

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Department of Commerce, Labor
and Environmental Resources,
AGENCY: Division of Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY §§20-1-7 and 20-2-38

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 49

TITLE OF RULE BEING AMENDED: Revocation of hunting and fishing
licenses

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON March 16, 1992 AT 5:00 p.m.
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

Office of Environmental & Regulatory Affairs
WV Division of Natural Resources
Capitol Complex
Building 3, Room 712
Charleston, WV 25305

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


Director, Division of Natural Resources

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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SECRETARY OF STATE

MEMORANDUM OF CONSENT

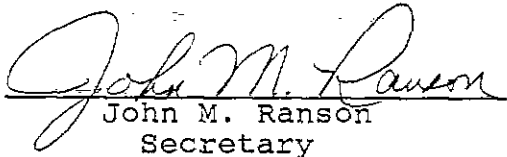
MEMORANDUM TO: J. Edward Hamrick III, Director
Division of Natural Resources

FROM: John M. Ranson, Secretary
Department of Commerce, Labor,
and Environmental Resources

SUBJECT: Consent to File Agency Proposed Regulations

The following regulations have my approval to be proposed pursuant to the Administrative Procedures Act set forth under Chapter 29A of the West Virginia Code [W. Va. Code §29A et seq.].

<u>Title</u>	<u>Series</u>	<u>Name</u>
47	15	Permits to kill deer and other wildlife causing damage to cultivated crops, fruit trees , or commercial nurseries.
47	49	Revocation of hunting and fishing licenses.


John M. Ranson
Secretary

2/7/92
Date



STATE OF WEST VIRGINIA
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

Capitol Complex, Building 3
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Telephone (304)348-2754

GASTON CAPERTON
Governor

J. EDWARD HAMRICK III
Director

ANN A. SPANER
Deputy Director

Memorandum

To: John M. Ranson, Secretary
Department of Commerce, Labor
and Environmental Resources


From: J. Edward Hamrick III, Director
Division of Natural Resources

Date: January 22, 1992

Subject: Division Approval of Proposed Rules and Request for
Department Consent to File.

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The proposed rules listed on the enclosed "MEMORANDUM OF
CONSENT" have my approval to be proposed pursuant to the West
Virginia Administrative Procedures Act. Your approval is
requested.


J. Edward Hamrick III, Director
Division of Natural Resources

FISCAL NOTE FOR PROPOSED RULE

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OFFICE OF THE CLERK
WEST VIRGINIA
DEPARTMENT OF STATE

Rule Title: Revocation of Hunting and Fishing Licenses, 47CSR49

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: Building 3, State Capitol Complex, Charleston, West Virginia

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		Thereafter
	Increase	Decrease	Current	Next	
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expenses					
Repairs & Alterations					
Equipment					
Other					

2. Explanation of above estimates: No change to program cost or revenue. In addition to technical cleanup, the point system used for revoking licenses is expanded to include other violations of article two, chapter twenty of the state code.

3. Objectives of this rule: Encourage less violation of hunting and fishing laws through more comprehensive point system.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact 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: Loss of license for violators amassing ten or more points.

Date: January 31, 1992

Signature of Agency Head or Authorized Representative

Director, Division of Natural Resources

PREAMBLE TO A PROPOSED RULE
CONCERNING
GROUNDWATER PROTECTION ACT FEE SCHEDULE

AGENCY: Department of Commerce, Labor, and Environmental Resources; Division of Natural Resources.

REGULATION: Title 47, Series 49, "Revocation of Hunting and Fishing Licenses."

ACTION: Filing of a Proposed Rule, Notice of a Thirty Day Public Comment Period.

SUMMARY: The proposed, filed rule provides for expansion of the point system used for revoking licenses to include other violations of article two, chapter twenty of the state code, along with minor technical cleanup.

Written comments with postmarks prior to 5:00 pm March ~~8~~¹⁶ 1992 will be accepted. Written comments should be sent to:

Office of Environmental and Regulatory Affairs
WV Division of Natural Resources
Capitol Complex
Building 3, Room 712
Charleston, WV 25305

TITLE 47
LEGISLATIVE RULES
~~DEPARTMENT~~ DIVISION OF NATURAL RESOURCES

SERIES 49
REVOCATION OF HUNTING AND FISHING LICENSES

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§47-49-1. General.

