

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

Form #6

Do Not Mark In This Box

FILED

APR 16 1 40 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**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 NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Special Boating Rules

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

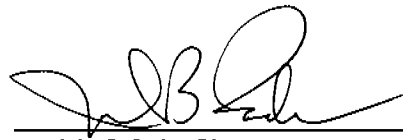
TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 320

SECTION §64-10-1(f) **PASSED ON** March 10, 1998

**THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS BILL BECOMES EFFECTIVE ON THE
FOLLOWING DATE:** April 16, 1998



John B. Rader, Director

\$3.60

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

**SERIES 26
SPECIAL BOATING RULES**

Promulgation History

Filed May 27, 1997 - Form #2 Notice of Comment Period of a Proposed Rule

Filed July 25, 1997 - Form #3 Notice of Agency Approval of a Proposed Rule & Filing
With Legislative Rule Making Committee

August 19, 1998 - Legislative Rule Making Committee Approved Rule

Filed August 28, 1997 - Form #4 Notice of Rule Modification of a Proposed Rule

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

**SERIES 26
SPECIAL BOATING RULES**

FILED

APR 16 1 40 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§58-26-1. General.

1.1. Scope and Purpose. -- This rule provides interpretations and guidance concerning special regulations that govern the operation of motorboats and other vessels on particular waters of this State.

1.2. Authority. -- West Virginia Code §20-1-7(30), §20-7-22, and §20-7-23.

1.3. Filing Date. -- April 16, 1998

1.4. Effective Date. -- April 16, 1998

§58-26-2. Definitions.

2.1. "Director" means the director of the West Virginia Division of Natural Resources.

2.2. "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 of the state.

2.3. "Motorboat" means any vessel propelled by an electrical, steam, gasoline, 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.

2.4. "Special Rules" means rules to be observed in the operation or navigation of motorboats and other vessels upon, over, or through the waters of a particular government-owned reservoir which the director considers necessary for the public health or safety of persons or property on or in those waters, or for the preservation of useful aquatic life. Special rules supplement the provisions of West Virginia Code §20-7-1 et.seq., and the general rules promulgated thereunder, as they relate to motorboats and other vessels by further limiting, restricting, or prohibiting the operation or navigation of the vessels on a particular government-owned reservoir.

§58-26-3. Special Rules for Government-owned Lakes.

3.1. Airport Pond (Raleigh County): No boating allowed.

- 3.2. Anawalt (McDowell County): No boating allowed.
- 3.3. Anderson (Kanawha County): No boating allowed.
- 3.4. Barboursville (Cabell County): No boating allowed.
- 3.5. Bear Rocks (Ohio County): Electric motors only.
- 3.6. Beech Fork (Wayne County): Motorboats are limited to a maximum of ten (10) horsepower and must observe no-wake zones marked by buoys or posted signs. Boats having motors greater than ten (10) horsepower must have the propeller removed or have the motor withdrawn to the maximum trailorable limit while operating on this lake. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.7. Berwind (McDowell County): Electric motors only.
- 3.8. Big Ditch (Webster County): Electric motors only.
- 3.9. Big Run (Marion County): Electric motors only.
- 3.10. Bluestone (Summers County): Motorboats must observe no-wake zones and speed limit zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.11. Boley (Fayette County): No motorboats allowed.
- 3.12. Brandywine (Pendleton County): Electric motors only.
- 3.13. Brushy Fork (Site 19) (Pendleton County): Electric motors only.
- 3.14. Buffalo Fork (Pocahontas County): Electric motors only.
- 3.15. Burches Run (Marshall County): Electric motors only.
- 3.16. Burnsville (Braxton County): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.17. Cacapon (Morgan County): No motorboats allowed.
- 3.18. Camp Run (Pendleton County): Electric motors only.
- 3.19. Castleman Run (Brooke and Ohio Counties): Electric motors only.
- 3.20. Cedar Creek (Gilmer County): No boating allowed.

