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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 THE
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.

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**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