

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

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OFFICE OF WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Natural Resources TITLE NUMBER: 58

AMENDMENT TO AN EXISTING RULE: YES XX NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: Boating Rule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB-310

SECTION 64-10-3(b), PASSED ON March 18, 2000

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: June 5, 2000



Authorized Signature

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TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 25
BOATING RULE

§58-25-1. General.

1.1. Scope. -- This legislative rule establishes standards 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, 20-7-22, and 20-7-23.

1.3. Filing Date. -- May 30, 2000

1.4. Effective Date. -- June 5, 2000

§58-25-2. Definitions.

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

2.2. "Division" means the West Virginia Division 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 a 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 of the State.

2.5. "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 federal agency that is the successor to the Bureau of Customs.

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 arranged so as to prevent the entrapment of the 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. "Personal Watercraft" or "PWC" means a small Class A vessel which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel rather than the conventional manner of sitting or standing inside the vessel.

2.11. "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.

2.12. "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 the water.

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

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

§58-25-3. Classification of Vessels.

3.1. Motorboats and other vessels are divided into four (4) classes as follows:

3.1.1. Class A includes vessels of less than sixteen (16) feet in length and all personal watercraft as defined in Section 2 of this rule;

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; and

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

§58-25-4. Required Equipment.

4.1. Lights.

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

4.1.2. Every white light prescribed by this Subsection be of such character as to be visible at a distance of at least two (2) miles. Every colored light prescribed by this Subsection shall be of such character as to be visible at a distance of at least one (1) mile.

4.1.3. Except for personal watercraft and as provided in Subdivision 4.1.4 of this Subsection, motorboats of Class A shall carry, ready at hand, a lantern or electric torch showing a white light which shall be exhibited in sufficient time to avert a collision.

4.1.4. Except for personal watercraft, motorboats of Class A shall be equipped with the lights required for motorboats of Class 1 under Subdivision 4.1.5 of this Subsection whenever operated on one of the bodies of water designated in Division of Natural Resources Special Boating Rule 58 CSR 26.

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

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

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 fixed so as to throw the lights ten (10) points on each side of the vessel (i.e., from directly ahead to two (2) points abaft the beam on either side).

4.1.6. Motorboats of Class 2 or Class 3 shall 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, constructed so as to show an unbroken light over an arc of the horizon of twenty (20) points of the compass and fixed so as to throw the light ten (10) points on each side of the vessel (i.e., from directly ahead to two (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; and

4.1.6.c. On the starboard side, a green light constructed so as to show an unbroken light over an arc of the horizon of ten (10) points of the compass and fixed so 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 constructed so as to show an unbroken light over an arc of the horizon of ten (10) points of the compass and fixed so as the throw the light from directly ahead to two (2) points abaft the beam on the port side. These side lights shall 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 shall exhibit the lights required for a motorboat of the same class propelled by machinery alone.

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

4.1.9. When propelled by sail alone, a vessel shall exhibit the white light aft as prescribed in Subdivision 4.1.5.a of this Subsection and either the combined lantern as prescribed in paragraph 4.1.5.b of this Subsection or the colored side lights as prescribed in Subdivision 4.1.6 of this Subsection.

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

4.1.10.a. Racing shells and rowing sculls are exempt from the provisions of Subdivision 4.1.10 of this Subsection.

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 this Subsection.

4.2. Personal Floatation Devices.

4.2.1. Except for personal watercraft, Class A vessels shall carry a Type I, Type II, or Type III personal floatation device for each person on board or being towed.

4.2.2. Motorboats and other vessels of Class 1, Class 2, or Class 3 shall carry a Type I, Type II, or Type III personal floatation device for each person on board or being towed and at least one Type IV personal floatation device. Canoes and kayaks 16 feet in length and over are exempted from the requirements of this subdivision for carriage of the additional Type IV personal floatation device.

4.2.3. All personal floatation devices prescribed by this Subsection shall be Coast Guard approved and shall be maintained in a good and serviceable condition. Type I, II, and III personal floatation devices shall be kept readily available for use at all times; Type IV personal floatation devices shall be kept immediately available for use at all times.

4.2.4. Racing shells and rowing sculls are exempt from the provisions of Subdivisions 4.2.1 and 4.2.2 of this Subsection.

4.2.5. Any person operating, riding as a passenger, or being towed behind a personal watercraft shall wear a Type I, II, or III personal floatation device approved by the United States Coast Guard.

4.2.6. The operator or owner of any vessel being used for recreational purposes, other than a vessel required to have a certificate of inspection issued by the United States Coast Guard, shall require any child age 12 and under who is aboard the vessel to wear a Type I, II, or III Coast Guard approved Personal Flotation Device while the vessel is underway unless the child is below deck or in an enclosed cabin.

4.3. Fire Extinguishers.

4.3.1. Motorboats with no fixed system.

4.3.1.a. Motorboats of Class A or Class 1 shall carry at least one (1) Type B-I or Type B-II fire extinguishers unless exempted from this requirement under paragraph 4.3.1.d of this Subdivision.

4.3.1.b. Motorboats of Class 2 shall 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 shall 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 are not required to 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 shall carry at least one (1) Type B-I fire extinguisher.

4.3.2.b. Motorboats of Class 3 shall 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 Subsection 4.3 of this rule shall be Coast Guard approved, shall be fully charged, shall be maintained in a good and serviceable condition, and shall be readily available for use at all times.

4.4. Signaling Devices.

4.4.1. Except for personal watercraft, all vessels of Class A or Class 1 shall carry a mouth whistle or a power-operated horn or whistle capable of producing a blast at least two (2) seconds in duration which is audible for a distance of at least one-half (½) mile.

