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December 20, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

RULE: 58CSR63, Amendments, Commercial Sale of Wildlife

DATE EMERGENCY AMENDMENT FILED: December 9, 2002

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: September 27, 2002

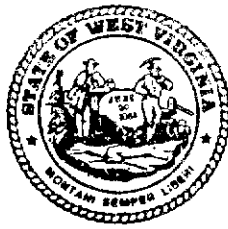
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

DECISION NO. 27-02

Following review under W. Va. 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.

JOE MANCHIN, III
Secretary of State

SCANNED



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**EMERGENCY RULE DECISION
(ERD 27-02)**

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- par. 1 The Division of Natural Resources (DNR) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. 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: W. Va. 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 September 27, 2002 and with the LRMRC September 27, 2002.

par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §20-1-7(30) reads:

Promulgate rules, in accordance with the provisions of §29A-1-1 et seq. to implement & make effective the powers & duties vested in him or her by the provisions of this chapter & take such other steps as may be necessary in his or her discretion for the proper & 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 -- W. Va. 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 recent discover of chronic wasting disease (CWD) in deer & elk in new locations in a number of states has led to USDA issuing a declaration of emergency regarding CWD & development of a national management plan. This disease is especially serious in that there is no known test for live animals. Chronic wasting disease is a progressive fatal disease of the nervous system in cervids. Although there is no known cases in humans, the consumption of deer meat infected with the disease is considered a risk.

The recreational hunting & wildlife viewing associated with the deer herd & associated economic benefits would drastically decrease should CWD become established in WV deer herd. Millions of dollars have been spent & dedicated to the elimination & control of CWD in states where it has occurred. Prevention of the introduction of CWD into WV is the most economically prudent course of action. Recent surveys of hunters in Wisconsin where the disease occurs indicates that 36% of hunters may not participate in deer hunting this fall because of their concern

for CWD. A 36% decline in deer hunting in WV would result in a loss of a minimum of \$2.6 million in license sales and a total loss of \$89 million from deer hunting to the state's economy.

A primary method of spreading the disease has been through the interstate transfer of deer & elk into captive pens. Immediate action must be taken to change WV's laws to prevent the importation into the state & decrease the risks associated with CWD & other wildlife associated diseases from becoming established in our native wildlife.

Based upon public comment received after September 27, 2002 filing of the Emergency Rule dealing with the Commercial Sale of Wildlife, the West Virginia Division of Natural Resources is filing an amendment to this Emergency Rule that will allow for the following specific and limited activities to take place.

- The Director may allow certain captive cervides, that have been temporarily removed from their home facilities, to be returned to their home facilities within the borders of the State. Provided further that any such movement shall only be allowed through written authorization of the Director and must take place prior to January 15, 2003.
- The Director may allow red deer or elk, that are consigned to slaughter, to be transported directly to meat processing facilities for slaughter and processing. Provided that, any such movement of red deer or elk shall only be allowed through written authorization of the Director.

The West Virginia Division of Natural Resources believes that these minor amendments to the Emergency Rule are justified and that the amended Emergency Rule will effectively address the emerging and ongoing risks associated with chronic wasting disease infection to the state's white-tailed deer herd.

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). . . "immediate preservation of public peace, health, safety or welfare" & "to prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 27-02 or ERD 27-02 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 Committee.



JOE MANCHIN III
Secretary of State

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