

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3 □

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: BOC, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: WV CODE 20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

SCANNED



DIVISION OF NATURAL RESOURCES

1900 Kanawha Boulevard East
Building 3, Room 669
Charleston WV 25305-0668
Telephone (304) 558-2754
Fax (304) 558-2768
TDD (304) 558-1439
TDD (304) 1-800-354-8087

Bob Wise
Governor

Ed Hamrick
Director

July 29, 2002

Ms. Judy Cooper
Administrative Law Division
Office of the Secretary of State
State Capitol, Suite 157K
Charleston, West Virginia 25305-0770

Dear Ms. Cooper:

This letter will confirm that I approve of the Legislative Rule, 58 CSR 23, that was filed with your office by Lt. Colonel W. B. Daniel.

If I may provide you with any additional information, please feel free to contact me.

Sincerely,


Ed Hamrick
Director

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 23
REVOCATION OF HUNTING AND FISHING LICENSES**

SUMMARY

This rule establishes the 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 rules. This change will add three additional violations that will be assessed six points upon conviction of the charges.

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

SERIES 23
REVOCATION OF HUNTING AND FISHING LICENSES

CIRCUMSTANCE

The Division of Natural Resources continues to receive an increasing number of complaints regarding possession limits, taking fish by illegal method and prohibiting the use of certain bait in restricted areas. Loss of fishing privileges is an effective deterrent for violations. Currently, it takes three separate violations for an offender to lose their fishing privileges. With the three recommended changes in the point system, it will only take two separate violations for a person to lose his or her fishing licenses and privileges.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: REVOCATION OF HUNTING AND FISHING LICENSES

Type of Rule X **Legislative** **Interpretive** **Procedural**

Agency DIVISION OF NATURAL RESOURCES

Address BLDG. 3, ROOM 840, CAPITOL COMPLEX

CHARLESTON, WEST VIRGINIA 25305

1. Effect of Proposed Rule

| | ANNUAL | | | FISCAL YEAR | |
|-----------------------|----------|----------|---------|-------------|------------|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | 0 | 0 | 0 | 0 | 0 |
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 |
| CURRENT EXPENSE | 0 | 0 | 0 | 0 | 0 |
| REPAIRS & ALTERATIONS | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 |

2. Explanation of above estimates: Initially there may be a small increase in the number of persons that lose their license privileges, but it will be negligible.

3. Objective of these rules: To gain voluntary compliance with the possession limits and other fishing prohibitions.

Rule Title: REVOCATION OF HUNTING AND FISHING LICENSES

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:
None

Date: July 26, 2002

**Signature of Agency or
Authorized Representative:**



Lt. Colonel W. B. Daniel, Deputy Chief
DNR Law Enforcement

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 21, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Natural Resources
Building 3, Capitol Complex
Charleston, West Virginia 25305
Telephone Number: (304) 558-2784

LEGISLATIVE RULE TITLE: REVOCATION OF HUNTING AND FISHING LICENSES

1. Authorizing statute(s) citation §20-1-7(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 21, 2002

b. What other notice, including advertising, did you give of the hearing

None

c. Date of Hearing(s) or Public Comment Period ended:

June 21, 2002 through 4:00 p.m., July 21, 2002

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached NA

No comments received NA

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

NA

- f. Name, title, address and phone/fax/e-mail numbers of agency persons(s) to receive all written correspondence regarding this rule: (Please type)

LT. COLONEL W. B. DANIEL, DIVISION OF NATURAL RESOURCES

BUILDING 3, ROOM 840, CAPITOL COMPLEX

CHARLESTON, WV. 25305

- g. ***IF DIFFERENT FROM ITEM 'f'***, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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.

NA

- b. Date of hearing: NA

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

- d. Attach findings and determinations and reasons:

Attached NA

**TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES**

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SECRETARY OF STATE

**SERIES 23
REVOCATION OF HUNTING AND FISHING LICENSES**

§58-23-1. 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 rules.

1.2. Authority. -- W. Va. Code §20-1-7(30).

1.3. Filing Date. --

1.4. Effective Date. --

§58-23-2. 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.

§58-23-3. 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 Subdivision 5.1.1 of this rule, 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 (10) 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)~~ (2) 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 rules shall be revoked and license privileges shall be suspended until the costs, fines, forfeitures, or penalties are paid in full.

3.2. If any person is convicted of violating State hunting or fishing statutes or rules during the period when his or her 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.

§58-23-4. Surrender of Licenses.

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

4.1.1. A clerk of a county commission, upon receiving a surrendered license, shall immediately transmit the license to the Division.

4.2. A person shall 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 this rule.

§58-23-5. Restoration of License Privileges.

5.1. Except as provided in Subdivisions 5.1.1, 5.1.2, and 5.1.3 of this Subsection, 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 this rule.

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 shall, 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.

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

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

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

5.1.3. The Division shall return a lifetime license revoked in accordance with the provisions of Subdivisions 3.1.1, 3.1.2, or 3.1.4 of this rule to the licensee upon the expiration of the period of license suspension.

§58-23-6. Assignment of Points.

6.1. Except as provided in Subsections 6.2, 6.3 and 6.4 of this Section, the Division shall assign four (4) points to a person for any violation of hunting or fishing laws or rules.

6.2. The Division shall 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 or her 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 shall assign ten (10) points to any person found guilty of violating W. Va. Code §20-2-5(20) (18) -- 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 shall assign six (6) points to any person found guilty of violating any of the following:

6.4.1. W. Va. Code §20-2-4: Illegal possession of wildlife or any part thereof. The Division shall not assign points to any person possessing wildlife or any part thereof that was legally taken during the respective open season.

6.4.2. W. Va. Code §20-2-11: Illegal sale of wildlife.

6.4.3. W. Va. Code §20-2-5(27): Illegally killing deer, boar or turkey.

6.4.4. W. Va. Code §20-2-5(4): Hunting for, taking, killing, wounding or shooting at wild animals or wild birds from an airplane or other airborne conveyance, or an automobile, or other land conveyance.

6.4.5. W. Va. Code §20-2-5(15): Taking fish by illegal method.

6.4.6. W. Va. Code §20-2-5b and 20-1-7(30): Exceeding the daily creel limit.

6.4.7. W. Va. Code §20-1-7(30): Use of prohibited bait in restricted area.

§58-23-7. Removal of Points.

7.1. The Division shall remove points on their second anniversary or upon the restoration of license privileges.

§58-23-8. 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. The request shall be made in writing to the director within thirty (30) days after the receipt of the revocation notice.

8.2. Hearings. A hearing shall 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 this rule. 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 for the finding, 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.

§58-23-9. License Fee Refunds.

9.1. No person whose license has been revoked under the provisions of this rule 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.