

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

Form #4

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5260
May 4 2 26 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: §§20-7-22 & 20-7-23

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: SPECIAL MOTORBOATING REGULATIONS

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


JOHN B. RADER, DIRECTOR

52.60

**TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES**

FILED

MAY 4 2 25 PM '99

OFFICE OF THE CLERK OF THE VIRGINIA
SECRETARY OF STATE

**SERIES 27
SPECIAL MOTORBOATING REGULATIONS**

§58-27-1. General.

- 1.1. Scope and Purpose. -- This rule establishes no wake zones for certain waters of this State.
- 1.2. Authority. -- W. Va. Code §§20-7-22 and 20-7-23.
- 1.3. Filing Date. —
- 1.4. Effective Date. --

§58-27-2. Definitions.

- 2.1. "Director" means the Director of the West Virginia Division of Natural Resources.
- 2.2. "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the United States Bureau of Customs or any successor federal agency.
- 2.3. "No Wake Speed Zone" means an area restricting motorboats from attaining a speed which would produce a wake that would noticeably disturb other motorboats or other vessels, docks, piers, or any other shoreline facility within the designated area.

§58-27-3. No Wake Speed Zones.

- 3.1. The following areas are designated as no wake speed zones:

3.1.1. The back channel of Middle Island on the Ohio River beginning at Ohio River MP 155.1 and extending four hundred and sixty-eight feet (468 ft.) upstream to the St. Marys city limit. The area is situated entirely within the boundaries of Pleasants County. The City of St. Marys, West Virginia, is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. ~~posting of signs designating the zone.~~ Signs shall meet the approval of the director. Any buoys or other structures placed in the water shall conform to U. S. Coast Guard standards for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U.S. Army Corps of Engineers; and

3.1.2. Beginning at the mouth of Fish Creek at it's confluence with the Ohio River and extending upstream approximately 3 miles and ending at the first riffle or obstruction. This area is situated entirely within the boundaries of Marshall County. This zone is seasonal and is in effect from March 1 through November 1, each year. The Marshall County Commission is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. No Wake Zone signs shall be erected at the mouth of Fish Creek and at all locations where watercraft may be launched. The signs shall describe the extent of the no wake zone and shall meet the approval of the Director. Any buoys or other structures placed in Fish Creek shall conform to U. S. Coast Guard standards for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U. S. Army Corps of Engineers.



FILED

APR 20 9 50 AM '99

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

April 18, 1999

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lt. Colonel W.B. Daniel
Division of Natural Resources
Building 3, Room 669
Capitol Complex

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Special Motor Boating Regulations, 58CSR27**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Special Motor Boating Regulations, 58CSR27

PERTINENT DATES

Filed for public comment: July 31, 1998
Public comment period ended: August 31, 1998
Filed following public comment period: September 8, 1998
Filed LRMRC: September 8, 1998
Filed as emergency:

Fiscal Impact: None

OFFICE OF LEGISLATIVE SERVICES
SEP 11 3 50 PM '99
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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Subdivision 3.1.2 is new. It makes three miles of Fish Creek a no wake zone. The area is situated entirely in Marshal County, and the zone is seasonal from March 1 through November 1 each year.

Subsection 4.2 is new. It requires the Marshal County Commission to purchase, place and maintain the no wake zone buoys and informational signs. The signs must meet the approval of the Director, and any buoys or other structures placed in fish Creek must conform to U.S. Coastguard standards, and if they interfere with commercial river traffic, must be approved by the U.S. Army Corps of Engineers.

AUTHORITY

Statutory authority: W.Va. Code, §20-7-23, which provides, in part, as follows:

§20-7-23.

...(c) The director is hereby authorized to promulgate special rules with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.