- 3.21. Charles Fork (Roane County): Electric motors only.
- 3.22. Cheat (Monongalia County): Motorboats must observe no-wake zones marked by buoys or posted signs which are approved by the Director. Motorboats and other vessels may not enter restricted areas marked by such approved buoys or posted signs.
- 3.23. Chief Cornstalk (Mason County): Electric motors only.
- 3.24. Chief Logan (Logan County): No boating allowed.
- 3.25. Conaway Run (Tyler County): Electric motors only.
- 3.26. Coopers Rock (Monongalia County): Electric motors only.
- 3.27. Curtisville (Marion County): Electric motors only.
- 3.28. Rockhouse (Logan County): Electric motors only.
- 3.29. Doe Run Sub-Impoundment (Taylor County): Electric motors only.
- 3.30. Dog Run (Harrison County): Electric motors only.
- 3.31. Dunkard Fork (Marshall County): Electric motors only.
- 3.32. East Lynn (Wayne County): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.33. Edwards Run (Hampshire County): No boating allowed.
- 3.34. Elk Two Mile (Site 12) (Kanawha County): No boating allowed.
- 3.35. Elk Two Mile (Site 13) (Kanawha County): No boating allowed.
- 3.36. Fitzpatrick (Raleigh County): No boating allowed.
- 3.37. Flat Run (Marion County): Electric motors only.
- 3.38. Fork Creek (Boone County): Electric motors only.
- 3.39. Fort Ashby (Mineral County): No boating allowed.
- 3.40. French Creek (Upshur County): No boating allowed.
- 3.41. Frozencamp - Left Fork (Jackson County): Electric motors only.

- 3.42. Frozencamp - Right Fork (Jackson County): Electric motors only.
- 3.43. Handley (Pocahontas County): Electric motors only.
- 3.44. Hawks Nest (Fayette County): No restrictions.
- 3.45. Horse Creek (Wyoming County): Electric motors only.
- 3.46. Huey Run (Marion County): Electric motors only.
- 3.47. Hurricane (Putnam County): No boating allowed.
- 3.48. James P. Bailey (Mercer County): No boating allowed.
- 3.49. Jennings Randolph (Mineral County): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.50. Jimmy Lewis (Mercer County): Electric motors only.
- 3.51. Jonathan Larck (Putnam County): No boating allowed.
- 3.52. Kanawha State Forest (Kanawha County): No boating allowed.
- 3.53. Kee (Mercer County): Electric motors only.
- 3.54. Kimsey Run (Hardy County): Electric motors only.
- 3.55. Krodel (Mason County): Electric motors only.
- 3.56. Larenim (Mineral County): No motorboats allowed.
- 3.57. Laurel (Mingo County): Electric motors only.
- 3.58. Lick Creek (Wayne County): No boating allowed.
- 3.59. Little Beaver (Raleigh County): Rental boats only.
- 3.60. Lumberport (Harrison County): Electric motors only.
- 3.61. McClintic (Mason County): Electric motors only.
- 3.62. Middle Wheeling Creek Dam (Ohio County): Electric motors only.
- 3.63. Miletree (Roane County): Electric motors only.

- 3.64. Mill Creek (Barbour County): Electric motors only.
- 3.65. Elk Fork (Jackson County): Motorboats are limited to a maximum of ten (10) horsepower and must observe no-wake zones marked by buoys or posted signs. Boats having motors greater than ten (10) horsepower must have the propeller removed or have the motor withdrawn to the maximum trailorable limit while operating on this lake.
- 3.66. Moncove (Monroe County): Motorboats are limited to a maximum of five (5) horsepower.
- 3.67. Mount Storm (Grant County): Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.68. Mountwood (Wood County): Electric motors only.
- 3.69. New Creek (Dam Number 14) (Grant County): No boating allowed.
- 3.70. North Bend (Ritchie County): No boating allowed.
- 3.71. O'Brien (Site 13) (Jackson County): Motorboats are limited to a maximum of ten (10) horsepower and must observe no-wake zones marked by buoys or posted signs. Boats having motors greater than ten (10) horsepower must have the propeller removed or have the motor withdrawn to the maximum trailorable limit while operating on this lake.
- 3.72. Pennsboro (Ritchie County): Electric motors only.
- 3.73. Pipestem (Summers County): Rental boats only.
- 3.74. Plum Orchard (Fayette County): Motorboats must observe no-wake zones marked by buoys or posted signs. Only motorboats powered by electric motors are allowed within zones marked by barrels.
- 3.75. R. D. Bailey (Mingo and Wyoming Counties): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.76. Ridenour (Kanawha County): No boating allowed.
- 3.77. Rock Cliff (Hardy County): Electric motors only.
- 3.78. Rollins (Jackson County): Electric motors only.
- 3.79. Saltlick #9 (Braxton County): Electric motors only.
- 3.80. Seneca (Pocahontas County): Electric motors only.

