



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

Form #7

Do not mark in this box
Filing Date

FILED

Nov 4 2 40 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Dec. 15, 1995

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Natural Resources TITLE NUMBER: 58, Series 23

CITE AUTHORITY: SSS 20-2-11, 20-2-47, 20-2-48.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 23

TITLE OF RULE BEING AMENDED: Commercial Sale of Wildlife

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____


THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached

1/1/0

Use additional sheets if necessary


Signature

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Commercial Sale of Wildlife
 Type of Rule: X Legislative Interpretive Procedural
 Agency: Division of Natural Resources
 Address: State Capitol Complex
Building 3, Room 812
1900 Kanawha Blvd.
Charleston, WV 25305-6087

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$	\$	\$	\$ 0
PERSONAL SERVICES	0				0
CURRENT EXPENSE	0				0
REPAIRS & ALTERATIONS	0				0
EQUIPMENT	0				0
OTHER (LICENSE FEES)	0				0

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

Reduce the spread of wildlife diseases, (i.e. rabies) to native wildlife populations.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impacts on State government.

None

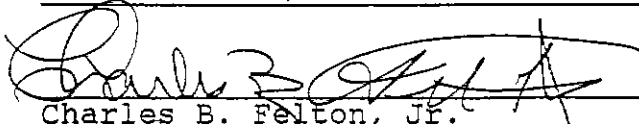
B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: November 4, 1994



 Charles B. Felton, Jr.
 Director

Series 48A

DATE: November 4, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Charles B. Felton, Jr., Director

EMERGENCY RULE TITLE: Miscellaneous Permits and License

1. Date of Filing November 4, 1994
2. Statutory authority for promulgating emergency rule:
20-1-7 (20) and 20-1-7 (30)
3. Date of filing of proposed legislative rule: November 4, 1994
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?
Adopts new language.
5. Has the same or similar emergency rule previously been filed?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary from the immediate preservation of public peace, health, safety or welfare. Passage of Senate Bill 337 by the 1994 Legislature adds live foxes and raccoons taken during the established trapping season to wildlife items that can be sold. Prior to the legislation, only the pelts of these animals could be sold. Without the proposed emergency rule the welfare of these animals is not assured through any established regulations and the potential for commingling and transmission of disease, especially through contact with wild foxes, raccoons and game farm animals is great. The proposed emergency rule separates the current licenses to operate a private game preserve into three categories to govern the use, care and disposition of live foxes and raccoons now available for commercial sale as a result of Senate Bill 337. The 1994-95 trapping season for foxes and raccoon opens November 5, 1994 and closes January 31, 1995.
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.
No

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

The uncontrolled possession, transfer, translocation, holding and release of wild trapped foxes and raccoons will increase exposure of human and domestic livestock to rabies, parvovirus, distemper and other highly contagious diseases. In addition, the uncontrolled sale of these animals will increase the geographic dislocation of rabies in nature.

PREAMBLE TO A PROPOSED RULE
CONCERNING
COMMERCIAL SALE OF WILDLIFE

AGENCY: Bureau of Commerce, Division of Natural Resources

REGULATION: Title 58, Series 23, "Commercial Sale of Wildlife".

ACTION: Filing of an proposed legislative rule.

SUMMARY: Amends current rule to allow for the sale within the state of live red and gray foxes and raccoons taken during the legal trapping season.

SUMMARY OF PROPOSED RULE
CONCERNING
COMMERCIAL SALE OF WILDLIFE

The purpose of the legislative rule is to implement Senate Bill 337 by allowing the sale, within the state, of live red and gray foxes and raccoons taken during the legal trapping season and to allow the director to establish facilities and locations where live trapped foxes and raccoons may be sold.

FILED

TITLE 47 58
LEGISLATIVE RULES
~~DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES~~
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

Nov 4 2 40 PM '94
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY RULE

SERIES 23
COMMERCIAL SALE OF WILDLIFE

§ 47 58-23-1. General.

