

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

Form #7

Do Not Mark In This Box, Filing Date

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 10, 1992
ADMINISTRATIVE LAW DIVISION

Effective Date

Aug. 19, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: DCL&ER, Division of Natural Resources

TITLE NUMBER: 47

CITE AUTHORITY: § 20-1-7(30)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 12A

TITLE OF RULE BEING FILED AS AN EMERGENCY: Special Migratory Bird Hunting Regulations

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS (Use Additional Sheets If Necessary) : See attached.


J. Edward Hamrick III, Director
Division of Natural Resources



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 22, 1992

RECEIVED
JUL 23 1992

J. Edward Hamrick III, Director
Division of Natural Resources
Building 3, Room 669
Charleston, West Virginia 25305

WATER RESOURCE SECTION

RE: Proposed Rules - Title 47, Series 11A, 11B, 11C, 11D,
11E, 11F, 11G, 11H, 11I, 12A & 13A (Regulations relating
to Wildlife Resources)

Dear Ed:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb

B:RULDNR-W.RUL

Migratory Bird Hunting Regulations
47 C.S.R. 12

Background of Problem Rule Currently in Effect

The existing 47 C.S.R. 12 is a legislative exempt rule which was last placed in effect September 1, 1990. This rule contains the agency's complete Migratory Bird Hunting regulations, both exempt and non-exempt provisions.

Agency Attempt to Correct Improper Filing of Migratory Bird Hunting Regulations

To correct this problem the current 47 C.S.R. 12 is being repealed and replaced by a purely exempt 47 C.S.R. 12 and the following non-exempt rule 47 C.S.R. 12A. Therefore, to have all the migratory bird hunting regulations in place for the 1992-1993 seasons, it is necessary for 47 C.S.R. 12A to be filed as an emergency rule and for 47 C.S.R. 12 to be repealed and replaced on the date the emergency 47 C.S.R. 12A rule become effective.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Special Migratory Bird Hunting Regulations, 47 C.S.R. 12A

Type of Rule: X Legislative ___ Interpretive ___ Procedural

Agency: Division of Natural Resources

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

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$				
Personal Services	\$				
Current Expenses	\$				
Repairs & Alterations	\$	No Change			
Equipment	\$				
Other	\$				

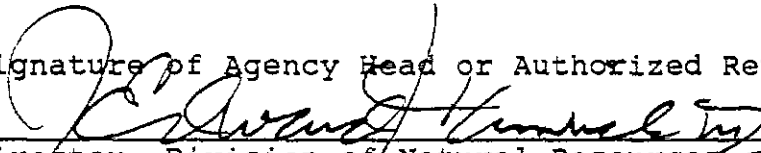
2. Explanation of above estimates: There is no change anticipated to administrative expenses as a result of this rule.

3. Objectives of this rule: This rule establishes regulations applicable to the hunting of migratory game birds in West Virginia.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government. No impact.
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. No impact
- C. Economic Impact on Citizens/ Public at Large. No impact.

Date: July 27, 1992

Signature of Agency Head or Authorized Representative

 Director, Division of Natural Resources

Date: July 24, 1992
To: Legislative Rule-Making Review Committee
From: Department of Commerce Labor and Environmental Resources, Division of Natural Resources

Emergency Rule Title: Special Migratory Bird Hunting Regulations, 47 C.S.R. 12A

1. Date of filing: July 28, 1992
2. Statutory authority for promulgating the emergency rule: § 20-1-7(30)
3. Date of filing the proposed legislative rule: July 31, 1992 (notice of 30 day comment period.)
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule: The emergency rule adopts language that was previously filed incorrectly as an exempt rule.
5. Has the same or similar emergency rule previously been filed and expired: No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare: N.A.
7. If the emergency rule was promulgated in order to comply with a time limit established by the code or federal statute or regulation, cite the code provision, federal statute or regulation and time limit established therein: N.A. _____
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest: To correctly file the exempt rule the existing exempt series 12 rule containing both exempt and non-exempt provisions must be repealed and replaced. Therefore to have in place for the 92-93 Migratory Bird Hunting season a complete set of regulations (exempt and non-exempt rules) it is necessary to file the non-exempt rules as emergency rules.

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

SERIES 12A
SPECIAL MIGRATORY BIRD HUNTING REGULATIONS
(EMERGENCY RULE)

§ 47-12A-1. General.

1.1. Scope and Purpose. -- This rule establishes regulations applicable to the hunting of migratory game birds in West Virginia.

1.2. Authority. -- West Virginia Code § 20-1-7(30).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Seasons in General. -- All seasons are subject to change under the provisions of W. Va. Code § 20-1-7(7). Opening and closing dates are inclusive and time periods are prevailing time unless otherwise noted in these regulations. Sunday hunting is illegal.

§ 47-12A-2. Definitions.

2.1. "Aggregate" means the total bag or possession limit of similar kinds of migratory game birds.

2.2. "Bait" means shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed.

2.3. "Baited Area" means any area where baiting occurs.

