

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

Form #7

Do Not Mark In This Box

Filing Date
FILED

APR 25 1 50 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

May 8, 1997

NOTICE OF AN EMERGENCY RULE

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: §§20-1-7(30), 20-7-13, 20-7-22, 20-7-23, 29-1J-1 and 29A-3-15

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 29

TITLE OF RULE BEING FILED AS AN EMERGENCY: Special Boating Rule for Jennings Randolph Lake

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:



ROBERT A. REINTSEMA, ACTING DIRECTOR

Use additional sheets if necessary

FISCAL NOTE FOR PROPOSED RULE

Rule Title: 58 CSR 29 EMERGENCY

Type of Rule Legislative Interpretive Procedural

Agency BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES

Address BUILDING 3, ROOM 840, CAPITOL COMPLEX, CHARLESTON

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates: There is no fiscal impact involved with this rule.

3. Objectives of these rules: These rules are being filed to establish the same boating rules for the State of Maryland and the State of West Virginia. The state boundary is covered by water and therefore current laws from both states are unenforceable.

Rule Title: Special Boating Rule for Jennings Randolph Lake

4. Explanation of overall Economic Impact of Proposed Rule.

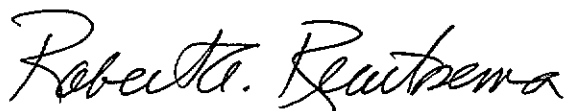
A. Economic Impact on State Government: None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: None

C. Economic Impact on Citizens/Public at Large: None

Date: April 18, 1997

**Signature of Agency or
Authorized Representative:**



ROBERT A. REINTSEMA, ACTING DIRECTOR

**SUMMARY OF PROPOSED RULE
CONCERNING
SPECIAL BOATING RULE FOR JENNINGS RANDOLPH LAKE**

The purpose of this proposal is establish joint rules with the State of Maryland and the State of West Virginia on the Jennings Randolph Lake which is situated on the border of both states. Both states passed legislation authorizing joint law enforcement jurisdiction and it was subsequently ratified by the U. S. Congress and signed by the President. Current rules are unenforceable because the location of the state boundary is covered by water and therefore unidentifiable. Copies of the Compact are attached for reference.

PREAMBLE TO A PROPOSED RULE
CONCERNING
SPECIAL BOATING RULE FOR JENNINGS RANDOLPH LAKE

AGENCY: Bureau of Commerce, Division of Natural Resources

REGULATION: Title 58, Series 29, "Special Boating Rule for Jennings Randolph Lake"

ACTION: Filing of a proposed legislative rule.

SUMMARY: This is a new rule. The purpose of this rule is to establish joint rules with the State of Maryland on the Jennings Randolph Lake which is situated on the border of both states. The Maryland and West Virginia Legislatures have both passed identical legislation authorizing joint law enforcement authority within the boundaries of the Jennings Randolph Lake Project, a U. S. Army Corps of Engineers project located on our respective state line. Congress, on July 29, 1996, passed HJR 113, which is the ratification needed to implement our respective statutes. It has been sent to the President for signature. These rules are identical to rules promulgated by Maryland and contain those differences that were agreed upon because of statutory requirements. A fact sheet is available for review if requested.

DATE: April 18, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Robert A. Reintsema, Acting Director, Division of Natural Resources

EMERGENCY RULE TITLE: Special Boating Rule for Jennings Randolph Lake

1. Date of Filing April ²⁵~~18~~, 1997

2. Statutory authority for promulgating emergency rule:
§§20-1-7(30), 20-7-13, 20-7-22, 20-7-23, 29-1J-1 and 29A-3-15

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?
This is a new rule.

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.
This rule established joint rules with Maryland on a lake that is situated on the border of both states. Maryland and West Virginia legislatures have both passed identical legislation authorizing joint law enforcement authority on the lake. Congress, on July 29, 1996 passed HJR 113, which is the ratification needed to implement out respective

statutes. President Clinton signed Public Law 104-176 on August 6, 1996. The rules bring into conformity the differences between the two states. There are presently no boating rules in effect for this lake.

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.

Boating season begins in West Virginia around May 15 and ends on or about Labor Day.

West Virginia needs to have these rules in place by the beginning of the season.

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

There are currently no rules in existence on Jennings Randolph Lake, a U. S. Corps of Engineers Project located on the boundaries of Maryland and West Virginia. These rules are needed to protect the health and welfare and property of the users of this lake.

