

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

Oct. 16, 1991

NOTICE OF AN EMERGENCY RULE

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

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

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO XX

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 14A

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

"Special Regulations for Waterfowl Hunting Areas"

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.

Signature

FISCAL NOTE FOR PROPOSED RULES

Rule Title: "Special Waterfowl Hunting Areas"

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: The 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 controlled hunting areas for the proper management of waterfowl in certain areas 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.

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 Regulations for Waterfowl Hunting
Areas"

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

PREAMBLE TO A PROPOSED RULE CONCERNING
SPECIAL WATERFOWL HUNTING AREAS

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

REGULATIONS: Title 47, Series 14A, "Special Waterfowl Hunting Areas"

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).

regulations (47 C.S.R. 13) that had previously been filed as a legislatively exempt regulation. The division seeks to only include those provisions concerning Waterfowl hunting areas falling under the authority of W. Va. Code §29A-1-3(c) in 47 C.S.R. 14. 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

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

SERIES 14A
SPECIAL REGULATIONS FOR WATERFOWL HUNTING AREAS

§47-14A-1. General.

1.1. Scope and Purpose. -- These regulations establish provisions for hunting waterfowl in specified areas of this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

§47-14A-2. Definitions.

2.1. All terms shall have the meaning prescribed in Title 47 Series 13A "Special Waterfowl Hunting Regulations" (47 C.S.R. 13A).

§47-14A-3. McClintic Wildlife Management Area.

3.1. The provisions of Title 47 Series 13 and 13A are in effect at the McClintic Wildlife Management Area, except as provided in Section 3.2 of these regulations.

3.2. All hunters in the controlled waterfowl hunting area during the early waterfowl season must obey the following rules:

3.2.1. Hunters with controlled area hunting permits must report to the McClintic WMA Office prior to six o'clock antemeridian (6:00 a.m.) on the morning of the hunt. Failure to report by that time forfeits the hunter's reservation and the reserved blind will then be filled on a first-come, first-served basis.

3.2.2. Hunters must present the day's bag for inspection and return their controlled area hunting permits to the McClintic WMA Office prior to one o'clock postmeridian (1:00 p.m.) on the day of the hunt.

3.2.3. Hunters in the controlled area who violate the provisions of these regulations or conduct themselves in an unsportsmanlike manner will not receive any further permits.

EMERGENCY RULE

3.2.4. Hunters in the controlled area are restricted to fifteen (15) shells per hunter per day per hunt and must have a valid controlled hunting permit in possession while hunting in the controlled area.

3.2.5. Guns must be cased and unloaded except when in the blind area.

3.2.6. Alcoholic beverages are prohibited in the blind area.

3.2.7. Dogs must be kept on a leash except when in the blind area.

3.2.8. Hunters may not travel more than seventy-five (75) yards from the blind in pursuit of cripples.

3.3. The following rules concerning the issuance of hunting permits are in effect at McClintic Wildlife Management Area.

3.3.1. Applications for controlled area hunting permits must be received at the DNR Point Pleasant Office, Route 1, Box 484, Point Pleasant, West Virginia 25550, by the date announced annually by the director.

3.3.2. Letters of notification granting controlled area hunting permits will be sent to successful applicants.

3.3.3. Controlled area hunting permits are not transferable.

§47-14A-4. Green Bottom Wildlife Management Area.

4.1. The provisions of Title 47 Series 13 and 13A are in effect at the Green Bottom Wildlife Management Area, except as provided in Sections 4.1.1. through 4.1.3. of these regulations.

4.1.1. Waterfowl hunting is by permit only.

4.1.2. A permit must be obtained at the Green Bottom Wildlife Management Area Headquarters prior to each day's hunt.

4.1.3. Permits will be issued between the hours of five o'clock and seven o'clock antemeridian (5:00 a.m. through 7:00 a.m.) during the open waterfowl seasons.

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

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)

October 16, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

RULE: Series 14A, Special Regulations for Waterfowl Hunting Areas

DATE FILED AS AN EMERGENCY RULE: October 15, 1991

DECISION NO. 90-91

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".

KEN HECHLER
Secretary of State

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

KEN HECHLER
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DECISION

EMERGENCY RULE DECISION (ERD 90-91)

AGENCY: Division of Natural Resources
RULE: Series 14A, Special Regulations for Waterfowl
Hunting Areas
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 90-91 or ERD 90-91 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
THIS DATE Oct. 16, 1991
ADMINISTRATIVE LAW DIVISION