

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Boating Regulations

1988 JUL 22 PM 1:09

Type of Rule: X Legislative Interpretive Procedural
SECRETARY OF STATE

Agency: West Virginia Department of Natural Resources

Address: 1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$

Personal Services

Current Expense

Repairs and Alterations NO CHANGE

Equipment

Other

2. Explanation of Above Estimates:

This proposal replaces similar, existing Department regulations; therefore, no new administrative expenditures are anticipated.


3. Objectives of These Rules:

This proposal establishes regulations to govern the operation of motorboats and other vessels on the waters of this State.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government: NO IMPACT
- B. Economic Impact on Political Subdivisions: NO IMPACT
 Economic Impact on Specific Industries: NO IMPACT
 Economic Impact on Specific Groups of Citizens: NO IMPACT
- C. Economic Impact on Citizens/Public at Large: NO IMPACT

Date:



 Ronald R. Potesta
 Director

PREAMBLE TO A PROPOSED LEGISLATIVE RULE
CONCERNING WEST VIRGINIA BOATING REGULATIONS

FILED

1988 JUL 22 PM 1:09

DEPARTMENT OF NATURAL RESOURCES
SECRETARY OF STATE

STATE AGENCY: Department of Natural Resources

REGULATIONS: Title 47, Series 25, "Boating Regulations"

AUTHORITY: W. Va. Code §§20-1-7(30), 20-7-13, and 20-7-22

ACTION: Proposed Rule; Notice of Hearing and Comment Period

DATES: A public hearing on this proposal will be held on Monday, August 15, 1988 at 1:30 p.m. in the Director's Conference Room 674, Building 3, State Capitol Complex, Charleston; written comments will be received by the Department until 4:30 p.m. on that day.

CONTACT: For further information regarding this filing, please contact Mr. Jeffrey E. Herrold, WV Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305, telephone (304) 348-2761.

SUMMARY: The Department is proposing a new rule concerning the regulation of motorboats and other vessels on the waters of this State. This proposal would repeal and replace existing regulations on the same subject (Series 25 and 26). The provisions previously found in Series 26 have been combined with Series 25 to produce a shorter, more understandable set of regulations. Highlights of today's proposal include:

1. Equipment requirements for Class 3 motorboats (vessels of forty or more feet in length) mandated under federal regulations promulgated by the U.S. Coast Guard had not been included in the previous State regulations. Today's proposal corrects these omissions.
2. Racing shells and rowing sculls have been exempted from requirements for vessel lights and personal flotation devices.
3. Requirements concerning fire extinguishers, signalling devices, and ventilation systems have been rewritten to assure clarity and conformity with federal regulations.
4. Current prohibitions related to overloading and overpowering have been expanded in detail in order to address the recent increase in boating accidents caused by these factors.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 25
BOATING REGULATIONS

FILED
1988 JUL 22 PM 1:09
CLERK OF THE HOUSE
LEGISLATIVE STATE

§47-25-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes regulations to govern the operation of motorboats and other vessels on the waters of this State.

1.2. Authority. -- W. Va. Code §§20-1-7(30), 20-7-13, and 20-7-22.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces 47 C.S.R. 25 "Boating Regulations" that was filed and became effective on April 1, 1988 and 47 C.S.R. 26 "Special Rules and Regulations Governing Boating on U.S. Government-Owned Reservoir Areas in West Virginia" that was filed on December 30, 1982 and became effective on January 1, 1983.

§47-25-2. Definitions.

2.1. "Coast Guard Approved" means equipment which has been approved by the Commandant of the United States Coast Guard after such equipment has been determined to be in compliance with Coast Guard specifications and regulations relating to the materials, construction, and performance of equipment. Such equipment must bear the approval stamp of the United States Coast Guard.

2.2. "Department" means the West Virginia Department of Natural Resources.

2.3. "Fixed System" means a Coast Guard approved fixed fire extinguisher system in a vessel's engine compartment.

2.4. "Government-Owned Reservoir" means any natural or artificial impoundment, lake, pond, or reservoir that is partially or wholly within the territorial limits of West Virginia and is owned or administered by the federal government or by the State or any political subdivision thereof.

2.5. "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not such motor is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the United States Bureau of Customs or any federal agency that is the successor thereto.

2.6. "Open Boat" means a vessel on which all engine compartments, fuel tank compartments, and other spaces to which explosive or flammable gases and vapors may flow are open to the atmosphere and so arranged as to prevent the entrapment of such gases and vapors within the vessel.

2.7. "Open to the Atmosphere" means a compartment which has at least fifteen (15) square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume.

2.8. "Operate" means to navigate or otherwise use a vessel.

2.9. "Person" includes the plural "persons" and means an individual, partnership, firm, corporation, association, or other legal entity.

2.10. "Racing Shell" or "Rowing Scull" means a manually-propelled vessel, recognized by a national or international racing association for use in competitive racing, in which all occupants except a coxswain row, scull, or paddle and which is designed and equipped solely for competitive racing.

2.11. "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

2.12. "Visible" means visible on a dark night with a clear atmosphere.

2.13. "Waters of this State" means any public waters within the territorial limits of this State.