Contact Person:

Lt. Colonel W. B. Daniel, Deputy Chief
Law Enforcement Section
Bldg 3, Capitol Complex
Charleston, 25305
558-2784

FILED

APR 25 1 50 PM '97

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

EMERGENCY RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 29
SPECIAL BOATING RULE FOR JENNINGS RANDOLPH LAKE

§58-29-1. General.

1.1. Scope. -- This emergency rule is designed for the protection of Jennings Randolph Lake as a natural resource and to provide a pleasant and safe family oriented facility for the enjoyment of water related activities. Jennings Randolph Lake is a U. S. Army Corps of Engineers facility sharing a common boundary between the State of West Virginia and the State of Maryland. The U. S. Army Corps of Engineers has agreed that West Virginia and Maryland have enforcement authority on the project, both the land and the water areas, by being a signatory partner in the Compact found in the West Virginia Code, chapter 29, article 1J (§29-1J-1), with the States of West Virginia and Maryland. The States have agreed to identical boating regulations and to share enforcement responsibilities. A fundamental consideration is preserving an acceptable quality of recreational experience on the Lake while providing for the greatest use consistent with a quality experience and safety for all users.

1.2. Purpose. -- The purpose of this emergency rule is to establish joint rules with the State of Maryland and the State of West Virginia on the Jennings Randolph Lake which is situated on the border of both states.

1.3. Authority. -- W. Va. Code §§20-1-7(30), 20-7-13, 20-7-22, 20-7-23, 29-1J-1 and 29A-3-15..

1.4. Filing Date. -- April 25, 1997

1.5. Effective Date. --

§58-29-2. Definitions. Unless otherwise specified below, all terms shall have the meaning given in chapter twenty of the West Virginia Code and Boating Rule, §58 CSR 25.

2.1. "Controlled Dangerous Substance or Drug". -- means those controlled dangerous substances or drugs defined in article two, chapter sixty-A (§60A-2).

2.2. "Lake" -- means the surface area of the water in the Jennings Randolph Lake where operation of a vessel may occur.

2.4. "Lake Project" -- means anywhere within the boundaries of the Jennings Randolph Lake project owned and administered by the U. S. Army Corps of Engineers

2.5. "Minimum/No Wake Speed Zone" -- means an area where a vessel may not operate in excess of the idling speed or the slowest possible speed necessary to maintain steerage under prevailing wind and water conditions.

2.6. "Operate" -- means to navigate or otherwise use a motorboat or vessel.

2.7. "SAE". -- means the Society of Automotive Engineers

2.8. "States" -- means the State of West Virginia and the State of Maryland.

2.9. "Steerage" -- means the minimum rate of motion required for the steerage apparatus (rudder or motor) of a vessel to have effect.

§58-29-3. Prohibitions. In addition to the rules contained in West Virginia Boating Rule §58 CSR 25, the following provisions are applicable specifically to boating on the Lake.

3.1. No person may operate a recreational vessel with a length in excess of 26 feet as measured using existing U. S. Coast Guard standards of measurement. Vessels carrying passengers for hire may not be more than 50 feet in length.

3.2. Vessels carrying passengers for hire shall comply with U. S. Coast Guard requirements governing such vessels and may not operate on the Lake without the prior written permission of the Lake Manager.

3.3. No person may operate a sea plane or float plane on the Lake without prior permission of the Lake Manager.

3.4. No person may operate or give permission to operate a personal watercraft on the Lake at any time at a speed in excess of 6-knots within 100 feet of another vessel, shore, wharf, pier, piling, bridge structure or abutment or people in the water.

3.5. Rules of the Road. A person operating a vessel on the Lake shall comply with the Federal Inland Navigation Rules Act of 1980, CFR §4-90, as amended.

3.6. U. S. Coast Guard Requirements. Except where specifically regulated in this rule, all operators of vessels operating on the Lake must comply with current U. S. Coast Guard regulations, including, but not limited to, safety equipment, personal floatation devices, maximum weight and powering capacity plates, fire extinguishers, and lighting requirements.

3.7. State of West Virginia Requirements. Except as otherwise specified in this rule, all

powering capacity plates, fire extinguishers, and lighting requirements.

3.7. State of West Virginia Requirements. Except as otherwise specified in this rule, all persons operating a vessel or manipulating water skis, surfboard, aquaplane, or similar device, on the Lake must comply with West Virginia Legislative Rule, "Boating Rules", 58 CSR 25.

