

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

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1991 OCT 15 PM 1:53

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #7

Effective Date

*Oct. 16, 1991/jc*

**NOTICE OF AN EMERGENCY RULE**

Department of Commerce, Labor  
and Environmental Resources,

AGENCY: Division of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: West Virginia Code §20-1-7(30)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

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 SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached

Use Additional Sheets If Necessary.

*John Edward Hechler*  
Signature

DATE: October 7, 1991

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"

1. Emergency rule was filed on: October 15, 1991
2. Statutory authority for promulgating the emergency rule: West Virginia Code §20-1-7(30)
3. Proposed legislative rule was filed on: October 15, 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 waterfowl hunting regulations (47 C.S.R. 13) 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. 13. 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.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: "Special Waterfowl Hunting Regulations"

Type of Rule: XX Legislative      Interpretive      Procedural

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		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

NO CHANGE

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 waterfowl 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.

PREAMBLE TO A PROPOSED RULE CONCERNING  
SPECIAL WATERFOWL HUNTING REGULATIONS

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

REGULATIONS: Title 47, Series 13A, "Special Waterfowl Hunting Regulations"

AUTHORITY: West Virginia Code §20-1-7(30).

ACTION: Filing an Emergency Rule

SUMMARY: These regulations implement provisions currently incorporated into exempted regulations. The Division feels it necessary to seek legislative approval for provisions not exempted under West Virginia Code §29A-1-3(c).

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

SERIES 13A  
SPECIAL WATERFOWL HUNTING REGULATIONS

§47-13A-1. General.

1.1. Scope and Purpose. -- These regulations establish 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 Title 47, Series 13, Section 4, Waterfowl Hunting 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. Steel shot must be used in the hunting of waterfowl statewide. It shall be illegal use or have in one's possession lead shot 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

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

October 16, 1991

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

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

AGENCY: Division of Natural Resources

RULE: Series 13A, Special Waterfowl Hunting Regulations

DATE FILED AS AN EMERGENCY RULE: October 15, 1991

#### DECISION NO. 89-91

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 that reads "Ken Hechler".

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KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Oct. 16, 1991  
ADMINISTRATIVE LAW DIVISION

KEN HECHLER  
Secretary of State

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## STATE OF WEST VIRGINIA

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#### DECISION ... EMERGENCY RULE DECISION (ERD 89-91)

AGENCY: Division of Natural Resources  
RULE: Series 13A, Special Waterfowl Hunting Regs  
FILED AS AN EMERGENCY RULE: October 15, 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 October 15, 1991 and with the LRMRC October 15, 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.

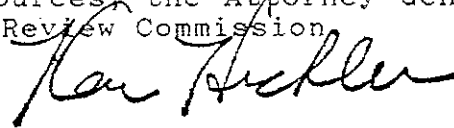
par. 12 The facts and circumstances as presented by the DNR are as follows:

The Division is seeking to divide waterfowl hunting regulations (47 C.S.R. 13) 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. 13. 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.

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). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 89-91 or ERD 89-91 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.



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KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Oct. 16, 1991  
ADMINISTRATIVE LAW DIVISION

Entered \_\_\_\_\_