§47-25-3. Classification Of Vessels.

3.1. Motorboats and other vessels shall be divided into four classes as follows:

3.1.1. Class A includes vessels of less than sixteen (16) feet in length.

3.1.2. Class 1 includes vessels of sixteen (16) feet or over and less than twenty-six (26) feet in length.

3.1.3. Class 2 includes vessels of twenty-six (26) feet or over and less than forty (40) feet in length.

3.1.4. Class 3 includes vessels of forty (40) feet or over in length.

§47-25-4. Required Equipment.

4.1. Lights.

4.1.1. From sunset to sunrise and during times of low visibility, a vessel must carry and exhibit the lights prescribed by Section 4.1 of these regulations when the vessel is under way. During such times, no other lights which can be mistaken for those prescribed may be exhibited.

4.1.2. Every white light prescribed by Section 4.1 of these regulations must be of such character as to be visible at a distance of at least two (2) miles. Every colored light prescribed by Section 4.1 of these regulations must be of such character as to be visible at a distance of at least one (1) mile.

4.1.3. Except as provided in Section 4.1.4 of these regulations, motorboats of Class A must carry, ready at hand, a lantern or electric torch showing a white light which must be exhibited in sufficient time to avert a collision.

4.1.4. Motorboats of Class A must be equipped with the lights required for motorboats of Class 1 under Section 4.1.5 of these regulations whenever operated on one of the bodies of water designated in 47 C.S.R. 25B.

4.1.5. Motorboats of Class 1 must be equipped with the following lights:

4.1.5.a. A bright white light aft to show all around the horizon.

4.1.5.b. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port and so fixed as to throw the lights 10 points on each side of the vessel (i.e., from directly ahead to 2 points abaft the beam on either side).

4.1.6. Motorboats of Class 2 or Class 3 must be equipped with the following lights:

4.1.6.a. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light 10 points on each side of the vessel (i.e., from directly ahead to 2 points abaft the beam on either side).

4.1.6.b. A bright white light aft to show all around the horizon and higher than the white light forward.

4.1.6.c. On the starboard side, a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from directly ahead to 2 points abaft the beam on the starboard side. On the port side, a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from directly ahead to 2 points abaft the beam on the port side. These side lights must be fitted with inboard screens of sufficient height to prevent the lights from being seen across the bow.

4.1.7. A vessel propelled by sail and machinery must exhibit the lights required for a motorboat of the same class propelled by machinery alone.

4.1.8. A vessel propelled by sail alone must carry, ready at hand, a lantern or electric torch showing a white light which must be exhibited in sufficient time to avert a collision.

4.1.9. When propelled by sail alone, a vessel must exhibit the white light aft as prescribed in Section 4.1.5.a of these regulations and either the combined lantern as prescribed in Section 4.1.5.b of these regulations or the colored side lights as prescribed in Section 4.1.6 of these regulations.

4.1.10. A vessel propelled manually must carry, ready at hand, a lantern or electric torch showing a white light which must be exhibited in sufficient time to avert a collision.

4.1.10.a. Racing shells and rowing sculls are exempt from the provisions of Section 4.1.10 of these regulations.

4.1.11. Any vessel may carry and exhibit the lights required by 33 U.S.C. §§1051-1094 (Regulations for Preventing Collisions at Sea) in lieu of the lights required by Section 4.1 of these regulations.

4.2. Personal Flotation Devices.

4.2.1. Motorboats and other vessels of Class A must carry a Type I, Type II, Type III, or Type IV personal flotation device for each person on board or being towed.

4.2.2. Motorboats and other vessels of Class 1, Class 2, or Class 3 must carry a Type I, Type II, or Type III personal flotation device for each person on board or being towed and at least one Type IV personal flotation device.

4.2.3. All personal flotation devices prescribed by Section 4.2 of these regulations must be Coast Guard approved and must be maintained in a good and serviceable condition. Type I, II, and III personal flotation devices must be kept readily available for use at all times; Type IV personal flotation devices must be kept immediately available for use at all times.

4.2.4. Racing shells and rowing sculls are exempt from the provisions of Sections 4.2.1 and 4.2.2 of these regulations.

4.3. Fire Extinguishers.

4.3.1. Motorboats with no fixed system.

4.3.1.a. Motorboats of Class A or Class 1 must carry at least one (1) Type B-I or Type B-II fire extinguisher unless exempted from this requirement under Section 4.3.1.d of these regulations.

4.3.1.b. Motorboats of Class 2 must carry either two (2) Type B-I fire extinguishers or one (1) Type B-II fire extinguisher.

4.3.1.c. Motorboats of Class 3 must carry either three (3) Type B-I fire extinguishers or one (1) Type B-I and one (1) Type B-II fire extinguishers.

4.3.1.d. Motorboats of Class A or Class 1 need not carry a fire extinguisher if the following conditions are met:

4.3.1.d.A. The construction of the motorboat is such that flammable or explosive vapors cannot be trapped within;

4.3.1.d.B. The motorboat has no enclosed engine compartments; and

4.3.1.d.C. The motorboat has no permanently-installed fuel tanks.