1.1. Scope. -- This legislative rule establishes procedures to govern the revocation and restoration of hunting and fishing licenses and the assignment of points for violations of hunting or fishing laws and regulations.

1.2. Authority. -- West Virginia Code §§20-1-7(30) and 20-2-38.

1.3. Filing Date. -- ~~March 29, 1990.~~

1.4. Effective Date. -- ~~May 1, 1990.~~

1.5. ~~Repeal of Former Rule.~~ -- This legislative rule ~~repeals and replaces~~ amends 47 C.S.R. 24 49 "Point System for the Revocation of Hunting and Fishing Licenses" that was filed on ~~December 30, 1982~~ March 29, 1990 and became effective ~~January 1, 1983~~ May 1, 1990.

§47-49-2. Definitions.

2.1. ~~"Department"~~ "Division" means the West Virginia ~~Department~~ Division of Natural Resources.

2.2. "Director" means the director of the West Virginia ~~Department~~ Division of Natural Resources.

2.3. "License" means a hunting or fishing license, and any associated tags or stamps, issued by the ~~Department~~ Division in accordance with provisions of Article 2 or Article 2B of Chapter 20 of the West Virginia Code.

2.4. "Lifetime License" means a Class A-L, Class AB-L, Class B-L, or Class O-L license issued by the ~~Department~~ Division in accordance with the provisions of Article 2B of Chapter 20 of the West Virginia Code.

§47-49-3. Revocation of Licenses.

3.1. A license or licenses shall be revoked by the ~~Department~~ Division for the following causes:

3.1.1. Negligent Shooting. Except as provided in Section 5.1.1 of these regulations, the hunting licenses of any person convicted of negligent shooting under the provisions of W. Va. Code

§20-2-57 shall be revoked and license privileges shall be suspended for a period of five (5) years. The suspension period will begin on the date of conviction.

3.1.2. Amassed Points. The hunting or fishing licenses of any person who amasses ten (10) or more points in any two-year period shall be revoked and license privileges shall be suspended for a period of two (2) years. The suspension period will begin on the date on which the ten-point total was reached.

3.1.3. False Application. The hunting or fishing licenses of any person who obtained such licenses under false pretenses or otherwise in violation of the provisions of W. Va. Code §20-2-30 shall be revoked and license privileges shall be suspended for a period of one (1) year. The suspension period will begin on the date of License revocation.

3.1.4. Illegal Bear Kill. The hunting and fishing licenses of any person convicted of killing a bear in violation of the provisions of W. Va. Code §20-2-22a shall be revoked and license privileges shall be suspended for a period of one (1) year. The suspension period will begin on the date of conviction.

3.1.5. Failure to Pay Fines. The hunting or fishing licenses of any person who fails to pay the costs, fines, forfeitures, or penalties imposed by a magistrate court under the provisions of W. Va. Code §50-3-2a for a violation of the State's hunting or fishing laws or regulations shall be revoked and license privileges shall be suspended until such time that such costs, fines, forfeitures, or penalties are paid in full.

3.2. Should any person be convicted of violating State hunting or fishing statutes or regulations during the period when his license privileges have been suspended, the suspension period shall be extended for an additional two (2) years from the date of conviction for the latest offense.

3.3. Upon revoking the license of any person, the ~~Department~~ Division shall immediately send written notification of the revocation to the licensee by certified mail, return receipt requested, sent to the address given by the licensee on his license application.

§47-49-4. Surrender of Licenses.

4.1. A person must surrender his license to the ~~Department~~ Division or the clerk of any county court within ten (10) days after receiving notification that the license has been revoked.

4.1.1. A clerk of a county court, upon receiving a surrendered license, shall immediately transmit the same to the ~~Department~~ Division.

4.2. A person must surrender his license to the ~~Department~~

Division prior to requesting an opportunity for a hearing before the ~~Department~~ Division under the provisions of Section 8 of these regulations.

\$47-49-5. Restoration of License Privileges.

5.1. Except as provided in Sections 5.1.1, 5.1.2, and 5.1.3 of these regulations, any person whose license has been revoked may again purchase such license upon the expiration of the period of suspension set forth in Section 3 of these regulations.

