

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box

FILED

SEP 27 PM 1:06

OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

Sept. 3, 1991

NOTICE OF AN EMERGENCY RULE

Effective Date

Department of Commerce, Labor
and Environmental Resources,
Division of Natural Resources
AGENCY: _____ TITLE NUMBER: 47

CITE AUTHORITY: West Virginia Code §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: _____

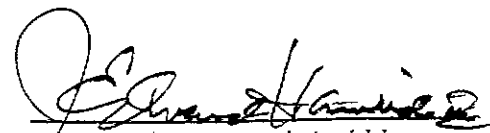
Special Migratory Bird Hunting Regulations

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use Additional Sheets If Necessary.

2.80


J. Edward Hamrick III
Director

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: "Special Migratory Bird Hunting Regulations"

JUN 27 PM 1:06

Type of Rule: XX Legislative Interpretive Procedural

OFFICE OF THE CLERK
LEGISLATIVE STATE

Agency: Department of Commerce, Labor and Environmental
Resources Division of Natural Resources.

Address: Building 3, State Capitol Complex, Charleston, West
Virginia 25305

1. Effect of Proposed Rule	Increase \$	ANNUAL Decrease \$	Current \$	FISCAL YEAR	
				Next \$	Thereafter \$
Personal Services					
Current Expense					
			NO CHANGE		
Repairs and Alterations					
Equipment					
Other					

2. Explanation of Above Estimates: This rule adopts provisions currently in effect under an exemption from legislative review. The Division feels it necessary for these provisions to be legislatively approved, therefore, is resubmitting these rules to be subject to Legislative review. No new administrative expenditures are anticipated.

3. Objectives of These Rules: The objectives of this rule are to provide for the safe hunting and proper management of migratory birds within the boundaries of this State.

4. Explanation of Overall Economic Impact of Proposed Rule.

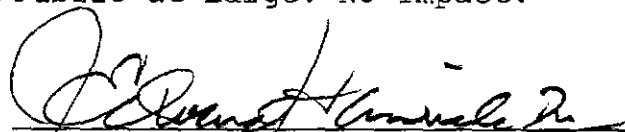
A. Economic Impact on State Government: No Impact.

B. 1. Economic Impact on Political Subdivisions: No Impact.

2. Economic Impact on Specific Industries: No Impact.

3. Economic Impact on Specific Groups of Citizens: No Impact.

C. Economic Impact on Citizens/Public at Large: No Impact.



J. Edward Hamrick III
Director

Date: August 21, 1991

DATE: August 28, 1991

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"

1. Emergency rule was filed on: August 27, 1991
2. Statutory authority for promulgating the emergency rule: West Virginia Code §20-1-7(30)
3. Proposed legislative rule was filed on: August 27, 1991
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 as an exempt regulation under W. Va. Code §29A-1-3(c).
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. See discussion under Item 8.
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 federal regulation and time limit established therein.
Not Applicable
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.
The Division is seeking to divide the migratory bird hunting regulations (47 C.S.R. 12) that had previously been filed as a legislatively exempt regulation. The division seeks to only include those provisions falling under the authority of W. Va. Code §29A-1-3(c) in 47 C.S.R. 12. The remainder of the provisions not under the authority of W. Va. Code §29A-1-3(c) are broken into categories and are being filed as individual regulations that are required to be put through the legislative process. The exempt regulations will

become effective immediately upon filing, however, they will lack the provisions that must be legislatively approved. The Division finds it necessary to promulgate these rules as an emergency to provide regulations for the upcoming 91-92 hunting seasons for the safety and welfare of the public and controlled hunting of wildlife within the State of West Virginia.

EMERGENCY RULE

FILED

SEP 27 PM 1:06

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

SERIES 12A
SPECIAL MIGRATORY BIRD HUNTING REGULATIONS

§47-12A-1. General.

1.1. Scope and Purpose. -- These rule establishes regulations when hunting 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 Section 4 of these regulations.

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

EMERGENCY RULE

§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

EMERGENCY RULE

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
Secretary of State

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Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA

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SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

September 3, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

RULE: Migratory Bird Hunting

DATE FILED AS AN EMERGENCY RULE: August 27, 1991

DECISION NO. 85-91

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.

A handwritten signature in cursive script, reading "Ken Hechler".

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 3, 1991
ADMINISTRATIVE LAW DIVISION

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

--- WILLIAM H. HARRINGTON
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Director, Administrative Law

DONALD R. WILKES
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SHEREE COHEN
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(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION (ERD 85-91)

AGENCY: Division of Natural Resources
RULE: New Rule, Series 12A, Migratory Bird Hunting
FILED AS AN EMERGENCY RULE: August 27, 1991

- par. 1 The Division of Natural Resources (DNR) has filed the above new rule as an 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 forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DNR filed this emergency rule with supporting documents with the Secretary of State September 3, 1991 and with the LRMRC September 3, 1991.

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:

(30) 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:

The Division is seeking to divide the hunting and trapping regulations (47 CSR 11) that had previously been filed on August 13, 1990 as a legislatively exempt regulation. The division seeks to only include those provisions falling under the authority of W. Va. Code §29A-1-3(c) in 47 CSR 11. The remainder of the provisions not under the authority in W. Va. Code §29A-1-39(c) are broken into categories and are being filed as individual regulations that are required to be put through the legislative process. The exempt regulations will become effective immediately upon filing, however, they will lack the provisions that must be legislatively approved. The Division finds it necessary to promulgate these rules as an emergency to provide regulations for the upcoming 91-92

hunting seasons for the safety and welfare of the public and controlled hunting of wildlife within the State of West Virginia.

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). . . "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 85-91 or ERD 85-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Natural Resources, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE Sept. 3, 1991
ADMINISTRATIVE LAW DIVISION