

WEST VIRGINIA
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ADMINISTRATIVE LAW DIVISION

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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: West Virginia Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY W. Va. Code §§20-1-7(30) and 20-2-38

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 49

TITLE OF RULE BEING PROPOSED: _____

Revocation of Hunting and Fishing Licenses

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.



Larry W. George III
Director

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Revocation of Hunting and Fishing Licenses

Type of Rule: X Legislative Interpretive Procedural

1989 JUN 12 AM 11:
OFFICE OF ESTIMATES
SECRETARY OF STATE

Agency: West Virginia Department of Natural Resources

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

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:

This proposal replaces existing regulations; no new administrative expenditures are anticipated.

3. Objectives of These Rules:

This proposal updates existing regulations to improve hearing and appeal procedures, to formalize license surrender and restoration procedures, and to clarify state policy on license refunds.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government: NO IMPACT
- B. Economic Impact on Political Subdivisions: NO IMPACT
Economic Impact on Specific Industries: NO IMPACT
Economic Impact on Specific Groups of Citizens: NO IMPACT
- C. Economic Impact on Citizens/Public at Large: NO IMPACT

Date: June 12, 1989


J. Edward Hamrick III
Director

PREAMBLE TO PROPOSED LEGISLATIVE RULE CONCERNING
THE REVOCATION OF HUNTING AND FISHING LICENSES

STATE AGENCY: West Virginia Department of Natural Resources

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

AUTHORITY: W. Va. Code §§20-1-7(30) and 20-2-38

ACTION: Agency-Approved Rule

SUMMARY: The Department is approving a new rule concerning the revocation of hunting and fishing licenses and the assignment of points for violations of hunting or fishing laws and regulations. This rule will repeal and replace 47 C.S.R. 24 "Point System for the Revocation of Hunting and Fishing Licenses" that was filed on December 30, 1982 and became effective January 1, 1983.

Today's agency-approved rule expands upon the existing regulations by introducing new provisions on license surrender and restoration, hearing and appeal procedures, and the availability of license refunds. Furthermore, two new sections have been added to reflect statutory changes enacted in the past two years. Section 3.1.4 makes effective the provisions of 1989 House Bill 2705 which call for the revocation of a person's hunting and fishing licenses upon his conviction for an illegal bear kill. Section 3.1.5 makes effective the provisions of 1988 Senate Bill 378 which call for the suspension of license privileges until a person pays magistrate fines imposed for violations of hunting or fishing laws or regulations.

A public hearing on this rule was held on Wednesday, July 19, 1989 in Charleston; written comments were received by the Department until the close of the public hearing. No interested individual attended the hearing and no written comments were received concerning the proposed rule. Therefore, the Department is approving this rule as it was proposed on June 12, 1989.

FILED

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1989 JUL 25 AM 10:59

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) and 20-2-38.

1.3. Filing Date. --

1.4. Effective Date. --

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

§47-49-2. Definitions.

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

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

2.3. "License" means a hunting or fishing license, and any associated tags or stamps, issued by the Department 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 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 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 shall immediately send written notification of the revocation to the licensee by registered mail 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 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.

4.2. A person must surrender his license to the Department prior to requesting an opportunity for a hearing before the Department 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 in order to regain license privileges.

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

5.1.3. The Department 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 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.

§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. 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 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 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.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 24
POINT SYSTEM FOR THE REVOCATION OF
HUNTING AND FISHING LICENSES

§47-24-1. General.

1.1. Scope. -- These are legislative rules and regulations establishing a point system for the revocation of hunting and fishing licenses.

1.2. Authority. -- W. Va. Code §20-1-7 and §20-2-38.

1.3. Filing Date. -- December 30, 1982.

1.4. Effective Date. -- January 1, 1983.

§47-24-2. General Purpose.

2.1. Purpose. -- To assure uniform, impartial application of hunting and fishing license revocation, from four (4) to ten (10) points will be assigned for each hunting and fishing violation, and a record system will be utilized to assured accuracy and expediency in the operation of revocation procedures.

§47-24-3. Revocation of License; Duration.

3.1. Negligent Shooting. -- Licenses of persons convicted of negligent shooting of a human being or livestock will be revoked for a period of five (5) years.

3.2. Points. -- Licenses of those amassing ten (10) or more points in any two (2) years period will be revoked for a period of two (2) years from the date the ten (10) points total was reached. Should any person be convicted of a violation during the revocation period, the revocation period shall be extended for two (2) years.

§47-24-4. Assignment of Points.

4.1. Points --- Offense.

10 --- Spotlighting with firearm or
implement.

10 --- Taking fish with explosive or
poison materials.

4 --- All other hunting or fishing
violations.

§47-24-5. Removal of Points.

5.1. Points will be removed on their second anniversary or upon restoration of the license(s).

§47-24-6. Hearing.

6.1. Notification. -- Upon revoking the license(s) of any person, the the Department of Natural Resources shall immediately notify the licensee in writing, sent by registered mail to the address given by the licensee in applying for license, and upon his/her request, shall afford an opportunity for a hearing within thirty (30) days after receipt of the request.

6.2. Hearing. -- The hearing may be conducted in the county in which the licensee resides or any other county designated by the director.

6.3. Hearing Officer. -- The director or his duly authorized agent shall act as hearing officer.

6.4. Action. -- After such hearing, the director may uphold or rescind the revocation.