



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

October 16, 1986

ARCH A. MOORE, JR.
Governor

RONALD R. POTESTA
Director
MICHAEL A. FOTOS
Deputy Director


NOTICE OF PUBLIC HEARING
OR COMMENT PERIOD ON A PROPOSED RULE
PUBLIC HEARING

AGENCY: West Virginia Department of Natural Resources
RULE TYPE: Procedural and Interpretive
RULE TITLE: Gun Repair Shop Exemptions

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT
3:00 p.m. on Monday, November 17, 1986 at Room 674,
1800 Washington Street, East, Charleston, WV 25305

COMMENTS ARE LIMITED TO: ORAL _____ WRITTEN _____ BOTH XX
COMMENTS MAY ALSO BE MAILED TO: Mr. Jeffrey E. Herrold,
West Virginia Department of Natural Resources, Room 842,
1800 Washington Street East, Charleston, WV 25305.

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS
AT THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN
ORDER TO FACILITATE A REVIEW OF THESE COMMENTS. THE ISSUES TO
BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesta
Director



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

October 16, 1986

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FILED

1986 OCT 16 PM 2:17

OFFICE OF THE
SECRETARY OF STATE


NOTICE OF PUBLIC HEARING
OR COMMENT PERIOD ON A PROPOSED RULE
COMMENT PERIOD

AGENCY: West Virginia Department of Natural Resources
RULE TYPE: Procedural and Interpretive
RULE TITLE: Gun Repair Shop Exemptions

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED
AND WILL END ON WEDNESDAY, NOVEMBER 19, 1986 AT 5:00 P.M.
WRITTEN COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Department of Natural Resources, Room 842
1800 Washington Street East, Charleston, WV 25305
Attention: Mr. Jeffrey E. Herrold

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesa
Director



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DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

ARCH A. MOORE, JR.
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October 16, 1986

RONALD R. POTESTA
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Deputy Director

FILED
1035 OCT 16 PM 2:15
OFFICE OF THE
SECRETARY OF STATE

The Honorable Ken Hechler
Secretary of State
Capitol Complex, Suite 157-K
Charleston, West Virginia 25305

Re: Filing of Proposed Rules (Gun
Repair Shop Exemptions, Series
IV-G and IV-H), Notice of Public
Hearing, and Notice of Comment
Period by the Department of
Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of proposed procedural and interpretive rules of the Department of Natural Resources, a Notice of Public Hearing, and a Notice of Comment Period for the proposed rule.

If you have any questions, please contact Mr. Jeffrey E. Herrold, Director's Office of Regulatory Affairs, at 348-2761.

Sincerely,

Ronald R. Potesta
Director

RRP/jhb

Enclosures

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Procedures for Granting Gun Repair Shop Exemptions 1986 OCT 16 PM 2:17Type of Rule: Legislative X Interpretive X Procedural

Agency: Department of Natural Resources

Address: 1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$

Personal Services

Current Expense

Repairs and Alterations

NO CHANGE

Equipment

Other

2. Explanation of Above Estimates:

Work will be accomplished by conservation officers as part of their regular duties; costs would be negligible and within normal budgets.

3. Objectives of These Rules:

The proposed rules provide for the granting of exemptions to exempt gun shop operators from the law prohibiting the discharging of a firearm within 500 feet of a residence and 400 feet of a school or church.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: No impact

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: No impact

C. Economic Impact on Citizens/Public at Large:

Gun shop operators will pay a minimal cost to notify people living within the 500 feet and churches and schools within 400 feet of the test firing site.

Date: October 16, 1986



Ronald R. Potesta
Director

FILED

1986 OCT 16 PM 2:17

PREAMBLE FOR PROCEDURAL AND INTERPRETIVE RULES
RELATING TO GUN REPAIR SHOP EXEMPTIONS

PROGRAM: Law Enforcement

REGULATIONS: Gun Repair Shop Exemptions, Series IV-G (Procedural)
and Series IV-H (Interpretive).

AUTHORITY: West Virginia Code, Chapter 20, Article 2, Section 58;
Chapter 61, Article 7, Section 12; and Chapter 29A, Article 3.

ACTION: Proposed Rules and Request for Comments

TOPIC: Series 4G establishes procedures for granting gun repair shop operators exemptions from the law prohibiting the discharge of a firearm within five hundred feet of any dwelling house or within four hundred feet of any schoolhouse or church. Series 4H provides guidance to gun repair shop operators concerning safe test firing sites.

DATES: A public hearing will be held on Monday, November 17, 1986 at 3:00 p.m. in the Director's Conference Room 674, 1800 Washington Street East, Charleston, West Virginia. Comments will be received until the close of business on Wednesday, November 19, 1986.

SUMMARY: Under Sections 20-2-58 and 61-7-12 of the West Virginia Code, the Director is authorized to grant exemptions to the operators of gun repair shops which allows the test firing of a firearm under certain circumstances. The Director may grant such exemptions provided that he "shall ensure that any person residing in any dwelling home within five hundred feet of such gun repair shop be given an opportunity to protest the granting of such exemption."

