



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Natural Resources TITLE-SERIES: 58-25
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 58-25 Boating Rule

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §20-1-7(31), §20-7-13, §20-7-16, §20-7-22, §20-7-22a, §20-7-23

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Director of the Division of Natural Resources is granted statutory authority to promulgate rules related to motorboating, required lights and equipment, operation or navigation on the waters of the state, and personal watercraft.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2021

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Press release

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes regulations to govern use the operation of motorboats and other vessels on the waters of the state.

This rule revision reflects changes made by the US Coast Guard effective April 4, 2021 regarding engine cut-off switches and engine cut-off switch links.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is required to establish standards to govern the operation of motorboats and vessels on the waters of the state.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no anticipated economic impact on the revenue of the state.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no anticipated impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

No economic impact on the state or its residents is anticipated.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There is no anticipated changes to administrative costs or revenues.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jack M Rife -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 25
BOATING RULE

§58-25-1. General.

1.1. Scope. -- This legislative rule establishes standards to govern the operation of motorboats and other vessels on the waters of this State.

1.2. Authority. -- W. Va. Code §§20-1-7(31), 20-7-13, 20-7-16, 20-7-22, 20-7-22a and 20-7-23.

1.3. Filing Date. -- ~~March 27, 2020.~~

1.4. Effective Date. -- ~~March 28, 2020.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~March 28, 2025~~August 1, 2027.

§58-25-2. Definitions.

2.1. "Coast Guard Approved" means equipment which has been approved by the Commandant of the United States Coast Guard after the equipment has been determined to be in compliance with Coast Guard specifications and regulations relating to the materials, construction, and performance of equipment. The equipment must bear the approval stamp of the United States Coast Guard.

2.2. "Covered recreational vessel" means a recreational vessel that is less than 26 feet overall in length and capable of developing 115 pounds or more of static thrust.

~~2.2.2.3.~~ "Division" means the West Virginia Division of Natural Resources.

~~2.3.2.4.~~ "Fixed System" means a Coast Guard approved fixed fire extinguisher system in a vessel's engine compartment.

~~2.4.2.5.~~ "Government-Owned Reservoir" means a natural or artificial impoundment, lake, pond, or reservoir that is partially or wholly within the territorial limits of West Virginia and is owned or administered by the federal government or by the State or any political subdivision of the State.

~~2.5.2.6.~~ "Open motorboat" means a vessel on which all engine compartments, fuel tank compartments, and other spaces to which explosive or flammable gases and vapors may flow are open to the atmosphere and arranged so as to prevent the entrapment of the gases and vapors within the vessel.

~~2.6-2.7.~~ "Open to the Atmosphere" means a compartment which has at least fifteen (15) square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume.

~~2.7-2.8.~~ "Operate" means to navigate or otherwise use a vessel.

~~2.8-2.9.~~ "Person" includes the plural "persons" and means an individual, partnership, firm, corporation, association, or other legal entity.

~~2.9-2.10.~~ "Personal Watercraft" or "PWC" means a vessel which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel rather than the conventional manner of sitting or standing inside the vessel.

~~2.10-2.11.~~ "Racing Shell" or "Rowing Scull" means a manually propelled vessel, recognized by a national or international racing association for use in competitive racing, in which all occupants except a coxswain row, scull, or paddle and which is designed and equipped solely for competitive racing.

~~2.11-2.12.~~ "Visible" means visible on a dark night with a clear atmosphere.

~~2.12-2.13.~~ "Waters of this State" means any public waters within the territorial limits of this State.

~~2.13-2.14.~~ All other terms have the meaning prescribed in W. Va. Code §20-7-13 *et seq.*

§58-25-3. Required Equipment.

3.1. Personal Floatation Devices.

3.1.1. Any person operating, riding as a passenger, or being towed behind a personal watercraft shall wear a personal flotation device of an appropriate design and fit for the activity and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302.