§58-29-4. Vessel Operator Blood Alcohol Content; Testing Method; and Loss of Privileges.

4.1. No person may operate a vessel on the Lake while having an alcohol concentration in his or her blood of seven one hundredths of one percent or more by weight or under the influence of alcohol or any controlled substance or drug, or under the combined influence of alcohol and any controlled substance or drug.

4.2. Any person suspected to be in violation of this section will be subject to a blood or alcohol test. The method of testing is to be selected by the law enforcement officer involved. Refusal to be tested will subject the operator to loss of all vessel operating and other user privileges on the Jennings Randolph Lake Project for a period of one (1) year, in addition to any other penalties that may be imposed by law.

§58-29-5. Water Skis, Surfboards, or Similar Devices.

5.1. No person may operate a vessel towing a person on water skis, surfboard, aquaplane, or similar device, nor may any persons engage in water skiing, surfboarding, or similar activity at any time between the hours of sunset to sunrise, unless participating in an approved and permitted regatta, race, marine parade, tournament, or exhibition.

5.2. Except for personal watercraft, no person may operate a vessel towing a person on water skis, surfboard, or similar device unless a person at least twelve (12) years of age, other than the operator is on board such vessel in a position to observe the progress of the person being towed, or unless the vessel is equipped with a wide-angle rear-view mirror.

5.3. No person may operate or give permission to operate a personal watercraft for the purpose of towing a person on water skis, surfboard, aquaplane, or similar device, unless the personal watercraft:

5.3.1. Has a capacity of three individuals that includes the:

- a. Operator/Driver;
- b. Rear facing observer who is at least twelve (12) years of age or older;
- c. Water skier; and

similar device shall stay at least twenty (20) feet outside marked no wake zones and other restricted areas, and shall at all times, keep at least 100 feet from the shore, wharf, pier, piling, jetty, bridge structure, abutment, other fixed structure or obstruction, other vessels, or an individual(s) in the water.

5.4. The maximum length for a tow rope is 75 feet except a tow rope of up to 100 feet in length may be used while towing a bare-foot skier(s).

5.5. No person may manipulate any water skis, surfboard, aquaplane, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of another.

5.6. No person may manipulate any water skis, surfboard, or similar device while having an alcohol concentration in his or her blood of seven one hundredths of one percent or more by weight or under the influence of alcohol or any controlled substance or drug, or under the combined influence of alcohol and any controlled substance or drug. Any person suspected of violating this section will be subject to a blood or breath test. The method of testing is to be selected by the law enforcement officer involved. Refusal to be tested will subject the person to loss of all user privileges on the Lake Project for a period of one (1) year, in addition to any other penalties that may be imposed by law.

§58-29-6. Sailboards.

6.1. The operator of a sailboard may meet the requirement to carry one personal flotation device for each person on board by wearing the following equipment so that positive buoyancy is provided to the operator:

6.1.1. Neoprene wetsuit or drysuit;

6.1.2. Closed-cell foam design padded chest, waist, or seat harness; or a

6.1.3. Combination of the equipment specified in 6.1.1. and 6.1.2. above.

6.2. From October 15 to May 15 inclusive, an operator of a sailboard shall wear a neoprene wetsuit or drysuit which covers the entire torso of the body.

§58-29-7. Skin and Scuba Diving.

7.1. Skin and scuba diving are permitted in all areas of the lake except the following:

7.1.1. The restricted area established above the dam, around the intake tower, or any other restricted area that may be established on the Lake and approved by the Director;

7.1.2. Heavily traveled boat lanes;

7.1.2. Heavily traveled boat lanes;

7.1.3. Narrow channels; and

7.1.4. Areas where visibility is obscured.

7.2. The provisions of section 7.1. of this rule shall not apply to law enforcement vessels, U. S. Army Corps of Engineers vessels, or professional skin or scuba divers engaged in demolition, salvage, construction, rescue, or repair work in the regular course of their business and who are registered with the Lake Manager of the Lake.

7.3. "Diver-Down" Flag Required and Flag Specifications.

7.3.1. No person may skin or scuba dive in the Lake unless the diving area is marked by one "diver-down" flag displayed at all times while a diver is in the water.