The Department's proposed rulemaking addresses two of the four possible exemptions available under Sections 20-2-58 and 61-7-12 of the West Virginia Code. Under the proposed procedural rules (Series IV-G), the operator of a gun repair shop may be granted an exemption to allow the test firing of firearms (1) within five hundred feet of any dwelling house and (2) within four hundred feet of any school or church. Series IV-G establishes the procedures to be followed and the form to be used in applying for this exemption. The proposed rules also set forth the manner in which objections to a grant of exemption will be addressed. The

proposed interpretive rules (Series IV-H) provide guidance concerning safety requirements to be followed by gun repair shops under a grant of exemption.

The Department is not proposing rules on the other two categories of exemption: (3) the discharge of a firearm "across or in any public road in this State" or (4) the discharge of a firearm "on or near any park or other place where persons gather for purposes of pleasure." We decline to adopt rules for these exemptions for several reasons.

Statutory amendments in 1985 created the four categories of exemptions and provided the Director with the authority to promulgate rules to govern the granting of such exemptions. When creating the exemptions, the Legislature sought to assure that relevant members of the public had the right to protest the granting of an exemption. Members of the public who are allowed to protest can be clearly identified for exemptions granted for test firing within five hundred feet of a dwelling or within four hundred feet of a schoolhouse or church. The statutory amendments do not however provide any guidance for identifying the relevant public for the other two categories of exemption. Therefore, the Department is not establishing procedures for protest in cases where the group upon whom the Legislature intended to convey the right of protest cannot be readily identified.

The Legislature specifically granted the right of protest to "any person residing in any dwelling home within five hundred feet of (a) gun repair shop." Using this as a guide, the Department has extended the right to protest a gun repair shop exemption to: "the principal, school personnel, and the parents of students of any schoolhouse located within four hundred feet of a test firing site" and "any member of a church located within four hundred feet of a test firing site."

Identifying relevant members of the public for the two remaining categories is not easily accomplished. It appears that the Legislature intended to grant the right of protest to individuals who would be affected by an exemption, such as persons residing within five hundred feet of the gun repair shop. The Department is reluctant to use a broader definition of identification due to the administrative unworkability and inherent unfairness in extending the right of protest to any member of the public who may use a public road or who may gather at a place "for purposes of pleasure." The Department does not know of an adequate method for notifying such categories of people of their right to protest. Any method would be either too expensive or fail to reach all of the potential users and, thus, would be inherently unfair.

There exist other reasons for not adopting rules covering these two categories. First, the Department does not know how the Legislature intended the phrase "places where people gather for purposes of pleasure" to be interpreted. Second, the Department

does not believe that it would be proper to issue exemptions that would allow the test firing of firearms across or in public roads. Consequently, today's proposed rulemaking addresses procedures for only two of the four categories contained in Sections 20-2-58 and 61-7-12 of the West Virginia Code.

FILED

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Department of Natural Resources
Series IV-H
Gun Repair Shop Exemptions
Interpretive Rules

1986 OCT 16 PM 2:17
OFFICE OF THE SECRETARY OF STATE

Section 1. Scope and Authority

- 1.1 Scope and Purpose. The purpose of these rules is to provide guidance concerning safety requirements to be followed by gun repair shops under a grant of exemption.
- 1.2 Authority. These rules are promulgated under the authority of the West Virginia Code, Chapter 20, Article 2, Section 58; Chapter 61, Article 7, Section 12; and Chapter 29A, Article 3.
- 1.3 Effective Date. These rules will be effective 30 days after filing.
- 1.4 Filing Date. These rules were filed on _____, 1986.

Section 2. Definitions

- 2.1 Applicant means the operator of a gun repair shop duly licensed under applicable federal and state laws.
- 2.2 Exemption means an exemption from the law prohibiting the discharge of a firearm within five hundred feet of a dwelling house or within four hundred feet of a schoolhouse or church.
- 2.3 Person means also the plural "persons" and includes individuals, partnerships, corporations, or other legal entities.

Section 3. Nontransferability

- 3.1 A grant of exemption may not be transferred to another person.
- 3.2 A grant of exemption is void upon the bankruptcy, sale, or cessation of the applicant's gun repair business.

Section 4. Safety Requirements

- 4.1 All test firing done under a grant of exemption will be by the gun repair shop operator, his paid employee, or the owner of the firearm being repaired.
- 4.3 All test firing will be done into a safe backstop or bullet trap.

Section 5. Revocation of Exemption

- 5.1 Failure to maintain a safe test firing area may result in the revocation of the grant of exemption.
- 5.2 Revocation of a grant of exemption may result in the imposition of criminal penalties as prescribed in Chapter 20, Article 7, Section 9 of the West Virginia Code.