2.2.2. A license for the operation of a private plant, pond, or business for the propagation, sale, or purchase of fish, frogs, turtles, or other forms of aquatic life for commercial purposes (W. Va. Code § 20-2-48). This license authorizes the

holder to breed or raise such species as specified by the license and to buy and sell the fish, frogs, turtles or other form of aquatic life, dead or alive or the eggs thereof in accordance with the provisions of this regulation.

2.3. "Wildlife" means wild animals, wild birds, fish, frogs and other amphibians, turtles, and all forms of aquatic life used as fish bait.

2.4. All other terms have the meaning prescribed in W. Va. Code § 20-1-2.

§ 47-23-3. Wildlife Acquisition.

3.1. Wildlife held by a licensee shall have been:

3.1.1. Obtained from a person licensed by the Department to sell wildlife in this State;

3.1.2. Imported into this State under the provisions of W. Va. Code § 20-2-13; or

3.1.3. Born at the licensee's facility, the offspring of wildlife legally held by the licensee.

3.2. If a licensee acquires wildlife in the manner specified in Section 3.1.1 of this regulation, a bill of sale from the supplying vendor must be retained by the licensee as proof of legal acquisition.

3.3. If a licensee acquires wildlife in the manner specified in Section 3.1.2 of this regulation, the importation permit issued by the Division must be retained by the licensee as proof of legal acquisition.

3.4. If a licensee acquires wildlife in the manner specified in Section 3.1.3 of this regulation, a record must be kept by the licensee in accordance with the provisions of Section 5 of this regulation.

§ 47-23-4. Wildlife Sales.

4.1. The licensee shall provide a bill of sale to each person who purchases the licensee's wildlife. The bill of sale shall, at a minimum, contain the following information:

4.1.1. The seller's name and address;

4.1.2. The seller's license number;

4.1.3. The date of the sale;

4.1.4. The purchaser's name and address; and

4.1.5. A description of the wildlife sold, including the number of each species sold.

4.1.5.a. For sales of fish, this description shall include the number of pounds of each species sold.

§ 47-23-5. Record Keeping.

5.1. Accurate and current records of all wildlife acquisitions and sales shall be maintained by the licensee. The licensee shall also maintain records on all wildlife born at the licensee's facility. All records shall be either typed or written in plain and legible English and shall include the full name, address, and telephone number of each person with whom a wildlife transaction has been conducted. All records shall be maintained by the licensee at his or her facility for a minimum period of three (3) years.

§ 47-23-6. Inspections.

6.1. A licensee's facility, records, or wildlife may be inspected by an authorized representative of the director, on a case by case basis, to assure compliance with all requirements mandated by statute or regulation or by the terms and conditions of the licensee's permit or license.

§ 47-23-7. Possession for commercial purposes prohibited.

The following species shall not be taken from the wild or possessed for any commercial purpose except as authorized pursuant to W. Va. Code §§ 20-2-11, 20-2-47 or 20-2-48.

7.1. It is illegal to catch, capture, sell, trade, take or kill by seine, net, bait, trap, or any other means, or to have in one's possession, or to transport into or out of the state any of the following species of turtles or their eggs for commercial purposes:

Common snapping turtle (*Chelydra serpentina serpentina*),

Eastern painted turtle (*Chrysemys picta picta*),

Eastern river cooter (*Pseudemys concinna concinna*),

Eastern spiny softshell (*Apalone spinifera spinifera*),

Hieroglyphic turtle (*Pseudemys concinna hieroglyphica*),

Map turtle (*Graptemys geographica*),

Midland painted turtle (*Chrysemys picta marginata*),

Midland smooth softshell (*Apalone mutica*),

Ouachita map turtle (*Graptemys pseudogeographica*
ouachitensis),

Redbelly turtle (*Pseudemys rubriventris*),

Red-eared slider (*Trachemys scripta elegans*),

Spotted turtle (*Clemmys guttata*),

Stinkpot (*Sternotherus odoratus*), and

Wood turtle (*Clemmys insculpta*).

§ 47-23-8. Penalties.

A violation of this regulation constitutes a misdemeanor for each offense in accordance with W.Va. code § 20-2-11 and each misdemeanor offense is subject to the penalties provided for in W. Va. code § 20-7-9.



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-152, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3286

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Nov 25 2 38 PM '92

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

Senator William R. Wooton, Co-Chair
 Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel
 Michael Matheson, Associate Counsel
 Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

November 9, 1992

TO: Ken Hechler, Secretary of State, State Register

TO: J. Edward Hamrick, Director
 Division of Natural Resources
 Building 3, State Capitol Complex
 Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Commercial Sale of Wildlife

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Wm. Daniel