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OFFICE OF THE WEST VIRGINIA SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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September 16, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Curtis Taylor
Natural Resources, Division of
Capitol Complex
Building 3, Room 842

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Deer Hunting Regulations, 58CSR50**

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
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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Deer Hunting Regulations, 58CSR50

PERTINENT DATES

Filed for public comment: June 14, 2002
Public comment period ended: July 15, 2002
Filed following public comment period: July 26, 2002
Filed LRMRC: July 26, 2002
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule amends a current legislative rule. Under the current rule, hunters may not take two deer in the same day and are required to have the first deer legally checked with a conservation officer or an official game checking station prior to hunting the second deer. The proposed rule allows the taking of any number of deer on any day.

Under the current rule, a hunter may hunt deer with a bow, hunt bear or hunt small game in those counties or portions of counties open to antlerless deer hunting, and the hunters may carry slugs or Number 4 or smaller shot with a shotgun prior to killing the deer. Under the proposed rule, solid ball ammunition replaces slugs. It also allows hunters to hunt water fowl during the antlerless deer season and provides that they may possess nontoxic shot shells containing shot larger than Number 4, but may not possess solid ball ammunition.

Finally, the current rule provides that Class R and RR archery licenses are valid in those counties open to bucks only firearm hunting and in those counties not open to buck only firearm

hunting, provided that the first archery deer was taken in a county open to firearms deer hunting. The proposed rule places the requirement that the first archery deer be taken in a county open to firearms deer hunting with the requirement that if two deer are taken in counties closed to bucks only firearm hunting, one of the deer must be antlerless.

AUTHORITY

Statutory authority: W.Va. Code, §21-1-7, which provides, in part, as follows:

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

...(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.