

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

Form #3

Do Not Mark In This Box

2011 JUL 26 PM 3:10

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Department of Commerce  
AGENCY: Division of Natural Resources, Law Enforcement Section TITLE NUMBER: 58

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

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: Special Motorboat Regulations

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 26, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Department of Commerce, Division of Natural Resources,

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

Lt. Colonel Jerry B. Jenkins, Deputy Chief, DNR Law Enforcement, 304-558-2784

LEGISLATIVE RULE TITLE: Special Motorboat Regulations

1. Authorizing statute(s) citation 20-7-22 and 20-7-23

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 8, 2011

b. What other notice, including advertising, did you give of the hearing?  
N/A

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 8, 2011 at 5:00 PM

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 26, 2011

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Lt. Colonel Jerry B. Jenkins, Deputy Chief, DNR Law Enforcement Section

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324 Fourth Avenue

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South Charleston WV 25303-1228

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Phone: 304-558-2784; Fax: 304-558-1170; Email: Jerry.B.Jenkins@wv.gov

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

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- 3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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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)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	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

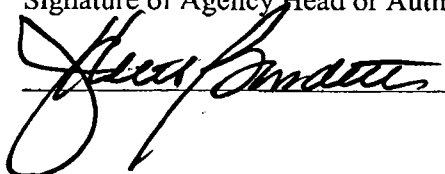
### MEMORANDUM

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

  
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**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.

TITLE 58  
LEGISLATIVE RULE  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES

FILED  
2011 JUL 26 PM 3:10  
OFFICE OF THE CLERK  
SECRETARY OF STATE

SERIES 27  
SPECIAL MOTORBOATING REGULATIONS

**§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 Monongalia 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.