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**STATE OF WEST VIRGINIA**

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June 9, 1995

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Natural Resources

RULE: Amendments, Series 25 Boating Regulations

DATE FILED AS AN EMERGENCY RULE: May 16, 1995

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JUN 9 10 36 AM '95

FILED

DECISION NO. 8-95

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.

  
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**EMERGENCY RULE DECISION  
(ERD 8-95)**

AGENCY: Division of Natural Resources  
RULE: Amendments, Series 25, Boating Regulations  
FILED AS AN EMERGENCY RULE: May 16, 1995

- par. 1 The Division of Natural Resources (DNR) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a 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-3-15a(b))].
- 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 thirty-five 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 May 16, 1995 and with the LRMRC May 16, 1995.

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 §20-7-22 reads:

*The director is hereby authorized and empowered to prescribe and enforce:*

*(a) General rules and regulations to be observed in the operation or navigation of motorboats upon, over or through the waters in this State which he shall deem necessary for the public health or safety of persons or property on or in such waters, or for the preservation of all forms of useful aquatic life, particularly as to speed, running, lights, signals, courses, channels, rights-of-way, and the disposal of oil, gas, gasoline or other wastes from such boats;*

*(b) Special rules and regulations for such particular, artificial or natural areas of water, for further limiting, restricting or prohibiting the operation or navigation of motorboats thereon to protect the public health or to protect and preserve useful aquatic life.*

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(f) defines "emergency" as follows:

*(f) 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 are as follows:

Promulgation of 33 CFR Part 175 with an effective date of May 1, 1995 necessitates the promulgation of this rule. More stringent safety requirements as it relates to the carrying of Personal Flotation Devices is required by the federal CFR.

Failure to promulgate this rule would cause boaters to be solely under the jurisdiction of the U.S. Coast Guard and could necessitate the operator of the motorboat or vessel to appear in U.S. Court for failure to comply with the new requirement.

Failure to follow through on the mandated federal requirements for personal flotation devices (PFDs) on all vessels may jeopardize over \$250,000 in federal funding.

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(f). . . "necessary to comply with a time limitation established by a federal statute or regulation and to prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 8-95 or ERD 8-95 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

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SECRETARY OF STATE

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FILED