

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

1991 JUL -1 PM 3:00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Department of Commerce, Labor
and Environmental Resources,
Division of Natural Resources

AGENCY: _____ TITLE NUMBER: 47

CITE AUTHORITY West Virginia Code §§20-7-22 and 20-7-23

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

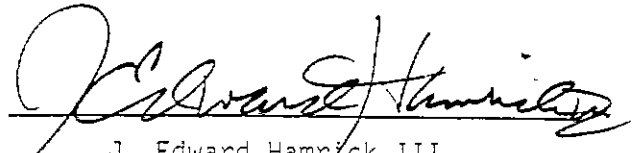
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 250

TITLE OF RULE BEING PROPOSED: "Special Motorboating Regulations"

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



J. Edward Hamrick III
Director

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Special Motorboating 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: The Agency-Approved Rule will designate areas on State waters to be "no wake speed zones". This will provide for safety in the operation of motorboats in the designated areas. No new administrative expenditures are anticipated.

3. Objectives of These Rules: The objectives if this rule are to provide for the safe operation of motorboats in areas where they may jeopardize the safety of others when operated at a rate of speed to noticeably disturb other vessels and facilities.

4. Explanation of Overall Economic Impact of Proposed Rule.

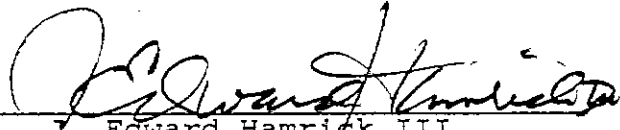
A. Economic Impact on State Government: No impact.

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.



J. Edward Hamrick III
Director

Date: June 25, 1991

DATE: July 1, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Commerce, Labor, and
Environmental Resources, Division of Natural Resources

LEGISLATIVE RULE TITLE: Title 47, Series 25C "Special Boating
Regulations"

1. Authorizing statute(s) citation:

West Virginia Code Chapter 20, Article 7, Sections 22 and 23.

2. a. Date filed in State Register with Notice of Hearing:

The rules were filed for public comment on May 15, 1991.

b. What other notice, including advertising, did you give of
the public hearing?

A news release was published in Statewide newspapers.

c. Date(s) of hearing(s): Comment period ended June 17, 1991
at 4:30 p.m. No hearing was
scheduled.

d. Attach list of persons who appeared at the hearing,
comments received, amendments to the proposed rule, and
the reasons for those amendments.

Attached X No comments received

e. Date you filed in the State Register the agency-approved
proposed Legislative Rule following public hearing:

July 21, 1991

f. Name and phone number of agency person to contact for
additional information:

Michael E. Comer, Regulatory Analyst
Office of Environmental and Regulatory Affairs
348-2761

3. If the statute under which you promulgated the submitted
rules requires certain findings and determinations to be made

as a condition precedent to their promulgation: N/A

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided: N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor? N/A

d. Attach findings and determinations and reasons: N/A

PREAMBLE TO A PROPOSED RULE CONCERNING
NO WAKE SPEED ZONES

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

REGULATIONS: Title 47, Series 25C "Special Motorboating Regulations"

AUTHORITY: West Virginia Code §§20-7-22 and 20-7-23.

ACTION: Filing an Agency-Approved Rule with the Legislative Rule-Making Review Committee.

SUMMARY: Today's Filing proposes an Agency-Approved Rule titled "(Special Motorboating Regulations)". The proposed regulation will designate a "no wake speed zone" for an area on Middle Island Creek. The designated area will restrict motorboats from producing a wake that would disturb other vessels or facilities within that area.

Several Comments were received on this proposed regulation all of which were in favor of the provision. One comment was made concerning the descriptive location of the designated "no wake speed zone." The commenter stated that the area referred to as Middle Island Creek is actually the back channel of Middle Island on the Ohio River. In response to that comment the Division is changing the text of Section 3.1.1 to read as follows:

3.1.1. The back channel of Middle Island on the Ohio River beginning at Ohio River MP155.1 and extending four hundred and sixty-eight feet (468 ft.) upstream to St. Marys city limit.

