

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

Form #3

Do Not Mark In This Box

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2012 AUG 31 PM 4: 59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Dept. of Commerce, Div. 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 Motorboating 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.

Angie R. Moore
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: 8/31/2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Dept. of Commerce, WV Div. of Natural Resources, Law

324 4th Avenue, South Charleston, WV 25303

Phone: 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:

8/1/2012

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:

8/31/2012 at 9:00 AM

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)

8/31/2012

- 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

324 4th Avenue, South Charleston, WV 25303

Phone: 304-558-2784; Fax: 304-558-1170

jerry.b.jenkins@wv.gov

- 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

- 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

b. Date of hearing or comment period:

8/1/2012 - 8/31/2012

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**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 requested the No Wake Zone for river safety concerns in 2011, and it passed in 2012. The City of Morgantown has since requested changes to the rule, as attached.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 27 Special Motorboating Regulations

Type of Rule: Legislative Interpretive Procedural

Agency: Dept. of Commerce, Div. of Natural Resources, Law Enforcement Section

Address: 324 4th Avenue, Building 74
South Charleston, WV 25303

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			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: Series 27 Special Motorboating Regulations

Rule Title:

Series 27 Special Motorboating 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: August 31, 2012

Signature of Agency Head or Authorized Representative

Angel R. Moore

TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 27
SPECIAL MOTORBOATING REGULATIONS

FILED
2012 AUG 31 PM 4:59

OFFICE 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. --
- 1.4. Effective Date. --

§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.

§58-27-3. No Wake Speed Zones.

3.1. The following areas are designated as no wake speed zones:

3.1.a. The back channel of Middle Island on the Ohio River beginning at Ohio 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;

3.1.b. 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

3.1.c. Beginning at the mouth of Fishing Creek at its 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.d. 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.e. 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 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.

3.1.f. ~~The Monongahela River at the Morgantown waterfront from approximately Mile 101.2 (just below the Westover Bridge) to Mile 102 beginning 500 feet downstream from the Westover Bridge extending upstream to the Morgantown Lock and Dam.~~ This area is situated entirely within the boundaries of Monongalia County. ~~The Morgantown Police Department~~ The City of Morgantown 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.~~ No Wake Zone signs will be erected at all boat docks and at all locations where watercraft may be launched within the No Wake Zone. Two no wake buoys will be placed 500 feet downstream from the Westover Bridge outside of the commercial river channel, and one will be placed downstream below the Morgantown Lock and Dam outside the commercial river channel near the lock entrance/exit. 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.