

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

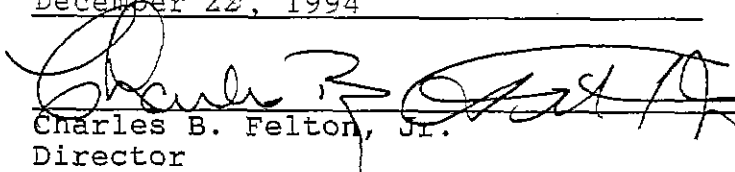
2. Explanation of above estimates:
N/A

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: December 22, 1994


 Charles B. Felton, Jr.
 Director

DATE: December 22, 1994
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: DIVISION OF NATURAL RESOURCES
LEGISLATIVE RULE TITLE: COMMERCIAL SALE OF WILDLIFE

1. Authorizing statute(s) citation § 20-2-11, 20-2-47, 20-2-48
2. a. Date filed in State Register with Notice of Hearing
November 4, 1994
 - b. What other notice, including advertising, did you give the hearing?
30 Day Public Comment Period
 - c. Date of Hearing(s): N/A
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached No comments received X
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)
N/A
 - f. Name and phone number(s) of agency person(s) to contact for additional information:
Bernard F. Dowler, Chief
Wildlife Resources Section
State Capitol Complex
Building 3, Room 812
Charleston, WV 25305-6087
3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
 - a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
N/A
 - b. Date of hearing: N/A
 - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
N/A
 - d. Attached findings and determinations and reasons:
N/A

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.

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.

Circumstance Statements For Rules

§ 58-23-1. General

-Adds the words transfer and captured to the scope to cover the trapping of live foxes and raccoons as per recently past Senate Bill No. 337

§ 58-23-2. Definitions

-Separates the current license to operate a private game preserve into three categories; 1) The current commercial game farm license for buying, selling, and propagating wildlife not taken directly from the wild, 2) A new category for hound coursing\training pens for the purchase and transfer of live foxes and raccoons from the wild during trapping season for use in pen facilities, and 3) A new category for incorporated sportsmen clubs to purchase and transfer live foxes and raccoons from the wild for restocking purposes.

-Adds definitions of hound coursing\training pen, incorporated sportsmen club, legal trapper, and native as these words relate to these regulations.

-Adds wildlife species to the definition of wildlife to comply with recently past Senate Bill No. 334.

§ 58-23-3 Wildlife Acquisition

-Adds the acquisition of live foxes and raccoons taken from the wild by trappers during trapping season, provides for ear tagging of these animals so they can be distinguished from foxes and raccoons acquired by other means and controls the movement of these animals if necessary to prevent the spread of diseases, especially rabies.

§ 58-23-4 Wildlife Sales or Transfer

-Adds the sale and\or transfer of live foxes and raccoons by trappers, limits the sale and\or transfer of live foxes and raccoons to licensed hound coursing\training pens and incorporated sportsmen clubs, and controls the movement through the sale and\or transfer of live foxes and raccoons to prevent the spread of diseases, especially rabies.

§ 58-23-5 Record Keeping

-Adds specific records to be kept in regards to the sale and\or transfer of live foxes and raccoons taken by trappers.

§ 58-23-7 Possession For Commercial Purposes Prohibited

-The director of the DNR adds other species of wildlife to the list of wildlife not to be taken from the wild for commercial purposes to conform to the changes in the definition of wildlife recently past in Senate Bill No. 334.

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

SERIES 23
COMMERCIAL SALE OF WILDLIFE

§ 47 58-23-1. General.

1.1. Scope. -- This legislative 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. -- November 4, 1994

1.4. Effective Date. -- 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; ~~e=~~

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.