

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**  
Form #7

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1992 SEP -1 PH 3: 22

OFFICE OF THE SECRETARY  
Effective Date

Sept. 4, 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: \_\_\_\_\_

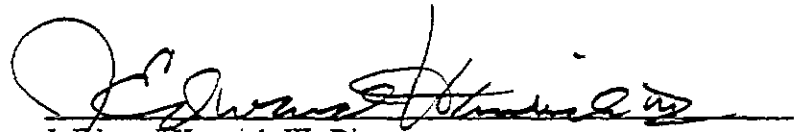
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 13A

TITLE OF RULE BEING FILED AS AN EMERGENCY: Special Waterfowl 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

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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

**Waterfowl Hunting Regulations  
47 C.S.R. 13**

**Background of Problem Rule Currently in Effect**

The existing 47 C.S.R. 13 is a legislative exempt rule which was last placed in effect September 5, 1989. This rule contains the agency's complete Waterfowl Hunting regulations, both exempt and non-exempt provisions.

**Agency Attempt to Correct Improper Filing of Waterfowl Hunting Regulations**

To correct this problem the current 47 C.S.R. 13 is being repealed and replaced by a two exempt rules, 47 C.S.R. 13 and 13B, and the following non-exempt rule 47 C.S.R. 13A. Therefore, to have all the waterfowl hunting regulations in place for the 1992-1993 seasons, it is necessary for 47 C.S.R. 13A to be filed as an emergency rule and for 47 C.S.R. 13 to be repealed and replaced on the date the emergency 47 C.S.R. 13A rule becomes effective.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Special Waterfowl Hunting Regulations, 47 C.S.R. 13A

Type of Rule:  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 waterfowl in West Virginia.

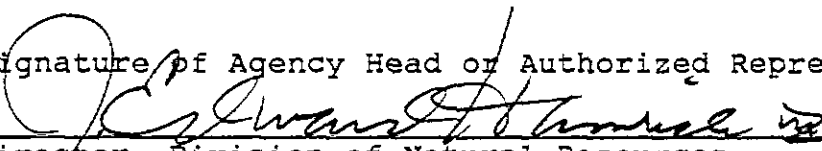
4. Explanation of Overall Economic Impact of Proposed Rule.

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 Waterfowl Hunting Regulations, 47 C.S.R. 13A

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 13 rule containing both exempt and non-exempt provisions must be repealed and replaced. Therefore to have in place for the 92-93 Waterfowl 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 13A  
SPECIAL WATERFOWL HUNTING REGULATIONS .  
(EMERGENCY RULE)

§ 47-13A-1. General.

1.1. Scope and Purpose. -- This regulation establishes provisions that provide for the proper management of waterfowl with respect to the hunting of waterfowl 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 the time periods are prevailing time unless otherwise noted in these regulations. Sunday hunting is illegal.

§ 47-13A-2. Definitions.

2.1. "Aggregate" means the total bag or possession limit of similar kinds of waterfowl.

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 waterfowl 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. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

2.7. "Permanently Disabled in the Lower Extremities" means an individual who is a paraplegic, who is missing both legs, or who has a disability affecting both legs which requires permanent use

of a wheelchair or crutches.

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

2.9. "Waterfowl" means members of the family Anatidae (ducks, geese, mergansers, and swans) and members of the family Rallidae (coots and gallinules) for which open seasons are prescribed in Section 4 of these regulations.

2.10. "Wildlife Management Area" means any public access area, public hunting area, public fishing area, public hunting and fishing area, public shooting ground, or public wildlife management area that is administered, leased, or owned by the State of West Virginia.

2.11. "Zone 1" means the entire State except Zone 2.

2.12. "Zone 2" means the following area:

2.12.1. Beginning at the West Virginia-Maryland boundary line, the eastern boundary of Zone 2 extends south along U.S. Route 220 through Keyser, West Virginia to the intersection with U.S. Route 50 and follows U.S. Route 50 to the intersection with State Route 93. The eastern boundary then follows State Route 93 south to the intersection of State Route 42 and continues south on State Route 42 to Petersburg. At Petersburg, the eastern boundary follows State Route 28 South to Minnehaha Springs and then follows State Route 39 west to U.S. Route 219. The eastern boundary then follows U.S. Route 219 south to the intersection with Interstate 64.