4.3.2. Motorboats with a fixed system.

4.3.2.a. Motorboats of Class 2 must carry at least one (1) Type B-I fire extinguisher.

4.3.2.b. Motorboats of Class 3 must carry either two (2) Type B-I fire extinguishers or one (1) Type B-II fire extinguisher.

4.3.3. All fire extinguishers prescribed by Section 4.3 of these regulations must be Coast Guard approved, must be fully charged, must be maintained in a good and serviceable condition, and must be readily available for use at all times.

4.4. Signalling Devices.

4.4.1. All vessels of Class A or Class 1 must carry a mouth whistle or a power-operated horn or whistle capable of producing a blast of at least two (2) seconds in duration which is audible for a distance of at least one-half (1/2) mile.

4.4.2. All vessels of Class 2 must carry a hand-operated or power-operated horn or whistle capable of producing a blast of at least two (2) seconds in duration which is audible for a distance of at least one (1) mile.

4.4.3. All vessels of Class 3 must carry a power-operated horn or whistle capable of producing a blast of at least two (2) seconds in duration which is audible for a distance of at least one (1) mile.

4.4.4. All vessels of Class 2 or Class 3 must carry a bell which, when struck, produces a clear tone.

4.5. Ventilation Systems.

4.5.1. All motorboats, except open boats, which use gasoline or any other fuel which has a flash point of 110 degrees Fahrenheit or less must have at least two (2) ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment.

4.5.1.a. At least one (1) exhaust duct must be installed that extends from the lower portion of the bilge to the open atmosphere.

4.5.1.b. At least one (1) intake duct must be installed that extends from the open atmosphere to a point that is either at least midway to the bilge or at least below the level of the carburetor air intake.

4.5.1.c. Cowls must be located and trimmed for maximum effectiveness in preventing displaced fumes from being recirculated.

4.5.2. The ventilation requirements of Section 4.5.1 of these regulations do not apply to a fuel tank compartment which:

4.5.2.a. Contains only permanently-installed fuel tanks;

4.5.2.b. Vents to the open atmosphere; and

4.5.2.c. Contains only electrical components which are ignition-protected in accordance with 33 C.F.R. §183.410(a).

4.5.3. All vessels built after July 31, 1980, except open boats, which have a gasoline engine for electrical generation, mechanical power, or propulsion must have a ventilation system that meets the requirements of Subpart K of 33 C.F.R. Part 183.

4.6. Flame Arrestors.

4.6.1. The carburetors of motorboats of Class A, Class 1, Class 2, or Class 3 which have a gasoline engine, except outboard motors, must be fitted with a Coast Guard approved device for arresting backfire flames.

§47-25-5. Right-Of-Way.

5.1. When two vessels are approaching each other head on or nearly so as to involve a risk of collision with each other, each vessel must bear to starboard and pass the other vessel on its port side.

5.2. When vessels approach each other obliquely or at right angles, the vessel approaching from the starboard has the right-of-way.

5.3. One vessel may overtake another on either side but must grant the right-of-way to the overtaken vessel.

5.3.1. Before passing another vessel to starboard, one (1) blast of one (1) second in duration must be sounded by whistle or horn.

5.3.2. Before passing another vessel to port, two (2) blasts of one (1) second in duration must be sounded by whistle or horn.

5.4. When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat must yield the right-of-way to the sailboat in all cases.

5.5. All vessels must be operated in conformance with the inland navigation rules of the United State Coast Guard (Commandant Instruction M16672.2A).

§47-25-6. Prohibited Operations.

6.1. No person may allow a motorboat owned by him or under his control to be operated upon the waters of this State by a person under twelve (12) years of age unless such person is under the direct visual and audible supervision of a parent, guardian, or other person over the age of sixteen (16) years.

6.2. No person may operate or give permission for the operation of a vessel which is not equipped as required under the provisions of Section 4 of these regulations.

6.3. No person may operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

6.4. No person may operate a vessel while intoxicated or while under the influence of any narcotic drug, barbituate, or marijuana.

6.5. No person may operate or knowingly permit another person to operate a vessel if such person, by reason of physical or mental disability, is incapable of operating such vessel in a safe manner under all the prevailing circumstances.

6.6. No person may operate or knowingly permit another person to operate a vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. This provision does not apply to the operator of a vessel competing in a regatta which is sanctioned under the provisions of W. Va. Code §20-7-20 who is attempting to attain high speeds on a marked race course.

6.7. No person may make a reckless approach to or passage by a dock or ramp, a moored or anchored vessel, or a marked swimming area.

6.8. No person may operate a motorboat at a speed greater than the speed limits established on the waters of a government-owned reservoir under 47 C.S.R. 25B.

§47-25-7. Restricted Areas.

7.1. No person may anchor a vessel in a position that obstructs a passageway ordinarily used by other vessels.

7.2. No person may anchor or tie a vessel to any type of navigation aid or buoy.

7.3. No person may operate a vessel within twenty (20) feet of a person engaged in fishing without first obtaining permission from that fisherman.

7.4. No person may operate a vessel within twenty (20) feet of the exterior boundary of a water area which is clearly marked by buoys as a swimming area.