3.1.2. The operator or owner of any vessel being used for recreational purposes, other than a vessel required to have a certificate of inspection issued by the United States Coast Guard, shall require any child age 12 and under who is aboard the vessel to wear a personal flotation device of an appropriate design and fit for the activity and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302 while the vessel is underway unless the child is below deck or in an enclosed cabin.

~~3.1.3-3.2.~~ Vessels operating on the waters of this state are subject to the equipment requirements as contained in the federal navigation laws and rules promulgated by the United States Coast Guard pursuant to Boating Safety, 33 C.F.R Subchapter S *et seq.*

3.3. Engine Cut-Off Switches.

3.3.1. Vessels operating on the waters of this state are subject to the engine cut-off switch requirements as contained in the federal navigation laws and rules promulgated by the United States Coast Guard pursuant to the Recreational Vessels, 46 U.S.C. Chapter 43 *et seq.*

§58-25-4. Prohibited Operations.

4.1. No person under the age of 15 may operate or be permitted to operate a motorboat or personal watercraft upon the waters of the State, except persons 12 to 15 years of age may operate a motorboat or personal watercraft if a person over 18 years of age is aboard the motorboat or personal watercraft. However, persons 12 to 15 years of age may operate a motorboat up to a maximum of 10 horsepower without having an adult on board.

4.1.1. No person who owns a motorboat or personal watercraft or who has charge over or control of a motorboat or personal watercraft may authorize or knowingly permit a motorboat or personal watercraft to be operated in violation of this rule.

4.2. No person may operate or give permission for the operation of a vessel which is not equipped as required under the provisions of section 4 of this rule and W.Va. Code §20-7-13 *et seq.*

4.3. No person may operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

4.4. No person may operate any motorboat or vessel while under the influence of any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, wine, or controlled substances, or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

4.5. No person may operate or knowingly permit another person to operate a vessel if that person, by reason of physical or mental disability, is incapable of operating the vessel in a safe manner under all the prevailing circumstances.

4.6. No person may operate or knowingly permit another person to operate a vessel at a rate of speed greater than will permit that person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. This section does not apply to the operator of a vessel competing in a regatta which is sanctioned under the provisions of W. Va. Code §20-7-20 who is attempting to attain high speeds on a marked racecourse.

4.7. No person may make a reckless approach to or passage by a dock or ramp, a moored or anchored vessel, or a marked swimming area.

4.8. No person may operate a motorboat at a speed greater than the speed limits established on the waters of a government-owned reservoir under W. Va. Code of State Rules, Title 58 Series 26, Special Boating Rule.

4.9. This section does not apply to participants in an approved and permitted regatta, race, marine parade, tournament, or exhibition.

4.10. Except as provided in subsections 4.10.1. and 4.10.2., no person may operate a covered recreational vessel on plane or above displacement speed without using an engine cut-off switch link pursuant to Recreational Vessels, 46 U.S.C. Chapter 43 *et seq.*

4.10.1. An engine cut-off switch link is not required if the main helm of the covered recreational vessel is installed within an enclosed cabin.

4.10.2. An engine cut-off switch link is not required if the vessel does not have an engine cut-off switch and is not required to have one pursuant to Recreational Vessels, 46 U.S.C. Chapter 43 §4312.

§58-25-5. Restricted Areas.

5.1. No person may anchor a vessel in a position that obstructs a passageway ordinarily used by other vessels.

5.2. No person may anchor or tie a vessel to any type of navigation aid or buoy.

5.3. No person may operate a vessel within 20 feet of a person engaged in fishing without first obtaining permission from that fisherman.

5.4. No person may operate a vessel within 20 feet of the exterior boundary of a water area which is clearly marked by buoys as a swimming area or other restricted area approved by the Director.

5.4.1. Swimming areas shall be marked with buoys pursuant to U.S.C. Aids to Navigation, 33 C.F.R Subchapter C Part 62 *et seq.* as authorized by 46 U.S.C. §4302.

