

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

2011 MAY 25 AM 9:15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

DEPARTMENT OF COMMERCE, DIVISION OF NATURAL RESOURCES

AGENCY: LAW ENFORCEMENT SECTION

TITLE NUMBER: 58

CITE AUTHORITY: 20-7-22 AND 20-7-23

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: SPECIAL MOTORBOATING REGULATIONS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary


Authorized Signature



EMERGENCY RULE QUESTIONNAIRE

DATE: May 17, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Lt. Colonel Jerry B. Jenkins

Division of Natural Resources, Law Enforcement Section

South Charleston WV 25303-1228 Phone: 304-558-2784

EMERGENCY RULE TITLE: Special Motorboating Regulations

1. Date of filing May 17, 2011
2. Statutory authority for promulgating emergency rule:
West Virginia Code Chapter 20-7-22 and 20-7-23
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amends 58CSR27
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
The establishment of the no wake zone prior to the upcoming recreational boating season will reduce the potential of death and injury to recreational boaters and other river users in this congested high river use area of the Monongahela River.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Not Applicable

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

This is a very high boating and recreational use area of the Monongahela River. This area of the river contains two boat docks. There are swimmers, rowers and kayakers that also use this section of the river. The establishment of a no wake zone would reduce the potential of death and injury for all river users.

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

**SERIES 27
SPECIAL MOTORBOATING REGULATIONS**

SUMMARY: Series 27 establishes no wake zones for certain waters of the state.

CIRCUMSTANCE: This rule allows for promulgation of rules and regulations limiting, restricting or prohibiting the operation or navigation of motorboats to protect the public health. The City of Morgantown is requesting the no wake zone for river safety concerns. The City of Morgantown conducted a public hearing on April 19, 2011, with all city council members present but one. The resolution was unanimously approved.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 27 Special Boating Regulations

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Commerce, Division of Natural Resources

Address: Law Enforcement Section
324 Fourth Avenue
South Charleston WV 25303-1228

Phone Number: (304) 558-2784 Email: Jerry.B.Jenkins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure will have no fiscal impact on costs and revenues of state government. West Virginia Natural Resources Police Officers and Morgantown City Police Officers presently conduct river patrols on this section of the Monongahela River.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Series 27 Special Boating Regulations

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

None

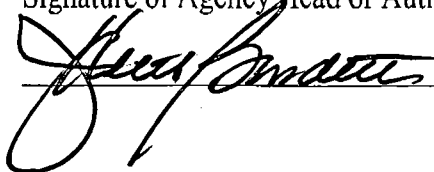
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None

Date: May 17, 2011

Signature of Agency Head or Authorized Representative



TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

FILED

2011 MAY 25 AM 9: 15

SERIES 27
SPECIAL MOTORBOATING REGULATIONS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§58-27-1. General.

1.1. Scope and Purpose. -- This rule establishes 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. -- April 6, 2004.

1.4. Effective Date. -- May 17, 2004.

River MP 155.1 and extending four hundred and sixty-eight feet (468 ft.) upstream to the St. Marys city limit. The area is situated entirely within the boundaries of Pleasants County. The City of St. Marys, West Virginia, is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. Signs shall meet the approval of the director. Any buoys or other structures placed in the water shall conform to U. S. Coast Guard standards for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U.S. Army Corps of Engineers;

§58-27-2. 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 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 successor federal agency.

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.

3.1.2. Beginning at the mouth of Fish Creek at it's confluence with the Ohio River and extending upstream approximately 3 miles and ending at the first riffle or obstruction. This area is situated entirely within the boundaries of Marshall County. This zone is seasonal and is in effect from March 1 through November 1, each year. The Marshall County Commission is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. No Wake Zone signs shall be erected at the mouth of Fish Creek and at all locations where watercraft may be launched. The signs shall describe the extent of the no wake zone and shall meet the approval of the Director. Any buoys or other structures placed in Fish Creek shall conform to U. S. Coast Guard standards for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U. S. Army Corps of Engineers; and

§58-27-3. 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

3.1.3. Beginning at the mouth of Fishing Creek at it's confluence with the Ohio River and extending upstream approximately six-tenths (0.6) of a mile to the Route 2 Bridge. This area is situated entirely within the boundaries of the City of New Martinsville,

West Virginia. The City of New Martinsville, West Virginia, is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. Signs shall meet the approval of the director. Any buoys or other structures placed in the water shall conform to the U. S. Coast Guard Standards for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U. S. Army Corps of Engineers.

3.1.4. Beginning at the upstream edge of Pier 54 Marina at the first pier of Old Lock Six and continuing downstream on the northern side of the Kanawha River for approximately 1500 feet to the last pier of Old Lock Six and extending out into the Kanawha River 80 feet from the northern riverbank. This area is situated entirely within the boundaries of the City of South Charleston, West Virginia. The City of South Charleston, West Virginia, is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. Signs shall meet the approval of the director. Any buoys or other structures placed in the water shall conform to the U. S. Coast Guard Standard for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U. S. Army Corps of Engineers.

3.1.5. The back channel of Wheeling Island on the Ohio River beginning at approximately Ohio River MP 89.5 (500 block of North Erie Street) extending downstream approximately one (1) mile to Ohio River MP 90.5 (200 block of South Erie Street). This area is situated entirely within the boundaries of Ohio County. The Wheeling Police Department is responsible for purchasing, placing and maintaining the No Wake Zone buoys and information signs. Signs shall meet the approval of the director. No Wake Zone signs shall be erected at the Island Marina boat dock and at all locations where watercraft may be launched. The signs shall describe the extent of the No Wake Zone and shall meet the approval of the director. Any buoys or other structures placed in the water shall conform to the U.S. Coast Guard Standard for Inland Rivers and, if they would

interfere with commercial river traffic, be approved by the U.S. Army Corps of Engineers.

3.1.6. The Monongahela River at the Morgantown waterfront from approximately Mile 101.2 (just below the Westover Bridge) to Mile 102. This area is situated entirely within the boundaries of Monongahela County. The Morgantown Police Department is responsible for purchasing, placing and maintaining the No Wake Zone buoys and informational signs. Signs shall meet the approval of the director. No Wake Zone signs shall be erected at the Island Marina boat dock and at all locations where watercraft may be launched. The signs shall describe the extent of the No Wake Zone and shall meet the approval of the director. Any buoys or other structures placed in the water shall conform to the U.S. Coast Guard Standard for Inland Rivers and, if they would interfere with commercial river traffic, be approved by the U.S. Army Corps of Engineers.