- 3.81. Sherwood (Greenbrier County): Electric motors only.
- 3.82. Silcott Fork (Roane County): No boating allowed.
- 3.83. Sleepy Creek (Berkeley County): Electric motors only.
- 3.84. South Mill Creek (Grant County): Electric motors only.
- 3.85. Spruce Knob (Randolph County): Electric motors only.
- 3.86. Stephens (Raleigh County): Motorboats must observe no-wake zones marked by buoys or posted signs.
- 3.87. Stonecoal (Lewis and Upshur Counties): Motorboats are limited to a maximum of ten (10) horsepower and must observe no-wake zones marked by buoys or posted signs. No waterskiing allowed. Boats having motors greater than ten (10) horsepower must have the propeller removed or have the motor withdrawn to the maximum trailorable limit while operating on this lake.
- 3.88. Stonewall Jackson (Lewis County): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.89. Summersville (Nicholas County): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.90. Summit (Greenbrier County): Electric motors only.
- 3.91. Sutton (Braxton County): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.
- 3.92. Teter Creek (Barbour County): Electric motors only.
- 3.93. Thomas Park (Tucker County): Electric motors only.
- 3.94. Tomlinson Run (Hancock County): Electric motors only.
- 3.95. Tracy (Ritchie County): Electric motors only.
- 3.96. Trout (Hardy County): No motorboats allowed.
- 3.97. Tuckahoe (Greenbrier County): Electric motors only.
- 3.98. Turkey Run (Jackson County): Electric motors only.

3.99. Turkey Run (Marshall County): Electric motors only.

3.100. Tygart (Taylor County): Motorboats must observe no-wake zones marked by buoys or posted signs. Motorboats and other vessels may not enter restricted areas marked by buoys or posted signs.

3.101. Tygart River Backwaters (Town of Elkins) (Randolph County): Electric motors only.

3.102. Upper Mud River (Lincoln County): Motorboats are limited to a maximum of ten (10) horsepower and must observe no-wake zones marked by buoys or posted signs. Boats having motors greater than ten (10) horsepower must have the propeller removed or have the motor withdrawn to the maximum trailorable limit while operating on this lake.

3.103. Wallback (Clay and Roane Counties): Electric motors only.

3.104. Warden (Hardy County): Electric motors only.

3.105. Watoga (Pocahontas County): Electric motors only.

3.106. Westover Park (Monongalia County): No boating allowed.

3.107. Whetstone (Marion County): Electric motors only.

3.108. Wolf Run (Marshall County): Electric motors only.

3.109. Woodrum (Jackson County): Motorboats are limited to a maximum of ten (10) horsepower and must observe no-wake zones marked by buoys or posted signs. Boats having motors greater than ten (10) horsepower must have the propeller removed or have the motor withdrawn to the maximum trailorable limit while operating on this lake.

§58-26-4. Special Regulations for Class A Motorboats.

4.1. Motorboats of Class A must be equipped with the lights required for motorboats of Class 1 in accordance with the Division of Natural Resources Boating Rules, 58 C.S.R. 25 4.1.5. whenever operated on one of the following bodies of water:

- 4.1.1. Beech Fork Lake;
- 4.1.2. Bluestone Lake;
- 4.1.3. Burnsville Lake;
- 4.1.4. Cheat Lake;
- 4.1.5. East Lynn Lake;
- 4.1.6. Jennings Randolph Lake;

- 4.1.7. Kanawha River;
- 4.1.8. Monongahela River;
- 4.1.9. Ohio River;
- 4.1.10. R. D. Bailey Lake;
- 4.1.11. Stonecoal Lake;
- 4.1.12. Stonewall Jackson Lake;
- 4.1.13. Summersville Lake;
- 4.1.14. Sutton Lake; and
- 4.1.15. Tygart Lake.