2.12.2. The southern boundary of Zone 2 follows Interstate 64 west to the intersection with U.S. Route 60 then follows U.S. Route 60 west to the intersection with U.S. Route 19.

2.12.3. The western boundary of Zone 2 follows U.S. Route 19 north to the intersection with Interstate 79 and then follows Interstate 79 north to the intersection with U.S. Route 48.

2.12.4. The northern boundary of Zone 2 follows U.S. Route 48 east to the West Virginia-Maryland boundary line.

#### § 47-13A-3. General Waterfowl 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 Waterfowl.

3.2.1. No person may take waterfowl with a trap, snare,

net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10-gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.

3.2.2. No person may take waterfowl 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 waterfowl 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 waterfowl from or with the aid or use of a motor vehicle, other land conveyance, or an aircraft of any kind, except as provided in Section 3.2.4.a of these regulations.

3.2.4.a. A person who is permanently disabled in the lower extremities and who holds a valid Class Q special resident hunting permit may take waterfowl from a stationary motor vehicle provided that he is the only occupant of that vehicle, that the engine of the vehicle is not operating, and that the vehicle is not parked on the right-of-way of any public road or highway.

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

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

3.2.6.a. All live, tame, or captive ducks and geese must have been removed from the hunt area for a period of ten (10) consecutive days prior to hunting and confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such tame birds from the sight of migratory waterfowl.

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

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

3.3.1. The hunter's signature; address; total number of birds involved, by species; and the date on which each bird was killed.

3.4. Field Dressing - No person may completely field dress waterfowl 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.

3.5. Shipment - No person may ship waterfowl unless the package is marked on the outside with the following information:

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

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

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

3.6. Importation - For information regarding the importation of waterfowl 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 waterfowl 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 waterfowl 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 waterfowl belonging to another person.

3.7. Federal Migratory Bird Hunting and Conservation Stamp - Each waterfowl hunter sixteen (16) years of age and over must carry on his person a valid federal Migratory Bird Hunting and Conservation Stamp (i.e., "duck stamp") signed in ink across the face. This stamp is not needed in order to hunt coots or gallinules.

3.8. West Virginia Migratory Waterfowl Conservation Stamp - Each waterfowl hunter sixteen (16) years of age and over, except those persons exempt by statute from the payment of hunting license fees, must carry on his person a valid West Virginia Migratory Waterfowl Conservation Stamp (i.e., a "state duck stamp") signed in

ink across the face. This stamp is not needed in order to hunt coots or gallinules.

3.9. Mandatory Use of Steel Shot - Use of steel shot is mandatory when hunting waterfowl. Only steel shot size "T" or smaller shall be used, or in the hunter's possession, while hunting waterfowl.

3.10. Concurrent Waterfowl Hunting - Concurrent hunting of waterfowl on major rivers, lakes, and reservoirs is legal during the bucks-only deer season if the season for such waterfowl is also open.



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(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

September 4, 1992

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

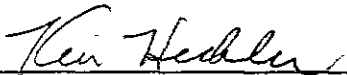
AGENCY: Natural Resources

RULE: New Rules, Series 13A, Special Waterfowl Hunting Regulations

DATE FILED AS AN EMERGENCY RULE: September 1, 1992

DECISION NO. 21-92

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 Sept. 4, 1992  
ADMINISTRATIVE LAW DIVISION

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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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

#### DECISION

#### EMERGENCY RULE DECISION (ERD 21-92)

AGENCY: Natural Resources  
RULE: New Rules, Series 13A, Special Waterfowl Hunting Regulations  
FILED AS AN EMERGENCY RULE: September 1, 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 September 1, 1992 and with the LRMRC September 1, 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 21-92 or ERD 21-92 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  
Secretary of State

Entered \_\_\_\_\_

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE \_\_\_\_\_  
ADMINISTRATIVE LAW DIVISION

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Sept. 4, 1992  
ADMINISTRATIVE LAW DIVISION