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

SERIES 25C
SPECIAL MOTORBOATING REGULATIONS

§47-25C-1. General.

1.1. Scope and Purpose. -- These regulations establish 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. --

§47-25C-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 such 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 an federal agency that is the successor thereto.

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.

§47-25C-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 MP155.1 and extending four hundred and sixty-eight feet (468 ft.) upsteam to the St. Marys city limit.

No Wake Z For Middle

The Division of Natural Resources is now receiving public comment on two proposed amendments to West Virginia's boat regulations.

Under one proposal, a 468-foot section of Middle Island Creek from the Ohio River upstream to Marys — would be designated a wake speed zone. The change will restrict motorboats from producing wake that would disturb o vessels or facilities within proposed zone.

The second proposal will amend the regulations by add language defining personal watercraft and incorporating the operation of such watercraft on state water. The DNR views the regulation such craft as necessary for the safety of the operator and public.

Both proposed regulation changes were filed with the West Virginia Secretary of State's office on June 15.

The deadline to submit written comments to the DNR on proposals is 4:30 p.m. on June 17. Written comments may be mailed to: Division of Natural Resources, Rule Comments Room, 712, Capitol Complex, Building Charleston, WV 25305.

June 13, 1991

Gentlemen,

Hoping the enclosed map will help correct a misunderstanding as to the mouth of Middle Island Creek.

As you can see the yellow shaded area indicating the proposed no wake zone is not on "a section of Middle Island Creek" as the proposal states - but is a section of the Ohio River.

Thank you - and I support the no wake proposal

Walter Carpenter

RECEIVED

JUN 14 1991

DIVISION OF NATURAL RESOURCES
OFFICE OF ENVIRONMENTAL &
REGULATORY AFFAIRS

6-8-91

Julie Richard
311 Riverside Dr.
St. Marys, WV 26170

Division of Natural Resources
Rule Comments, Room 712
State Capitol Complex
Building 3
Charleston, WV 25305

RECEIVED

JUN 10 1991

DIV. OF NATURAL RESOURCES
OFFICE OF ENVIRONMENTAL &
REGULATORY AFFAIRS

I am strongly in favor of the proposal to make the section of Middle Island Creek from the Ohio River up to St. Marys a no wake zone. It will make this area a lot safer for boaters and it will help protect the land.

Please put this proposal into effect, it has been needed for a long time, so lets do it while we can.

Thank You.

Julie Richard

RECEIVED

JUN 10 1991

A Marys W.V.
June 7, 1991

To The D.N.R.

DIV. OF NATURAL RESOURCES
OFFICE OF ENVIRONMENTAL &
REGULATORY AFFAIRS

In response to the proposal to implement a no wake zone. I am strongly in favor of the implementation. Being a resident of the river bank in this area, I see the result of high speed pleasure boating every day. The area in question is a confined waterway between the land mass & a two mile Island in the Ohio river. We have & are continuing to have an erosion problem on our property. When these boats go by it creates a repulsion effect between the Island bank & the mainland bank causing a continuing problem. The area in question is about 500 or so feet in length from the wide expanse of the river up to the marina where most of this boating is going or coming from. I can not see how a no wake zone will harm any of our citizens. The most they can lose out of their day is about one minute each way. I strongly recommend the No Wake Zone