7.3.2. The "diver-down" flag shall be a red field with a diagonal stripe not less than one and one-half inches wide running upper left to lower right. The dimensions of the flag shall not be less than ten (10) inches x ten (10) inches and the top of the flag shall be at least three (3) feet above the surface of the water.

7.3.3. The "diver-down" flag shall be anchored and affixed to a separate floatation device. No such flag may be attached to any vessel or navigational device or placed so as to obstruct other vessel traffic.

7.3.4. Divers must surface within one hundred (100) feet of the "diver-down" flag marking their diving area.

§58-29-8. Boating Safety Education Certificate.

8.1. Except as otherwise provided in section 8.3 of this rule, no person born on or after July 1, 1980 may operate a vessel on the Lake that is required to be numbered without first having obtained a certificate of boating safety education from this or any other state, which certificate was obtained by satisfactorily completing a course of instruction in boating safety education administered by the U. S. Coast Guard Auxiliary; the U. S. Power Squadron; the Maryland Department of Natural Resources; the West Virginia Division of Natural Resources; any person certified to teach the course administered by West Virginia or Maryland Natural Resources Boating Safety Education Section personnel; or any person authorized to teach the course prescribed by the National Association of State Boating Law Administrators in the operator's home state.

8.2. Any person who is subject to section 8.1. of this rule must possess the certificate of boating safety education when operating a vessel on the Lake and must show the certificate on demand of a Maryland Natural Resources Police Officer, West Virginia Conservation Officer or other

law enforcement officer authorized to enforce the provisions of this rule.

8.3. The following persons are exempt from the requirements of section 8.1 of this rule:

8.3.1. A person who is a resident of a state other than Maryland or West Virginia and who is visiting the state for 60 days or less in a vessel that is numbered in another state if:

a. The person is fifteen (15) years of age or older; or

b. The person has been issued a boating safety education certificate by that state in accordance with the criteria of the National Association of Boating Law Administrators;

8.3.2. A person who is visiting the Lake for ninety (90) days or less in a vessel from a country other than the United States;

8.3.3. A person who is operating a vessel in connection with commercial purposes.

8.4. The Division shall issue a certificate of boating safety education to a person who:

8.4.1. Passes any course prescribed in section 8.1 of this rule; or

8.4.2. Passes a boating safety equivalency examination administered by persons authorized to administer a boating safety education course as outlined above. Upon request, the Division shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

8.5. No person who owns a vessel required to be numbered or who has charge over a vessel required to be numbered shall authorize or knowingly permit it to be operated in violation of section 8.1. of this rule.

8.6. The provisions of section 8 of this rule may only be enforced as a secondary action when the officer detains an operator of a vessel for a suspected violation of another provision of the West Virginia Code or rules adopted in accordance with the West Virginia Code. A person may not be taken forthwith to a court or detention facility solely for a violation of section 8 of this rule.

§58-29-9. Noise Level Limits.

9.1. Noise Level Limits.

9.1.1. No person may operate or give permission to operate a vessel that emits a maximum noise level exceeding 90dB(A).

9.1.2. Noise level limits shall be measured using the procedures contained in the marine

environment noise level measurement procedure SAE J 2005.

9.2. Mufflers.

9.2.1. The exhaust of every inboard internal combustion engine of a vessel operated on the Lake shall:

- a. Be equipped with a muffler or system which muffles or suppresses engine noise emitted from the vessel to the established limits in subsection 9.1.1. of this rule; and
- b. Be vented at or below the water line of the vessel.

9.2.2. The exhaust system shall not be equipped with muffling cutout devices.

§58-29-10. Sanitation Devices. No vessel containing a sink, toilet, or sanitary system may be launched or operated upon the Lake 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 Lake Project.

§58-29-11. Waste Products. No person may deposit garbage, sewage, waste, food stuff, paper, or any obnoxious material in the waters of the Lake or anywhere on the Lake Project except in containers approved for the collection of such items.

§58-29-12. Penalties.

12.1. Any person violating the provisions of this rule, shall be guilty of a misdemeanor, and upon conviction, shall be subject to the penalties prescribed in article seven, chapter twenty (§20-7-9). Provided, that any person violating sections 4.1. or 5.6. of this rule shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or confined in jail not less than ten nor more than one hundred days, or be both fined and imprisoned within the limits aforesaid.

12.2. Second and subsequent convictions of violating the provisions of sections 4.1. or 5.5. of this rule shall subject the individual violating these sections to double the amount of the minimum and maximum fine and jail term.