

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

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Form #4

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

CITE AUTHORITY 20-1-7(30),20-7-13,20-7-22,20-7-33 & 29-1J-1

AMENDMENT TO AN EXISTING RULE: YES NO

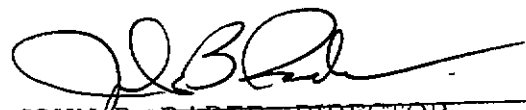
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 29

TITLE OF RULE BEING PROPOSED: SPECIAL BOATING RULE FOR JENNINGS
RANDOLPH LAKE

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



JOHN B. RADER, DIRECTOR



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegat:: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

August 22, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lt. Colonel W. B. Daniel
Division of Natural Resources
State Capitol Complex
Building 3
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Special Boating Rule for Jennings Randolph Lake (58CSR29)*

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

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

**SERIES 29
SPECIAL BOATING RULE FOR JENNINGS RANDOLPH LAKE**

§58-29-1. General.

1.1. Scope. -- This 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 West Virginia Code, (§29-1J-1 et. seq.), with the States of West Virginia and Maryland. The States have agreed to promulgate 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 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, and 29-1J-1.

1.4. Filing Date. --

1.5. Effective Date. --

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

2.1. "Controlled Dangerous Substance or Drug" -- means those controlled dangerous substances or drugs defined in West Virginia Code §60A-2 et. seq.

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

2.3. "Lake Manager" -- means the person designated as manager or resident engineer of the

Lake and its activities as appointed by the U. S. Army Corps of Engineers.

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 Division of Natural Resources 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. 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. 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. Except as otherwise specified in this rule, all persons operating a vessel or manipulating water skis, a surfboard, aquaplane, or similar device, on the Lake must comply with West Virginia Division of Natural Resources Boating Rule, 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 law enforcement officer involved shall select the method of testing. An operator who refuses to be tested may lose 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, a 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 he or she is 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, a surfboard, or similar device unless a person at least twelve (12) years of age, other than the operator is on board the 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, a 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. The Rear facing observer who is at least twelve (12) years of age or older;
- c. The person being towed; and

and

5.3.2. Is specifically designed for towing by the manufacturer.

5.4. A vessel towing an individual or individuals on water skis, a surfboard, aquaplane, or 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 any individual in the water.

5.5. The maximum length for a towrope is 75 feet except a tow rope of up to 100 feet in length may be used while towing bare-foot skiers.

5.6. 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.

5.7. 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 law enforcement officer involved shall select the method of testing. Any person who refuses to be tested may lose 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. A neoprene wetsuit or drysuit;

6.1.2. A closed-cell foam design padded chest, waist, or seat harness; or

6.1.3. A combination of the equipment specified in subdivisions 6.1.1. and 6.1.2. of this subsection

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;

7.1.3. Narrow channels; and

7.1.4. Areas where visibility is obscured.

7.2. The provisions of subsection 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.

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 flag may be attached to any vessel or navigational device or placed so as to obstruct other vessel traffic.

7.3.4. Divers shall 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 subsection 8.3 of this section, no person born on or after July 1, 1980, may operate a vessel that is required to be numbered on the Lake without first having obtained a certificate of boating safety education from this or any other state. The owner shall obtain the certificate 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 subsection 8.1. of this section 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 subsection 8.1 of this section:

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; or

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 subsection 8.1 of this section; or

8.4.2. Passes a boating safety equivalency examination administered by persons authorized to administer a boating safety education course. 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 subsection 8.1. of this section.

8.6. The provisions of this section 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 immediately to a court or detention facility solely for a violation of this section.

§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 system of every inboard internal combustion engine of a vessel operated on the Lake shall be:

a. Equipped with a muffler or system which muffles or suppresses engine noise emitted from the vessel to the established limits in subdivision 9.1.1. of this subsection; and

b. 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 those items.

§58-29-12. Penalties.

12.1. Any person violating the provisions of this rule, is guilty of a misdemeanor, and upon conviction, is be subject to the penalties prescribed in West Virginia Code §20-7-9. Provided, that any person violating subsections 4.1. or 5.6. of this rule is 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.

12.2. Second and subsequent convictions of violating the provisions of subsections 4.1. or 5.6. of this rule shall subject the individual violating these sections to double the amount of the minimum and maximum fine and jail term.