

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

Form #2

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2003 MAY 28 A 11:36

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

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

AMENDMENT TO AN EXISTING RULE: YES 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: _____

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 JULY 2, 2003 AT 4:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

LT. COLONEL W. B. DANIEL
DIVISION OF NATURAL
RESOURCES
LAW ENFORCEMENT SECTION
BLDG. 3, ROOM 840, CAPITOL
COMPLEX
CHARLESTON, WV. 25305

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: REVOCATION OF HUNTING AND FISHING LICENSES

Type of Rule: Legislative Interpretive Procedural

Agency: DIVISION OF NATURAL RESOURCES

Address: BLDG. 3, CAPITOL COMPLEX

CHARLESTON, WV. 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:
NA

3. Objectives of These Rules:

Points are accumulated on fishing or hunting licenses individually. This rule will combine the compilation of points into one database and the individual will lose their hunting and fishing license for designated violations or amassed points.

Rule Title: REVOCATION OF HUNTING AND FISHING LICENSES

4. Explanation of Overall Economic Impact of Proposed Rule:


A. Economic Impact on State Government:
NEGLIGIBLE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: NA

C. Economic Impact on Citizens/Public at Large.
NA

Date: June 2, 2003

Signature of Agency Head or Authorized Representative:



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

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

CIRCUMSTANCE

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Currently, points are accumulated on fishing or hunting licenses individually. This change will combine the compilation of points into one data base and the individual will lose their hunting and fishing licenses for designated violations or amassed points. This was requested by hunters and fishermen that see violators of the natural resources laws and rules continue to hunt or fish after having their hunting or fishing license revoked. This change is supported by a majority of those individuals participating in an annual survey that is conducted each March.

**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 the hunting or fishing laws and rules. Currently, points are accumulated on fishing or hunting licenses individually. This change will combine the compilation of points into one data base and the individual will lose their hunting and fishing licenses for designated violations or amassed points.

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

**SERIES 23
REVOCAION 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. -- ~~June 2, 2003~~

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,~~ or A-1-L license issued by the Division in accordance with the provisions of W. Va. Code §20-2B-1 et seq and 20-2-40b.

§58-23-3. Revocation of Licenses.

3.1. The director shall revoke a license or licenses for the following causes:

3.1.1. Negligent Shooting. Except as provided in Subdivision 5.1.1 of this rule, the hunting and fishing 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~~ and 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~~ and 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 the license's 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 two (2) years. The suspension period begins on the date of conviction; or

3.1.5. Failure to Pay Fines. The hunting ~~or~~ and 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 laws or rules during the period when his or her license privileges have been suspended, the Director shall extend the suspension period 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 and fishing license privileges. If the director, upon a 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~~ a hunting or fishing license.

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(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 an 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): Using prohibited bait in a 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. A person whose license has been revoked under the provisions of this rule is not eligible for a license fee refund. However, when more than one license of the same class has been purchased by that person in a given year, that person is eligible for a refund for the additional licenses upon the presentation of proof of purchase.