Captain Louis F Flade
309 River Side Drive
St. Marys W.V. 26170
3041-684-7150

RECEIVED

JUN 10 1991

DIV. OF NATURAL RESOURCES
OFFICE OF ENVIRONMENTAL &
REGULATORY AFFAIRS

Jeffrey A. RICHARD

311 Riverside Drive

St. Marys Wv

26170

DIVISION OF NATURAL RESOURCES

RICE COMMENTS

Room 712

STATE CAPITOL COMPLEX

BLDG 3

CHARLESTON, WV

I AM STRONGLY IN FAVOR OF PROPOSAL ONE, TO MAKE THE 468 FOOT SECTION OF THE OHIO RIVER / MIDDLE ISLAND CREEK A NO WAKE ZONE. A NO WAKE ZONE WOULD HAVE A POSITIVE EFFECT ON BOAT SAFETY AND WOULD LESSEN THE DETRIMENTAL EFFECTS THE WAKE HAS ON THE BANKS OF THE CREEK. AT PRESENT THIS STRIP OF WATER IS USED BY BOATERS AS A DRAG STRIP AND IS EXTREMELY UNSAFE. IN ADDITION, THE BANKS OF THIS CREEK ARE ERODING AT AN ALARMING RATE WHICH IS A DIRECT EFFECT OF THE SPEEDING BOATERS.

PLEASE PUT THIS PROPOSAL INTO EFFECT, BEFORE THE ENVIRONMENT IS DESTROYED AND/OR A BOATER IS KILLED.

Thank you
Jeffrey A. Richard

Box 329
Saint Marys, WV 26170
June 1991

RECEIVED
JUN 17 1991

Natural Resources Rule Comments
Room 712, State Capitol Complex
Bld. 3
Charleston, WV 25305

Sirs:

DIV. OF NATURAL RESOURCES
OFFICE OF ENVIRONMENTAL &
REGULATORY AFFAIRS

The proposal to make a 468 foot section of Middle Island Creek near Saint Marys a no-wake zone is desirable but needs to be expanded to include the Ohio River Thoroughfare to the north end of Ingram's Island.

Both high-powered boats and floods are causing extensive damage to the banks beyond the survey lines. The U.S. Army Corps. of Engineers established for easements for the Willow Island Dam Project.

A particular case in point is the land area at the intersection of the Middle Island Creek with the Thoroughfare of the Ohio River. This jut of land, said to be the beginning of the Old Cumberland Trail, is eroded over 25' beyond a tree marker left by timber cutters when the banks were being cleared. Protection of this and other critical areas with rock, cement and/or other ballast would appear even more desirable than a no-wake zone.

We the undersigned are in favor of a no-wake zone extending the entire length of the Ingram Island, with preference for ballast from the State Road and /or other sources to protect critical land areas.

Sincerely,

James C. Rymer, Box 329, St. Marys, WV 26170
James C. Rymer

Bobby Hunt #28 448 St. Marys, W. Va.

Donna & H. #28 448 St. Marys, W. Va.
Linda Layfield P.O. Box 88, Pennsboro - Home camp along stream.

Paul Layfield, P.O. Box 88, Pennsboro
Donald E. Place Lot #2 St. Marys, WV 26170 Boat owner

Swank Place Rt 3 St. Marys, WV 26170 Camp along stream
Gambel Tallman Rt 2 St. Marys, WV 26170 Garden along stream

Paul C. Tallman Rt #2 St. Marys, WV 26170 Garden camp along stream
Mary K. Tallman Rt 2 St. Marys, WV 26170 Garden along stream

Larry Pollock P.O. Box 103 St. Marys on camping area
Linda Pollock

James Hunt P.O. Box 557 St. Marys, WV 26170

Michael B. Pasay P.O. Box St. Marys, WV 26170

Kathleen Pasay Rt 1 Box 314 St. Marys, WV

Ernest Meadows Rt 1 Box 314 St. Marys, WV

G.M.L. et al. 101 1st St. Marys, WV. GARDEN ON THOROUGHFARE

Arthur J Bailey Box 476 St Mary W.V.

Charles J Wells 127 2nd Street St Mary
Patty Welch

Ross D. ~~Walters~~ P. Box 449 St Marys W.V.
I also have a camp site along
Thoro face 26170

Lyle S. ~~Walters~~ St. Marys W.V. 26170 we do have a camp
site along the Thoro face

Lena L. Malone St. Marys W.V. 26170

Peggy L. Malone St. Marys W.V. 26170

James R. Underwood camp thoro face
PO. Box 548 ~~St. Marys~~ W.V. 26170
St. Marys

Debra K. Murr St Marys W.V. 26170

(28)