1.1. Scope. -- This emergency rule establishes regulations to govern the sale or transfer of wildlife raised or captured under licenses issued by the ~~Department~~ Division 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. -- ~~May 1, 1989~~ November 4, 1994

1.4. Effective Date. -- ~~June 1, 1989~~ November 4, 1994

§ 47 58-23-2. 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 these regulations 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 ~~Department~~ 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). Three categories of this license will be issued:

2.2.1.a. Commercial game farm license. This license authorizes the holder to breed or raise such animals and birds as specified by the license, to sell the same dead or alive, or to sell the eggs of birds in accordance with the provisions of these regulations and license stipulations. This license does not include the acquisition or holding of foxes or raccoons trapped from the wild by a legal trapper (W. Va. Code 20-2-11).

2.2.1.b. Hound coursing/training pen game farm license. This license authorizes the holder to purchase, hold, and release into hound coursing/training pens in accordance with the

provisions of these regulations and under terms and conditions of the license, live foxes or raccoons obtained from the wild by a legal trapper (W. Va. Code 20-2-11) or live wildlife obtained by means specified under 58 CSR 23 Section 3.

2.2.1.c. Incorporated sportsmen club game farm license. This license authorizes incorporated sportsmen clubs in West Virginia to purchase, hold, and release in accordance with the provisions of these regulations and under terms and conditions of the license, live foxes and raccoons obtained from the wild by a legal trapper (W. Va. Code 20-2-11) or other means specified under 58 CSR 23 Section 3 for the purpose of restocking.

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 same dead or alive or the eggs thereof in accordance with the provisions of these regulations.

2.3. "Wildlife" means wild animals, wild birds, fish, frogs and other amphibians, turtles reptiles, amphibians, mollusks, crustaceans, and all forms of aquatic life used as fish bait, whether dead or alive.

2.4. "Legal Trapper" means a trapper possessing a valid West Virginia trapping license or equivalent (W. Va. Code 20-2-27,20-2-28).

2.5. "Hound Coursing/Training Pen" means a permanent enclosure of no less than forty (40) acres from which there is no reasonable expectation of escape of the animals placed within, except that fox hound coursing/training pens must be no less than 100 acres.

2.6. "Incorporated Sportsmen Club" means a club, organization, or group formed for a common purpose to further the tradition of hunting, fishing, or trapping and registered with the West Virginia Secretary of State for such purpose.

2.7. "Native" means commonly accepted and documented in scientific literature to live in the wild as part of the present or historic natural fauna of the State of West Virginia.

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

§ 47 58-23-3. Wildlife Acquisition.

3.1. Wildlife held by a licensee shall have been:

3.1.1. Obtained from a person licensed by the Department Division 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; or

3.1.4. Obtained from a legal trapper under provisions of W. Va. Code 20-2-11 and the animal captured within the County in which the licensee is to hold and release the animal or captured from counties specified by the Director for which inter-county sale or possession transfer may occur under terms and conditions of the license.

3.2. If a licensee acquires wildlife in the manner specified in Section 3.1.1 of these regulations, 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 these regulations, the importation permit issued by the Department 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 these regulations, a record must be kept by the licensee in accordance with the provisions of Section 5 of these regulations.

3.5. If a licensee acquires wildlife in the manner specified in Section 3.1.4 of this regulation the foxes and raccoons must be ear tagged by the licensee with a tag supplied by the DNR within 3 days of purchase and before release into the wild or hound coursing/training pen and a record must be kept by the licensee in accordance with the provisions of Section 5 of this regulation.

3.6. If a legal trapper acquires live foxes and raccoons under provisions of W. Va. Code 20-2-11 for the purpose of sale or any other form of possession transfer, the live foxes and raccoons shall only be possessed by the trapper during the trapping season and sixty (60) days thereafter. Live foxes and raccoons held for thirty (30) days or less shall be held according to temporary or permanent cage/pen/housing requirements as specified under 58 CSR 48a and foxes or raccoons held over thirty (30) days shall be held according to permanent cage/pen/housing requirements as specified under 58 CSR 48a.

§ 47 58-23-4. Wildlife Sales or Transfer.

4.1. The licensee and legal trapper that sells or transfers possession of wildlife shall provide a bill of sale or document to each person who purchases or receives the licensee's wildlife. The bill of sale or document shall, at a minimum, contain the following information:

4.1.1. The seller's (or licensee/legal trapper) name and address;

4.1.2. The seller's (or licensee/legal trapper) license number;

4.1.3. The date of the sale or transfer;

4.1.4. The purchaser's or receiver's name and address;
and

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

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

4.2. Legal trappers which acquire live foxes and raccoons under provisions of W. Va. Code 20-2-11 shall only sell or transfer possession of live foxes or raccoons to licensed hound coursing/training pens or incorporated sportsmens club located within the County from which the fox or raccoon was captured or located in the counties specified by the Director for which inter-county sale or possession transfer may occur.