7.4.1. Swimming areas must be marked with yellow and red-colored buoys by the owners of such areas.

7.6. No person may operate a motorboat at a speed greater than idling speed on established and marked no-wake zones on a government-owned reservoir.

§47-25-8. Overloading And Overpowering.

8.1. No vessel may be loaded with passengers or cargo beyond its safe carrying capacity.

8.1.1. The maximum persons capacity marked on a vessel's maximum capacities plate must not be exceeded.

8.1.2. The maximum weight capacity marked on a vessel's maximum capacities plate must not be exceeded.

8.1.3. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer, the owner must demonstrate that his vessel conforms to the safe loading requirements of Subpart C of 33 C.F.R. Part 183.

8.2. No vessel may operated beyond its safe powering capacity.

8.2.1. The maximum horsepower capacity marked on a vessel's maximum capacities plate must not be exceeded.

8.2.2. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer,

the owner must demonstrate that his vessel conforms to the safe powering requirements of Subpart D of 33 C.F.R. Part 183.

§47-25-9. Water Skis And Surfboards.

9.1. No person may operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon, to collide with or strike against any object or person.

9.2. No person may manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

9.3. No person may manipulate any water skis, surfboard, or similar device while intoxicated or while under the influence of any narcotic drug, barbituate, or marijuana.

9.4. No person may operate a vessel towing a person on water skis, surfboarding, or similar device, nor may any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one (1) hour after sunset to one (1) hour before sunrise.

9.5. No person may operate a vessel towing a person on water skis, surfboard, or similar device unless:

9.5.1. A person other than the operator is on board such vessel in a position to observe the progress of the person being towed; or

9.5.2. Such vessel is equipped with a wide-angle rearview mirror mounted in a manner that permits the operator to observe the progress of the person being towed.

9.6. The provisions of Sections 9.4 and 9.5 of these regulations do not apply to a performer in a professional exhibition or to a person engaged in an activity authorized under the provisions of W. Va. Code §20-7-20.

9.7. No person may operate a vessel on a government-owned reservoir while towing a person on water skis, surfboard, or similar device nor may any person engage in water skiing, surfboarding, or similar activity on such reservoir except in the unlimited speed zone.

9.8. Except as provided in Section 9.8.1 of these regulations, a person towed by a vessel must wear a Coast Guard approved Type I or Type II personal flotation device.

9.8.1. A person engaged in barefoot waterskiing may elect, at his own risk, to wear a non-Coast Guard approved barefoot wetsuit designed specifically for such activity.

§47-25-10. Accident Reports.

10.1. It is the duty of the operator of a vessel involved in a collision, accident, or other casualty -- so far as he can do so without serious danger to his own vessel, crew, and passengers -- to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and necessary in order to save them from or minimize any danger caused by the incident.

10.2. It is the duty of the operator of a vessel involved in a collision, accident, or other casualty to give his name, address, and identification of his vessel in writing to any person who was injured during the incident and to the owner of any property damaged by the incident.

10.3. The operator of any vessel involved in a collision, accident, or other casualty which results in death or injury to a person or damage to property in excess of one hundred dollars (\$100) must file a full description of the incident with the Department by completion, in triplicate, of Department of Natural Resources Form MB-3.

10.3.1. An accident report in a case involving a loss of life must be submitted to the Department within forty-eight (48) hours of the incident.

10.3.2. An accident report in a case involving an injury or property damage must be submitted to the Department within five (5) days of the incident.

10.4. An accident report must be submitted in person or by mail to the Department of Natural Resources, Motorboat Safety Section, 1800 Washington Street, East, Charleston, West Virginia 25305.

§47-25-11. Boating on Government-Owned Reservoirs.

11.1. Special regulations to be observed in the operation of motorboats and other vessels upon, over, or through the waters of a particular government-owned reservoir are found in 47 C.S.R. 25B.

11.2. No motorboat or other vessel may be placed upon or operated upon a government-owned reservoir for a fee or profit, either as a direct charge to a second party or as an incident to other services provided by the second party, except as specifically authorized by lease, license, or concession contract with the government agency which manages that reservoir.

11.3. No motorboat or other vessel containing a sink, toilet, or sanitary system may be launched and operated upon a government-owned reservoir unless such sink, toilet, or sanitary system has been removed, sealed, or made to drain into a tank which can be carried or pumped ashore into a receptacle for disposal away from the lands and waters of the reservoir.

11.4. A motorboat or other vessel, when not in actual use at a government-owned reservoir, must be:

11.4.1. Removed from the reservoir;

11.4.2. Securely moored at an authorized dock or boathouse where supervision by the owner or his representative is provided on a twenty-four hour basis; or

11.4.3. Placed in the care of a marina concessionaire, state or local managing agency, or other party authorized to care for floating equipment on a twenty-four hour basis.

11.5. No motorboat or other vessel may be placed upon a government-owned reservoir for use as a dwelling of either permanent or temporary nature.

11.6. A barge, floating facility, motorboat, or other vessel may be moored only in locations designated by the government agency which manages the reservoir. All floating or stationary mooring facilities must be constructed in accordance with plans approved by the managing government agency.