5.1.1. Any person convicted of an offense under W. Va. Code §§20-2-57 ~~or 61-7-11~~, other than a negligent shooting which has resulted in the killing of a human being, may, after the expiration of two (2) years from the date of conviction, submit a written petition to the director seeking the restoration of all hunting license privileges. If the director, upon a hearing and full investigation, finds that the petitioner has paid and satisfied all claims against him and the circumstances at the time and the nature of the offense indicate that he is not likely again to commit a like or similar offense and that the public good does not require that the petitioner's license privileges remain suspended, the director may enter an order restoring full license privileges to the petitioner.

5.1.2. Any person whose license privileges have been suspended for failure to pay the costs, fines, forfeitures, or penalties imposed by a magistrate court under the provisions of W. Va. Code §50-3-2a must, upon the expiration of the period of suspension, pay a reinstatement fee of fifty dollars (\$50) to the ~~Department~~ Division in order to regain license privileges.

5.1.2.a. If the license for which privileges were suspended was a lifetime license, the ~~Department~~ Division will return the original license to the licensee upon the receipt of the reinstatement fee.

5.1.2.b. If the license for which privileges were suspended would otherwise continue in effect after the expiration of the period of suspension, the ~~Department~~ Division will return the original license to the licensee upon the receipt of the reinstatement fee.

5.1.2.c. If the license for which privileges were suspended would otherwise have expired prior to the expiration of the period of suspension, the licensee must pay the reinstatement fee to the ~~Department~~ Division prior to again purchasing the license that had been revoked.

5.1.3. The ~~Department~~ Division will return a lifetime license revoked in accordance with the provisions of Sections 3.1.1, 3.1.2, or 3.1.4 of these regulations to the licensee upon the expiration of the period of license suspension.

§47-49-6. Assignment of Points.

6.1. Except as provided in Sections 6.2, and 6.3 and 6.4 of these regulations, four (4) points will be assigned to a person for any violation of hunting or fishing laws or regulations.

6.2. Ten (10) points will be assigned to any person found guilty of violating W. Va. Code §20-2-5(3) -- using any artificial light in hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal (except opossum, raccoon, or skunk), or to attempt to do so, while having in his possession or subject to his control, or for any person accompanying him to have in his possession or subject to his control, any firearm, bow, or other implement or device suitable for taking, killing or trapping a wild bird or animal.

6.3. Ten (10) points will be assigned to any person found guilty of violating W. Va. Code §20-2-5(20) -- using dynamite or any like explosive or poisonous mixture placed in any waters of the State for the purpose of killing or taking fish.

6.4. Six (6) points shall be assigned to any person found guilty of violating any of the following:

6.4.1. West Virginia Code §20-2-4: Illegal possession of wildlife or any part thereof.

6.4.2. West Virginia Code §20-2-11: Illegal sale of wildlife.

6.4.3. West Virginia Code §20-2-5(28): Illegally killing deer, boar or turkey.

§47-49-7. Removal of Points.

7.1. Points will be removed on their second anniversary or upon the restoration of license privileges.

§47-49-8. Hearing and Appeal Procedures.

8.1. Request for Hearing. Upon receipt of a notice of revocation, the licensee may request an opportunity for a hearing before the Department Division. Such request must be made in writing to the director within thirty (30) days after the receipt of the revocation notice.

8.2. Hearings. A hearing will be held by the Department Division within thirty (30) days after the receipt of a written request from the licensee, conditional upon the receipt of his surrendered license in accordance with the provisions of Section 4.2 of these regulations. The hearing may be conducted in the county in which the licensee resides or any other county designated by the director. A duly authorized agent of the director shall act as the hearings officer. Within thirty (30) days after the hearing,

the hearings officer shall issue a finding, and the reasons therefor, that either upholds or rescinds the revocation. The ~~Department~~ Division shall immediately send written notification of the finding to the licensee.

8.3. Appeals. The finding of the hearings officer shall constitute a final order appealable under the provisions of W. Va. Code §29A-5-4.

§47-49-9. License Fee Refunds.

9.1. No person whose license has been revoked under the provisions of these regulations shall be eligible for a license fee refund.

9.2. When more than one license of the same class have been purchased for a person in a given year, that person is eligible for a refund for the additional licenses upon the presentation of proof of purchase.