5.5. No person may operate a motorboat at a speed greater than idling speed on established and marked no-wake zones on a government-owned reservoir.

§58-25.6. Overloading and Overpowering.

6.1. No person may load a vessel with passengers or cargo beyond its safe cargo carrying capacity.

6.1.1. The maximum persons capacity marked on a vessel's maximum capacities plate shall not be exceeded.

6.1.2. The maximum weight capacity marked on a vessel's maximum capacities plate shall not be exceeded.

6.1.3. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer, the owner must demonstrate that his or her vessel conforms to the safe loading requirements of Boats and Associated Equipment, 33 C.F.R. Subchapter S Part 183.

6.2. No person may operate a vessel beyond its safe powering capacity.

6.2.1. The maximum horsepower capacity marked on a vessel's maximum capacities plate shall not be exceeded.

6.2.2. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer, the owner or operator shall demonstrate that his or her vessel conforms to the safe powering requirement of Boats and Associated Equipment, 33 C.F.R. Subchapter S Part 183.

§58-25-7. Water Skis and Surfboards.

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

7.2. No person may manipulate any water skis, surfboard or similar device while under the influence any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, wine, or controlled substances, or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

7.3. No person may operate a vessel towing a person on water skis, surfboard, other towable or similar device, nor may any person engage in water skiing, surfboarding, or similar activity at any time between sunset and sunrise.

7.4. No person may operate a vessel towing a person on water skis, surfboard, other towable or similar device unless:

7.4.1. A person at least 12 years of age or older other than the operator is on board the vessel in a position to observe the progress of the person being towed; or

7.4.2. The vessel is equipped with a wide-angle rear-view mirror mounted in a manner that permits the operator to observe the progress of the person being towed.

7.5. Sections 7.3 and 7.4 of this section do not apply to a performer in a professional exhibition or to a person engaged in an activity authorized under the provisions of W. Va. Code §20-7-20.

7.6. No person may operate a vessel on a government-owned reservoir while towing a person on water skis, surfboard, other towable or similar device nor may any person engage in water skiing surfboarding, or similar activity on the reservoir except in the unlimited speed zone.

7.7. Except as provided in subsection 7.7.1 of this section, a person towed by a vessel shall wear a personal flotation device of an appropriate design and fit for the activity and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302.

7.7.1. A person engaged in barefoot waterskiing may elect, at his or her own risk, to wear a non-Coast Guard approved barefoot wetsuit designed specifically for that activity.

§58-25.8. Accident Reports.

8.1. The operator of a vessel involved in a collision, accident, or other casualty -- so far as he or she can do so without serious damage to his or her own vessel, crew, and passengers -- shall render to other persons affected by the collision, accident, or other casualty any assistance that is practicable and necessary in order to save them from or minimize any danger caused by the incident.

8.2. The operator of a vessel involved in a collision, accident, or other casualty shall give his or her name, address, and the identification of his or her vessel in writing to any person who was injured during the incident and to the owner of any property damaged by the incident.

8.3. The operator of any vessel involved in a collision, accident, or other casualty which results in death or personal injury that requires medical treatment beyond first aid, or damage to property in excess of \$2000, shall file a full description of the incident with the Division of Natural Resources on West Virginia Boating Accident Report Form MB-3.

8.3.1. An accident report for an incident involving a fatality shall be submitted to the Division within 48 hours of the incident.

8.3.2. An accident report in a case involving a reportable injury or property damage shall be submitted to the Division within 10 days of the incident.

8.4. An accident report shall be submitted in person or by mail to the Division of Natural Resources, Law Enforcement Section, 324 4th Avenue, South Charleston, WV 25303.

§58-25-9. Boating on Government-Owned Reservoirs.

9.1. Special rules to be observed in the operation of motorboats and other vessels upon, over, or through the waters of a particular government-owned reservoir are found in W. Va. Code of State Rules, Title 58 Series 26, Special Boating Rule.