11.7. Abandonment of personal property on the land or waters of a government-owned reservoir is prohibited.

11.8. Gasoline, oil, and other inflammable or combustible liquids may not be stored upon or about a government-owned reservoir or the shores thereof without written permission from the managing government agency.

11.9. Private notices and advertisements may not be posted, distributed, or displayed at a government-owned

reservoir, except as the managing government agency may deem necessary for the convenience and guidance of the public using the area for recreational purposes.

11.10. No person may engage in or solicit any business at a government-owned reservoir unless such activities are permitted under the terms of a lease, license, or concession contract with the government agency which manages that reservoir.

§47-25-12. Special Requirements for Motorboats Which Carry Passengers for Hire.

12.1. Motorboats which carry passengers for hire must be provisioned with a Type I personal flotation device for each person carried. Such motorboats must also be provisioned with an additional number of Type I personal flotation devices suitable for children equal to at least ten (10%) percent of the maximum number of persons carried, unless the service is such that children are never carried.

12.1.1. All personal floatation devices prescribed by Section 12.1 of these regulations must be Coast Guard approved, must be maintained in a good and serviceable condition, and must be readily available for use at all times.

12.2. Motorboats while carrying passengers for hire must be operated and navigated by a person duly licensed by the United States Coast Guard. This provision does not apply to outfitters and guides licensed under W. Va. Code §§20-2-23a or 20-2-26.

12.3. Motorboats carrying more than six (6) passengers must be inspected and certified by the United States Coast Guard.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 25
BOATING REGULATIONS

§47-25-1. General.

1.1. Scope. -- The purpose of these legislative rules is to establish regulations to govern the operation of motorboats and other vessels on the waters of this State.

1.2. Authority. -- West Virginia Code §§20-1-7(30) and 20-7-22.

1.3. Filing Date. -- April 1, 1988.

1.4. Effective Date. -- April 1, 1988.

§47-25-2. Definitions.

2.1. "Coast Guard Approved" means equipment which has been approved by the Commandant of the United States Coast Guard after it has been determined to be in compliance with the various Coast Guard specifications and regulations relating to the construction and performance of such equipment. Names or manufacturers of approved equipment and approval numbers assigned to them for various types of equipment are contained in Coast Guard Booklet CG-190, Equipment Lists, which is published approximately once each year.

2.2. "Department" means the West Virginia Department of Natural Resources.

2.3. "Director" means the director of the West Virginia Department of Natural Resources.

2.4. "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel-propelled or drive motor, whether or not such motor is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.

2.5. "Operate" means to navigate or otherwise use a motorboat or vessel.

2.6. "Owner" means a person, other than a lien holder,

having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

2.7. "Person" means an individual, partnership, firm, corporation, association, or other entity.

2.8. "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

2.9. "Waters of this State" means any public waters within territorial limits of this State and includes that portion of the Ohio River which flows along the boundary of this State.

§47-25-3. Persons Subject To These Regulations.

3.1. All persons operating a vessel on the waters of this State and all persons classified as owners within the meaning of Section 2.6 of these regulations are subject to the provisions of these regulations.

§47-25-4. Classification Of Vessels.

4.1. Motorboats and other vessels subject to the provisions of these regulations shall be divided into four classes as follows:

4.1.1. Class A. -- Less than sixteen (16) feet in length, regardless of horsepower of motor or machinery.

4.1.2. Class 1. -- Sixteen (16) feet or over and less than twenty-six (26) feet in length, regardless of horsepower of motor or machinery.

4.1.3. Class 2. -- Twenty-six (26) feet or over and less than forty (40) feet in length, regardless of horsepower of motor or machinery.

4.1.4. Class 3. -- Forty (40) feet or over, regardless of horsepower of motor or machinery.

§47-25-5. Required Equipment.

5.1. General. No person shall operate or give permission for the operation of a vessel which is not equipped as required under the provisions of Section 5 of

these regulations.

5.2. Lights.

5.2.1. Every vessel in all weathers from sunset to sunrise shall carry and exhibit the following lights when under way and, during such time, no other lights which may be mistaken for those prescribed shall be exhibited.

5.2.2. Every motorboat or other vessel propelled by machinery of Class A or Class 1 shall carry the following lights:

5.2.2.a. A bright light aft to show all around the horizon.

5.2.2.b. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two (2) points abaft the beam of their respective sides.

5.2.3. Every motorboat or other vessel propelled by machinery of Class 2 or Class 3 shall carry the following lights:

5.2.3.a. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty (20) points of the compass, so fixed as to throw the lights ten (10) points on each side of the vessel; namely, from right ahead to two (2) points abaft the beam on either side.

5.2.3.b. A bright light aft to show all around the horizon and higher than the white light forward.