4.4.2. All vessels of Class 2 shall carry a hand-operated or power-operated horn 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 shall 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 shall 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 one hundred ten degrees (110°) Fahrenheit or less shall 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 shall 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 shall 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 shall be located and trimmed for maximum effectiveness in preventing displaced fumes from being recirculated.

4.5.2. The ventilation requirements of Subdivision 4.5.1 of this Subsection 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 1, 1980, except open boats, which have a gasoline engine for electrical generation, mechanical power, or propulsion shall 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, shall be fitted with a Coast Guard approved device for arresting backfire flames.

§58-25-5. Right-of-Way.

5.1. When two (2) vessels are approaching each other head on or nearly so as to involve a risk of collision with each other, each vessel shall 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 shall 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 shall be sounded by whistle or horn.

5.3.2. Before passing another vessel to port, two (2) blasts of one (1) second in duration shall 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 shall yield the right-of-way to the sailboat in all cases.

5.5. All vessels shall be operated in conformance with the inland navigation rules of the United States Coast Guard.

§58-25-6. Prohibited Operations.

6.1. No person under the age of fifteen (15) may operate or be permitted to operate a motorboat or personal watercraft upon the waters of the State, except persons twelve (12) to fifteen (15) years of age may operate a motorboat or personal watercraft if a person over eighteen (18) years of age is aboard the motorboat or personal watercraft. However, persons twelve (12) to fifteen (15) years of age may operate a motorboat up to a maximum of ten (10) horsepower without having an adult on board.

6.1.1. No person who owns a motorboat or personal watercraft or who has charge over or control of a motorboat or personal watercraft may authorize or knowingly permit a motorboat or personal watercraft to be operated in violation of this rule.

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 this rule.

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 any motorboat or vessel while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight.

6.5. No person may operate or knowingly permit another person to operate a vessel if that person, by reason of physical or mental disability, is incapable of operating the 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 that person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. This Subsection 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 Division of Natural Resources Special Boating Rule 58 CSR 26.

6.9. No person may operate a personal watercraft at any time between the hours of one-half (½) hour after sunset to one-half (½) hour before sunrise.

6.10. No person may operate a personal watercraft unless the lanyard cut off switch, if so equipped by the manufacturer, is attached to the operator's person, clothing, or personal floatation device.

6.11. All persons shall operate a personal watercraft in a reasonable and prudent manner at all times. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property shall constitute reckless operation of the vessel.

6.12. This Subsection does not apply to participants in an approved and permitted regatta, race, marine parade, tournament, or exhibition.

§58-25-7. 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 or other restricted area approved by the Director.

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

7.5. 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.

§58-25-8. Overloading and Overpowering.

8.1. No person may load a vessel with passengers or cargo beyond its safe cargo carrying capacity.

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

8.1.2. The maximum weight capacity marked on a vessel's maximum capacities plate shall 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 or her vessel conforms to the safe loading requirements of Subpart C of 33 C.F.R. Part 183.

8.2. No person may operate a vessel beyond its safe powering capacity.

8.2.1. The maximum horsepower capacity marked on a vessel's maximum capacities plate shall 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 or operator shall demonstrate that his or her vessel conforms to the safe powering requirement of Subpart D of 33 C.F.R. Part 183.

§58-25-9. 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 other 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 another person.

9.3. No person may manipulate any water skis, surfboard or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight.

9.4. No person may operate a vessel towing a person on water skis, surfboard, 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 at least twelve (12) years of age or older other than the operator is on board the vessel in a position to observe the progress of the person being towed; or

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

9.6. Subsections 9.4 and 9.5 of this Section 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 the reservoir except in the unlimited speed zone.

9.8. Except as provided in Subdivision 9.8.1 of this Subsection, a person towed by a vessel shall wear a Coast Guard approved Type I, Type II, or Type III personal floatation device.

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

§58-25-10. Accident Reports.

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

10.2. The operator of a vessel involved in a collision, accident, or other casualty shall give his or her name, address, and the identification of his or her 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 personal injury that requires medical treatment beyond first aid, or damage to property in excess of five hundred dollars (\$500) shall file a full description of the incident with the Division of Natural Resources on West Virginia Boating Accident Report Form MB-3.

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

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

10.4. An accident report shall be submitted in person or by mail to the Division of Natural Resources, Motorboat Safety Section, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305-0668.

§58-25-11. Boating on Government-Owned Reservoirs.

11.1. Special rules 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 Division of Natural Resources Special Boating Rule 58 CSR 26.

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 the 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 the 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 motor boat or other vessel, when not in actual use at a government-owned reservoir, shall 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 or her representative is provided on a twenty-four (24) 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 (24) 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 shall 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 flammable or combustible liquids may not be stored upon or about a government-owned reservoir or the shores of the reservoir 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 consider 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 the activities are permitted under the terms of a lease, license, or concession contract with the government agency which manages that reservoir.

§58-25-12. Special Requirements for Motorboats Which Carry Passengers for Hire.

12.1. Motorboats which carry passengers for hire shall be provisioned with a Type I personal floatation device for each person carried. They shall also be provisioned with an additional number of Type I personal floatation devices suitable for children equal to at least ten percent (10%) 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 this Subsection shall be Coast Guard approved, shall be maintained in a good and serviceable condition, and shall be readily available for use at all times.

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

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

§58-25-13. Penalties.

13.1. Any person convicted of a violation of this rule is subject to the penalties provided for in the W. Va. Code §20-7-9.