

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

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: DCL&ER, Division of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY § WEST VIRGINIA CODE §20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

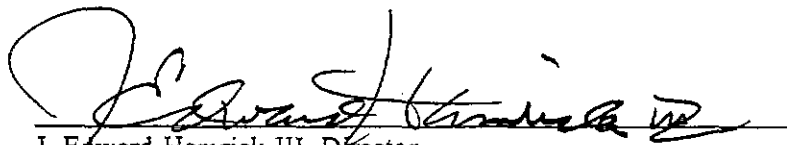
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 49

TITLE OF RULE BEING AMENDED: REVOCATION OF HUNTING AND FISHING LICENSE

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


J. Edward Hamrick III, Director
Division of Natural Resources

3.20

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

SERIES 49
REVOCATION OF HUNTING AND FISHING LICENSES

§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).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. This legislative rule amends the Point System for the Revocation of Hunting and Fishing Licenses (47 C.S.R. 49) that was filed on March 29, 1990 and became effective May 1, 1990.

§47-49-2. Definitions.

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

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

2.3. "License" means a hunting or fishing license, and any associated tags or stamps, issued by the Division in accordance with provisions of W. Va. Code § 20-2-1 et seq or 20-2B-1 et seq.

2.4. "Lifetime License" means a Class A-L, Class AB-L, Class B-L, or Class O-L license issued by the Division in accordance with the provisions of W. Va. Code § 20-2B-1 et seq.

§47-49-3. Revocation of Licenses.

3.1. A license or licenses shall be revoked by the 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 begins 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 begins 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 the 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 begins 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 begins 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 the 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 Division shall immediately send written notification of the revocation to the licensee by certified mail, return receipt requested, to the address given by the licensee on his or her license application.

§47-49-4. Surrender of Licenses.

4.1. A person must surrender his or her license to the 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 license to the Division.

4.2. A person must surrender his or her license to the Division prior to requesting an opportunity for a hearing before the Division under the provisions of Section 8 of these regulations.

§47-49-5. Restoration of License Privileges.

5.1. Except as provided in Subdivisions 5.1.1, 5.1.2, and 5.1.3 of these regulations, any person whose license has been revoked may again purchase the 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, 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 or her and the circumstances at the time and the nature of the offense indicate that he or she 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 Division in order to regain license privileges.

5.1.2.a. If the license for which privileges were suspended was a lifetime license, the 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 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 Division prior to again purchasing the license that had been revoked.

5.1.3. The Division will return a lifetime license revoked in accordance with the provisions of Subdivisions 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 Subsections 6.2, 6.3 and 6.4 of these regulations, the Division will assign four (4) points to a person for any violation of hunting or fishing laws or regulations.

6.2. The Division will assign ten (10) points 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 or her possession or subject to his or her control, or for any person accompanying him or her to have in his possession or subject to his or her control, any firearm, bow, or other implement or device suitable for taking, killing or trapping a wild bird or animal.

6.3. The Division will assign ten (10) points 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. The Division will assign six (6) points 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. The Division will not assign points to any person possessing wildlife or any part thereof that was legally taken during the respective species open season.

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

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

§47-49-7. Removal of Points.

7.1. The Division will remove points 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 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 Division within thirty (30) days after the receipt of a written request from the licensee, conditional upon the receipt of his or her surrendered license in accordance with the provisions of Subsection 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 Division shall immediately send written notification of the finding to the licensee.

8.3. Appeals. The finding of the hearings officer constitutes 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 is eligible for a license fee refund.

9.2. When more than one license of the same class has 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.

601 ~~§(ccc)~~ The legislative rules filed in the state register on
 602 the ninth day of September, one thousand nine hundred
 603 ninety-two, modified by the division of natural resources
 604 to meet the objections of the legislative rule-making
 605 review committee and refiled in the state register on the
 606 seventh day of December, one thousand nine hundred
 607 ninety-two, relating to the division of natural resources
 608 (prohibitions when hunting and trapping), are autho-
 609 rized with the amendments set forth below:

Adm.

610 "On page two, subsection 3.9., by striking out the
 611 words 'No person may use portable tree stands on public
 612 lands' and inserting in lieu thereof the words 'No person
 613 may use tree stands, except for portable tree stands, on
 614 public lands.'"

Title

47-49

615 ~~§(ddd)~~ The legislative rules filed in the state register
 616 on the twenty-first day of April, one thousand nine
 617 hundred ninety-two, modified by the division of natural
 618 resources to meet the objections of the legislative rule-
 619 making review committee and refiled in the state
 620 register on the sixteenth day of December, one thousand
 621 nine hundred ninety-two, relating to the division of
 622 natural resources (revocation of hunting and fishing
 623 licenses), are authorized with the amendments set forth
 624 below:

Adm.

625 "On page two, subsection 4.1., by striking out the word
 626 'court' and inserting in lieu thereof the word
 627 'commission';

628 And,

629 "On page two, subdivision 4.1.1, by striking out the
 630 word 'court' and inserting in lieu thereof the word
 631 'commission'."

632 ~~§(eee)~~ The legislative rules filed in the state register on
 633 the ninth day of September, one thousand nine hundred
 634 ninety-two, modified by the division of natural resources
 635 to meet the objections of the legislative rule-making
 636 review committee and refiled in the state register on the
 637 seventh day of December, one thousand nine hundred
 638 ninety-two, relating to the division of natural resources
 639 (special bear hunting regulations), are authorized.



WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

FILED
Nov 25 2 30 PM '92

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator William R. Wooton, Co-Chair
Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel
~~Michael Matheson, Associate Counsel~~
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

November 9, 1992

TO: Ken Hechler, Secretary of State, State Register

TO: J. Edward Hamrick, Director
Division of Natural Resources
Building 3, State Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Revocation of Hunting and Fishing Licenses

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Wm. Daniel