2.4. "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of bait so as to constitute for migratory game birds a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them.

2.5. "Blind Area" means the area within seventy-five (75) yards of the hunter's assigned blind.

2.6. "Migratory Game Birds" means doves, rails, snipe, and woodcock for which open seasons are prescribed in Title 47, Series 12, Section 4, Migratory Bird Hunting Regulations.

2.7. "Prevailing Time" means either Eastern Standard Time or Eastern Daylight Time as established by the United States Congress.

§ 47-12A-3. General Migratory Bird Hunting Rules.

3.1. Dual Violation - Violation of any provision of these regulations is also a violation of federal migratory bird hunting regulations under 50 C.F.R. Part 20, Subpart H.

3.2. Illegal Methods of Taking Migratory Game Birds.

3.2.1. No person may take migratory game birds with a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10-gauge, punt gun, battery gun, machine gun, fishhook, poison, drug, explosive, or stupefying substance.

3.2.2. No person may take migratory game birds with a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler which is incapable of removal without disassembling the gun.

3.2.3. No person may take migratory game birds from a sink box (i.e., a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water).

3.2.4. No person may take migratory game birds from or with the aid or use of a motor vehicle, other land conveyance, or an aircraft of any kind.

3.2.5. No person may take migratory game birds from or by means of any motorboat or sailboat unless the motor has been completely shut off or the sail furled and progress therefrom has ceased.

3.2.6. No person may take migratory game birds by the use or aid of live birds as decoys.

3.2.7. No person may take migratory game birds by the use of records or tapes of bird calls or sounds, or recorded or electrically-amplified imitations of bird calls.

3.2.8. No person may take migratory game birds by concentrating, driving, rallying, or chasing such birds with any motorized land, water, or air conveyance or any sailboat.

3.2.9. No person may take migratory game birds by the aid of baiting, or on or over any baited area. Hunters should be aware that a baited area is considered to be baited for ten (10) days after the removal of the bait, and is not necessary for the hunter to know an area is baited to be in violation of federal regulations and Section 3.2 of these regulations.

3.3. Wanton Waste - All migratory game birds killed or crippled must be retrieved if possible and retained in the custody of the hunter in the field.

3.4. Tagging - No person may give, put, or leave migratory game birds at any place, or in the custody of another person, unless the birds are tagged by the hunter with the following information:

- 3.4.1. The hunter's signature;
- 3.4.2. The hunter's address;
- 3.4.3. The total number of birds involved, by species; and
- 3.4.4. The date on which each bird was killed.

3.5. Field Dressing - No person may completely field dress migratory game birds, except doves and band-tailed pigeons, and then transport the birds from the field. The head or one fully-feathered wing must remain attached to all such birds while being transported from the field to one's home or to a migratory bird preservation facility, as defined in 50 C.F.R. § 20.11.

3.6. Shipment - No person may ship migratory game birds unless the package is marked on the outside with the following information:

3.6.1. The name and address of the person sending the birds;

3.6.2. The name and address of the person to whom the birds are being sent; and

3.6.3. The number of birds, by species, contained in the package.

3.7. Importation - For information regarding the importation of migratory game birds killed in another country, hunters should consult 50 C.F.R. §§ 20.61 through 20.66. One (1) fully-feathered wing must remain attached to all migratory game birds being transported between the port of entry and one's home or to a migratory bird preservation facility, as defined in 50 C.F.R. § 20.11. No person may import migratory game birds killed in any foreign country, except Canada, unless such birds are dressed (except as required in 50 C.F.R. § 20.63), drawn, and the head and feet removed. No person may import migratory game birds belonging to another person.



KEN HECHLER
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

August 19, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Natural Resources

RULE: New Rules, Series 12A, Special Migratory Bird Hunting

DATE FILED AS AN EMERGENCY RULE: August 10, 1992

DECISION NO. 19-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 19, 1992
ADMINISTRATIVE LAW DIVISION



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION (ERD 19-92)

AGENCY: Natural Resources
RULE: New Rules, Series 12A, Special Migratory Bird
Hunting
FILED AS AN EMERGENCY RULE: August 10, 1992

- par. 1 The Natural Resources (DNR) has filed the above new rule as emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The filed this emergency rule with supporting documents with the Secretary of State August 10, 1992 and with the LRMRC August 19, 1992.

- par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §20-1-7(30) reads:
Promulgate rules and regulations, in accordance with the provisions of §29A-1-1 et seq. of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter.
- par. 9 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 12 The facts and circumstances as presented by the DNR are as follows:
To correctly file the exempt rule the existing series 11 rule containing both exempt and non-exempt provisions must be repealed and replaced. Therefore to have in place for the 92-93 Hunting and Trapping season a complete set of Hunting and Trapping Regulations (exempt and non-exempt rules) it is necessary to file the non-exempt rules as emergency rules.
- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g).

par. 14 This decision shall be cited as Emergency Rule Decision 19-92 or ERD 19-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Natural Resources, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 19, 1992
ADMINISTRATIVE LAW DIVISION