5.2.3.c. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

5.2.4. Motorboats or other vessels of Classes A

and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, as prescribed in Section 5.2.2.b of these regulations. Motorboats of Classes 2 and 3 when so propelled, shall carry the colored side lights, suitably screened, but not the white lights, as prescribed in Section 5.2.3.c of these regulations. Motorboats of all classes, when so propelled, shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

5.2.5. Every white light prescribed by Section 5 of these regulations shall be of such character as to be visible at a distance of at least two (2) miles. Every colored light prescribed by Section 5 of these regulations shall be of such character as to be visible at a distance of at least one (1) mile. The term "visible" shall mean visible on a dark night with clear atmosphere.

5.2.6. Every vessels when propelled by sail and machinery shall carry the lights required under Section 5 of these regulations for a motorboat propelled by machinery only.

5.2.7. Any vessel may carry and exhibit the lights required by the Federal Regulations for Preventing Collisions at Sea, one thousand nine hundred forty-eight, (1948) Federal Act of October eleven, one thousand, nine hundred fifty-one, (October 11, 1951), 33 U.S.C. §143-147(d), as amended, in lieu of the lights required by Section 5 of these regulations.

5.2.8. Manually propelled vessels shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient time to prevent collision.

5.3. Personal Flotation Devices.

5.3.1. Motorboats and other vessels of Class A shall carry a Coast Guard approved Type I, II, III, and IV personal flotation device in good and serviceable condition, and readily available at all times, for each person on board.

5.3.2. Motorboats and other vessels of Class 1, Class 2, or Class 3 shall carry a Coast Guard approved Type I, II, or III (wearable) personal flotation device in good and serviceable condition and readily available at all times, for each person on board. In addition, motorboats and other vessels of Class 1, Class 2, or Class 3 shall

carry at least one Coast Guard approved Type IV (throwable) personal flotation device in good and serviceable condition and readily available at all times.

5.4. Fire Extinguishers.

5.4.1. Motorboats of Class A, Class 1, or Class 2 shall carry a Coast Guard approved fire extinguisher of either B-1 or B-11 classification, unless exempted from this requirement under Section 5.4.2 of these regulations.

5.4.2. Motorboats need not carry a fire extinguisher if the following conditions are met:

5.4.2.a. The construction of the motorboat is such that flammable or explosive vapors cannot be trapped within;

5.4.2.b. The motorboat has no enclosed engine compartments; and

5.4.2.c. The motorboat has no permanently installed fuel tanks.

5.5. Other Safety Equipment.

5.5.1. Class A motorboats. Motorboats of this class shall have the following:

5.5.1.a. Ventilation systems. All motorboats with a deck or partial deck or with an enclosed engine compartment must be provided with a ventilation system as set forth in Coast Guard regulations (technical details may be found in CG-395). Open construction boats are exempt from ventilation requirements.

5.5.1.b. Flame arrestor. Carburetors on all engines on motorboats, other than outboard engines, shall be fitted with an approved device for arresting backfire.

5.5.2. Class 1 motorboats. Motorboats of this class shall meet the equipment requirements of Section 5.5.1 of these regulations and in addition shall have a hand-mouth or power-operated whistle or horn capable of producing a blast of at least two (2) seconds duration and audible for a distance of at least one-half (1/2) mile.

5.5.3. Class 2 motorboats. Motorboats of this class shall meet the equipment requirements of Section 5.5.1 of these regulations and in addition shall have the following:

5.5.3.a. Bell. One which, when struck, produces a clear, bell-like tone of full round characteristics.

5.5.3.b. Horn or whistle. One hand- or power-operated whistle or horn capable of producing a blast of at least two (2) seconds duration and audible for a distance of one (1) mile.

§47-25-6. Special Requirements For Motorboats Which Carry Passengers For Hire.

6.1. Motorboats which carry passengers for hire shall be provided with a Coast Guard approved Type I personal flotation device for each person carried, and with additional number of Coast Guard approved Type I personal flotation devices suitable for children equal to at least ten (10%) percent of the total number of persons carried.

6.2. Motorboats while carrying passengers for hire shall be operated and navigated by a person duly licensed by the United States Coast Guard. This regulation does not apply to licensed outfitters and guides.

6.3. Motorboats carrying more than six (6) passengers are required to be inspected and certified by the Coast Guard.

§47-25-7. Boat Liveries.

7.1. The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated as a vessel, the identification number thereof, the departure date and time, and the expected time of return.

7.2. Neither the owner of a boat livery nor his agent or employee shall permit a motorboat or any vessel designed or permitted by him to be operated as a motorboat to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to those regulations.

§47-25-8. Prohibited Operation.

8.1. No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device, in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

8.2. No persons shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device, while intoxicated, or under the influence of any narcotic drug, barbituate, or marijuana.

8.3. No person shall operate, or knowingly permit any person to operate, any motorboat or vessel if, by reason of physical or mental disability, he is incapable of operating such vessel in a safe manner.

8.4. No person shall operate, or knowingly permit any person to operate, any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead; provided, however, that nothing in these regulations is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned, under the provisions of Chapter 20 of the Code of West Virginia, as amended, from attempting to attain high speeds on a marked racing course.

8.5. No person shall make reckless approach to, or passage by, a dock, ramp, diving board, or float.

8.6. Skiers being pulled by motorboats must have on their person a Coast Guard approved life preserver, buoyant vest, or ring buoy except as provided by Section 14.6 of these regulations.