4.3. The licensee under provisions of Section 2.2.1.b. and 2.2.1.c. of these regulations shall not transfer possession or resell any foxes or raccoons acquired under Section 3.1.4 of these regulations.

4.4. The Director shall in October of each year publish a list of specified counties for which inter-county sale or possession transfer of live foxes and raccoons obtained under provisions of W. Va. Code 20-2-11 may occur.

4.5. The Director shall suspend the sale or any other form of translocation of live foxes and raccoons acquired under provisions of W. Va. Code 20-2-11 in any counties or portions thereof to protect public health and the welfare of native wildlife.

§ 47 58-23-5. Record Keeping.

5.1. Accurate and current records of all wildlife acquisitions and sales or possession transfers shall be maintained by the licensee. Records on all wildlife born at the licensee's facility shall also be maintained. 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 facility for a minimum period of three (3) years. The ear tag number, county of origin, date, and disposition for all live foxes and raccoons acquired in the manner specified in Section 3.1.4. shall be recorded.

§ 47 58-23-6. 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 58-23-7. 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 §§ 20-2-11, 20-2-47 or 20-2-48 of the W. Va. Code.~~

The Director may designate other species of wildlife that shall not be taken, sold, or otherwise possessed for commercial purposes (W. Va. Code 20-2-11).

~~7.1. It is illegal to catch, capture, sell, trade, take or kill by seine, net, bait, trap, or any other means, Except persons possessing a license or permit issued for such purpose or specifically designated by authority of W. Va. Code 20-2-11, it shall be illegal for any person to take, or attempt to take, from the wild or possess for commercial purposes any species of wildlife native to this State, either dead or alive, or to take or attempt to take by any means, or to sell, trade, barter, expose or offer for sale, trade or barter, or to possess or transport, or to have in one's possession with the intent, or to transport into or out of the state any native wildlife, of the following species of turtles or their eggs, or part thereof 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 58-23-8. Penalties.

A violation of these regulations constitutes a misdemeanor for each offense in accordance with W. Va. Code § 20-2-11 and each misdemeanor offense shall be subject to the penalties provided for in W. Va. Code § 20-7-9.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

December 15, 1994

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Natural Resources

RULE: Amendments, Series 23, Commercial Sale of Wildlife

DATE FILED AS AN EMERGENCY RULE: November 4, 1994

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DEC 15 4 42 PM '94

FILED

DECISION NO. 20-94

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



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

EMERGENCY RULE DECISION (ERD 20-94)

AGENCY: Natural Resources
RULE: Amendments, Series 23, Commercial Sale of Wildlife
FILED AS AN EMERGENCY RULE: November 4, 1994

- par. 1 The Division of Natural Resources (DNR) has filed the above amendments to an existing 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(b))].
- 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 thirty-five 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 November 4, 1994 and with the LRMRC November 4, 1994.

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 §20-2-11 reads in part:

The director shall have authority to promulgate rules and regulations in accordance with 129A-1-1 et seq dealing with the sale of wildlife and the skins thereof.

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(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 DNR are as follows:

Passage of SB 337 by the 1994 Legislature adds live foxes and raccoons taken during the established trapping season to wildlife items that can be sold. Prior to the legislation, only the pelts of these animals could be sold. Without the proposed emergency rule the welfare of these animals is not assured through any established regulations and the potential for commingling and transmission of disease, especially through contact with wild foxes, raccoons and game farm animals is great. The proposed emergency rule separates the current licenses to operate a private game preserve into three categories to govern the use, care and disposition of live foxes and raccoons now available for commercial sale as a result of SB 337. The 1994-95 trapping season for foxes and raccoon opens November 5, 1994 and closes January 31, 1995.

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(g). . . "immediate preservation of public peace, health, safety and welfare."

par. 14

This decision shall be cited as Emergency Rule Decision 20-94 or ERD 20-94 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

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Dec 15 4 42 PM '94

FILED