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July 15, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Natural Resources

RULE: Amendments, 58CSR27, Special Motorboaring Regulations

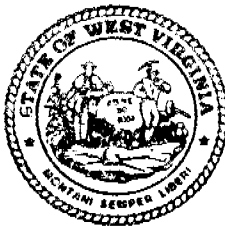
DATE FILED AS AN EMERGENCY RULE: June 18, 2003

DECISION NO. 7-03

FILED  
2003 JUL 16 A 9:00  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

JOE MANCHIN, III  
Secretary of State



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EMERGENCY RULE DECISION  
(ERD 7-03)

AGENCY: Division of Natural Resources  
RULE: Amendments, 58CSR27, Special Motorboating Regulations  
FILED AS AN EMERGENCY RULE: June 18, 2003

- par. 1 The Division of Natural Resources (DNR) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. 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 forty-two 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 June 18, 2003 and with the LRMRC June 18, 2003.

par. 7 It is the determination of the Secretary of State that the DNR has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §20-7-22 reads:

***§20-7-22. General rules and regulations for motorboating; special rules.***

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

***(a) General rules and regulations to be observed in the operation or navigation of motorboats upon, over or through the waters of 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 W. Va. Code further states in §20-7-23:

***§20-7-22a. Agency rule making for personal watercrafts.***

***The director of the division of natural resources shall propose rules, including the personal watercraft safety orientation requirements for livery owners and operators, for legislative approval in accordance with the provisions of subdivision thirty, section seven, article one of this chapter and section one, article one, chapter twenty-nine-a of this code which effectuate the contents of sections eleven, sixteen, eighteen-d, nineteen-a and twenty-a of this article.***

par. 10 It is the determination of the Secretary of State that the DNR has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency -- W. Va. 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. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm.

par. 13 The facts and circumstances as presented by the DNR are as follows:

There is not currently a no wake zone in the area of the Pier 54 Marina in South Charleston, WV. The wakes that are caused by pleasure boaters in this area endanger the lives & property of the operators & users of the Pier 54 Marina Facility.

par. 14 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). . . "immediate preservation of public peace, health, safety & welfare" and "prevent substantial harm to public interest"

par. 15 This decision shall be cited as Emergency Rule Decision 7-03 or ERD 7-03 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 Committee.



JOE MANCHIN, III  
Secretary of State

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