§47-25-9. Right-Of-Way.

9.1. When two vessels are approaching each other "head on" or nearly so as to involve risk of collision, each vessel shall bear to the right and pass the other vessel on its left side.

9.2. When vessels approach each other obliquely or at right angles, the vessel approaching on the right side has the right-of-way.

9.3. One vessel may overtake another on either side but shall grant right-of-way to the overtaken vessel.

9.4. When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboats shall yield the right-of-way to the sailboat in all cases.

9.5. All motorboats shall be operated in conformance with the Rules of the Road, Western rivers.

§47-25-10. Restricted Areas.

10.1. No person shall so anchor a vessel or other obstacles for fishing or pleasure purposes, on any body of water over which the state has jurisdiction, in such a position as to obstruct a passageway ordinarily used by other vessels.

10.2. No person shall operate a pleasure vessel within twenty (20) feet of the exterior boundary of a water area which is clearly marked by buoys, or some other distinguishing device, as a bathing or swimming area.

10.3. Swimming areas shall be marked with yellow and red-colored buoys by the owners of such areas.

10.4. No person shall operate or knowingly permit any person to operate a vessel within twenty (20) feet of a person engaged in fishing without permission.

10.5. No vessel shall anchor or tie to any type of navigation aid or buoy.

§47-25-11. Overloading And Overpowering.

11.1. No vessel shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other normal operating conditions.

11.2. No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such vessel and other existing operating conditions.

§47-25-12. Collisions, Accidents, And Casualties.

12.1. It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do without serious danger to his own vessel, crew, and passengers (if any), to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

12.2. In the case of a collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of one hundred dollars (\$100), shall file with the Department a

full description of the collision, accident, or other casualty by completion in triplicate, on Form MB-3. Reports in cases involving loss of life must be submitted within forty-eight (48) hours; reports in other cases are required within five (5) days. All reports shall be submitted in person or by mail to the Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia, Attention: Motorboat Safety Section.

12.2.1. The Department of Natural Resources Form MB-3 (July 1, 1975) shall be used for the report as required by Section 12 of these regulations.

12.2.2. A report is required whenever a vessel subject to these regulations is involved in a "boat accident" which results in any one or more of the following:

12.2.2.a. Loss of life.

12.2.2.b. Injury causing any person to remain incapacitated for a period in excess of seventy-two (72) hours.

12.2.2.c. Actual physical damage to property (including vessels) in excess of one hundred dollars (\$100).

§47-25-13. Transmittal Of Information.

13.1. In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the Department pursuant to these regulations shall be transmitted to said official or agency of the United States.

§47-25-14. Water Skis And Surfboards.

14.1. No person shall operate a vessel on any waters of this state towing a person or persons on water skis, surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one (1) hour after sunset to one (1) hour before sunrise.

14.2. No person shall operate a motorboat on any waters of this state for towing a person or persons on water skis, surfboard, or similar device unless there is in such motorboat a person, in addition to the operator, in a position to observe the progress of the person or persons being towed or such motorboat is equipped with a wide-angle rear view mirror mounted in such a manner as to permit the operator of the motorboat to observe the progress of the

person or persons being towed.

14.3. The provisions of Sections 14.1 and 14.2 of these regulations do not apply to a performer in a professional exhibition, or a person or persons engaged in an activity authorized under the provisions of Chapter 20 of the Code of West Virginia, as amended.

14.4. No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon, to collide with or strike against any object or person.

14.5. All right-of-way rules applying to the towing vessel shall apply.

14.6. Persons engaged in barefoot waterskiing may elect at their own risk to wear a non-Coast Guard approved barefoot wetsuit designed specifically for such activity in lieu of a Coast Guard approved life preserver, buoyancy vest, or ring buoy required under Section 8.6 of these regulations.

§47-25-15. Skin Or Scuba Diving.

15.1. No person shall skin or scuba dive in any waters of the State that is used by powerboats unless the diving area is marked by a minimum of two (2) "diver down" flags. Diver down flag shall be a red field of not less than ten (10) inches by ten (10) inches dimension with a white diagonal stripe not less than one and one-half (1-1/2) inches wide running upper left to lower right. Flags shall be displayed at all times while diver is in the water. Diving flags must be anchored, affixed to separate flotation devices, be within sight and not more than one hundred (100) feet apart. All powerboats will remain a minimum distance of one hundred (100) feet away from the marker flags. The top of the flag shall be at least three (3) feet above the surface of the water. Divers must come up within fifty (50) feet of the flag. Divers shall not dive in heavily traveled boat lanes, marked swimming areas, or areas set aside for waterskiing.

§47-25-16. Penalties.

16.1. Any person violating any of the provisions of these regulations is subject to the penalties prescribed in W. Va. Code §20-7-9.

§47-25-17. Special Regulations.

17.1. Boating in government-owned reservoirs is covered by special regulations.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 26
SPECIAL RULES AND REGULATIONS GOVERNING BOATING ON U.S.
GOVERNMENT OWNED RESERVOIR AREAS IN WEST VIRGINIA

§47-26-1. General.