1717
58-26

1 Bill-DNR,

H. B. 4141

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(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)
[Introduced January 30, 1998; referred to the
Committee on Agriculture and Natural Resources
then the Judiciary.]

10 A BILL to amend and reenact section one, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate a legislative rule relating to special
15 boating.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO**
22 **PROMULGATE LEGISLATIVE RULES.**

23 **§64-10-1. Division of natural resources.**

4141

1 (a) The legislative rule filed in the state register
2 on the sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by
5 the division of natural resources to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-seventh day of
8 September, one thousand nine hundred ninety-six, relating
9 to the division of natural resources (fertility control of
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register
12 on the sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 seven, article one, chapter twenty of this code, modified
15 by the division of natural resources to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twenty-seventh day
18 of September, one thousand nine hundred ninety-six,
19 relating to the division of natural resources (prohibitions
20 when hunting and trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register
22 on the sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified
2 by the division of natural resources to meet the objections
3 of the legislative rule-making review committee and
4 refiled in the state register on the twenty-seventh day of
5 September, one thousand nine hundred ninety-six, relating
6 to the division of natural resources (falconry, 58 CSR 65),
7 is authorized.

8 (d) The legislative rule filed in the state register
9 on the twenty-fifth day of July, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 twenty-three, article seven, chapter twenty, of this code,
12 relating to the division of natural resources (special
13 boating, 58 CSR 26), is authorized.

14

15 NOTE: The purpose of this bill is to authorize the
16 Division of Natural Resources to promulgate a legislative
17 rule relating to Special Boating.

18
19 Strike-throughs indicate language that would be
20 stricken from the present law, and underscoring indicates
21 new language that would be added.

Senate Bill No. 323

(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate a legislative rule relating to special
15 boating.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-10-1. Division of natural resources.

1 (a) The legislative rule filed in the state register
2 on the sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by
5 the division of natural resources to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-seventh day of
8 September, one thousand nine hundred ninety-six, relating
9 to the division of natural resources (fertility control of
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register
12 on the sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 seven, article one, chapter twenty of this code, modified
15 by the division of natural resources to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twenty-seventh day
18 of September, one thousand nine hundred ninety-six,
19 relating to the division of natural resources (prohibitions
20 when hunting and trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register
22 on the sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified
2 by the division of natural resources to meet the objections
3 of the legislative rule-making review committee and
4 refiled in the state register on the twenty-seventh day of
5 September, one thousand nine hundred ninety-six, relating
6 to the division of natural resources (falconry, 58 CSR 65),
7 is authorized.

8 (d) The legislative rule filed in the state register
9 on the twenty-fifth day of July, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 twenty-three, article seven, chapter twenty, of this code,
12 relating to the division of natural resources (special
13 boating, 58 CSR 26), is authorized.

14

15 NOTE: The purpose of this bill is to authorize the
16 Division of Natural Resources to promulgate a legislative
17 rule relating to Special Boating.

18

19 Strike-throughs indicate language that would be
20 stricken from the present law, and underscoring indicates
21 new language that would be added.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Special Boating Rules, 58CSR26

PERTINENT DATES

Filed for public comment: May 30, 1997
Public comment period ended: July 1, 1997
Filed following public comment period: July 25, 1997
Filed LRMRC: July 25, 1997
Filed as emergency: May 8, 1997; effective June 19, 1997

Fiscal Impact: None

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 13 9 30 AM '97

FILED

ABSTRACT

The proposed rule amends a current legislative rule. The current rule does not allow any boating on Miletree Lake in Roane County. The proposed rule would allow electric motors only.

AUTHORITY

Statutory authority: W.Va. Code, §§20-1-7 & 20-7-22 & 23, which provide, in part, as follows:

§20-1-7

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

...(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

§20-7-22.

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

...(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.

§20-7-23.

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

(d) The director shall immediately promulgate an emergency rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code providing for the use of electric motors on the waters of Miletree lake in Roane County.

ANALYSIS

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

No. In fact the Legislature directed the Division to promulgate an emergency rule providing for the use of electric motors on Miletree Lake in Enrolled SB No. 549, which passed during the 1997 Legislative Session..

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

Yes.

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

Yes.

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

Yes.

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

Yes.

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

No.

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

Yes.

VIII. OTHER.