1.1. Scope. -- These are legislative rules and regulations to be observed in the operation or navigation of motorboats upon U.S. Government owned reservoir areas in West Virginia.

1.2. Authority. -- West Virginia Code §§20-1-7(30) and 20-7-22.

1.3. Filing Date. -- December 30, 1982.

1.4. Effective Date. -- January 1, 1983.

§47-26-2. Definitions.

2.1. "Vessel" -- Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

2.2. "Motorboat" -- Any vessel propelled by machinery, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto, nor to a vessel powered by a motor of less than three horsepower.

2.3. "Owner" -- A person, other than a lien holder, having the property in or title to a motorboat.

2.4. "Person" -- An individual, partnership, firm, corporation, association, or other entity.

2.5. "Operate" -- To navigate or otherwise use a motorboat or vessel.

2.6. "Department" -- The Department of Natural Resources.

2.7. "Director" -- The director of the Department of Natural Resources.

2.8. "Managing Government Agency" -- The West Virginia Department of Natural Resources on reservoir areas leased to the State of West Virginia and the United States Army Corps of Engineers on unleased areas.

§47-26-3. General Rules and Regulations.

3.1. Boats - Commercial. -- No motorboat or other vessel shall be placed upon or operated upon any waters of the reservoirs for a fee or profit, either as a direct charge to a second party or as an incident to other services provided by the second party, except as specifically authorized by lease, license or concession contract with the managing government agency.

3.2. Boats and Other Vessels - Private.

(a) It shall be unlawful for any person or persons to use any watercraft or vessel for the purpose of establishing or maintaining a dwelling of either permanent or temporary nature on any of the reservoirs.

(b) Any watercraft or vessel containing a sink, toilet or sanitary system may be launched and operated on the reservoirs if such sink, toilet or sanitary system is removed or sealed or made to drain into a tank which can be carried or pumped ashore into a receptacle for disposal away from the lands and waters of the reservoir area.

3.3. Mooring - Care of Boats and Floating Facilities.

(a) All motorboats or other vessels when not in actual use must be either removed from the reservoir, securely moored at authorized docks or boathouses where supervision by the owner or his representative is provided on a 24-hour basis, or placed in the care of a marina concessionaire, state or local managing agency or other party authorized to care for floating equipment on a 24-hour basis.

(b) All motorboats, barges and other vessels or floating facilities will be moored only in designated locations. All floating or stationary mooring facilities will be constructed in accordance with plans and a permit approved by the managing government agency. This agency shall have authority to revoke such permit and require removal of the facility for failure to comply with the regulations in this part.

(c) Abandonment of personal property on the land or waters of the reservoir area is prohibited. Personal

property shall not be left unattended upon the lands and waters of the reservoir except in accordance with the regulations prescribed in this part or under permits issued therefore.

3.4. Age of Operators. -- No person shall authorize or permit a motorboat owned by him or under his control to be operated upon the waters of any reservoir by a person under twelve (12) years of age unless such person is under the direct visual and audible supervision, during such operation, of a parent, guardian or other person over the age of sixteen (16) years.

3.5. Motorboat Speed. -- Motor-driven boats shall not be operated at a speed greater than the speed limits established and marked on the waters of the reservoir by the managing government agency.

(a) No-Wake Zones. -- Motor driven boats shall not be operated at a speed greater than idling speed on established and marked no-wake zones.

3.6. Water Skis and Surfboards. -- No person shall operate a vessel on any reservoir of this state towing a person or persons on water skis, surfboard or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity in any areas of the reservoir except in the Unlimited Speed Zone.

3.7. Safety Equipment. -- Class A motorboats: one Type I, II, III, or IV personal flotation device for each person on board or being towed. Class 1, 2 or 3 motorboats: at least one Type I, II, or III personal flotation device for each person on board or being towed, plus one Type IV throwable device. Rowboats, canoes, kayaks and inflatable boats and rafts: same as Class A.

3.8 Gasoline and Oil Storage. -- Gasoline and other inflammable or combustible liquids shall not be stored in, upon or about the reservoir or shores thereof without permission of the managing government agency.

3.9. Advertisements. -- Private notices and advertisements shall not be posted, distributed or displayed in the reservoir areas, except as the managing government agency may deem necessary for the convenience and guidance of the public using the areas for recreational purposes.

3.10. Unauthorized Solicitations and Business Activities. -- No person, firm or corporation or their representatives shall engage in or solicit any business on

the reservoir areas, unless such solicitations and activities are permitted under the terms of a lease, license or concession contract.

§47-26-4. Responsibility.

The use of the reservoir area shall be at the risk of the user. The United States Government and the State of West Virginia shall not be liable for damage of any kind resulting from the use of the reservoir area for recreational purposes, nor from the operation of the reservoir.

§47-26-5. Penalties.

Any person violating any of the provisions of Chapter 20 of the Code of West Virginia or rules and regulations promulgated under the provisions of this Chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor and upon thereof shall, for each offense, be fined not less than twenty nor more than three hundred dollars, or confined in jail not less than ten or more than one hundred days or be both fined and imprisoned within the limitations aforesaid.