9.2. No motorboat or other vessel may be placed upon or operated upon a government-owned reservoir for a fee or profit, either as a direct charge to a second party or as an incident to other services provided by the second party, except as specifically authorized by lease, license, or concession contract with the government agency which manages the reservoir.

9.3. No motorboat or other vessel containing a sink, toilet, or sanitary system may be launched and operated upon a government owned reservoir 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 reservoir.

9.4. A motorboat or other vessel, when not in actual use at a government-owned reservoir, shall be:

9.4.1. Removed from the reservoir;

9.4.2. Securely moored at an authorized dock or boathouse where supervision by the owner or his or her representative is provided on a 24-hour basis; or

9.4.3. Placed in the care of a marina concessionaire, state or local managing agency, or other party authorized to care for floating equipment on a 24-hour basis.

9.5. No motorboat or other vessel may be placed upon a government-owned reservoir for use as a dwelling of either permanent or temporary nature.

9.6. A barge, floating facility, motorboat, or other vessel may be moored only in locations designated by the government agency which manages the reservoir. All floating or stationary mooring facilities shall be constructed in accordance with plans approved by the managing government agency.

9.7. Abandonment of personal property on the land or waters of a government-owned reservoir is prohibited.

9.8. Gasoline, oil, and other flammable or combustible liquids may not be stored upon or about a government-owned reservoir or the shores of the reservoir without written permission from the managing government agency.

9.9. Private notices and advertisements may not be posted, distributed, or displayed at a government-owned reservoir except as the managing government agency may consider necessary for the convenience and guidance of the public using the area for recreational purposes.

9.10. No person may engage in or solicit any business at a government-owned reservoir unless the activities are permitted under the terms of a lease, license, or concession contract with the government agency which manages that reservoir.

§58-25-10. Special Requirements for Motorboats Which Carry Passengers for Hire.

10.1. Motorboats which carry passengers for hire shall have readily available and maintained in good and serviceable condition for each person carried a personal flotation device of an appropriate design and fit for each activity type as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 *et seq.* as authorized by 46 USC §4302. They shall also have readily available and maintained in good and serviceable condition personal flotation devices of an appropriate design and fit for children as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 *et seq.* as authorized by 46 USC §4302 in number equal to at least 10 percent of the maximum number of persons carried, unless the service is such that children are never carried.

10.2. Motorboats while carrying passengers for hire shall be operated and navigated by a person duly licensed by the United States Coast Guard. This section does not apply to outfitters and guides licensed under W. Va. Code §20-2-23 and §20-2-23a.

10.3. Motorboats carrying more than six passengers shall be inspected and certified by the United States Coast Guard.

§58-25-11. Boat Liveries.

11.1. The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide boating safety orientation for all persons that rent any vessel which is designed or permitted by him or her to be operated as a motorboat, including personal watercrafts, unless that person holds a certificate as required under W. Va. Code §20-7-12b.

11.2. Individuals providing instruction shall apply for certification to the Division and shall renew the certification on an annual basis. Instructors shall: 1) Be at least 18 years of age, 2) Have successfully completed a basic National Association of State Boating Law Administrator's approved boating safety course, and 3) Have successfully completed an instructor training workshop on Boating Safety Orientation conducted by the Division.

11.3. The Boating Safety Orientation shall include the following: 1) Operational characteristics of

the vessel; 2) United States Inland Navigational rules; 3) W. Va. Laws and Rules; and 4) Procedures for maintaining a clean marine environment.

11.4. The boat livery or rental facility shall issue a temporary certificate to renters who successfully complete the orientation. This certificate is only valid for the rental period. The boat livery or rental facility shall keep a copy of the certificate on file for one year and make it available for inspection, during normal business hours, upon request of a Natural Resources Police Officer. The Division shall provide the certificates.

11.5. Renters taking the orientation training for personal watercrafts shall complete and sign a PWC Renter Orientation Checklist provided by the Division. The boat livery or rental facility shall keep the original on file for a period of one year and make it available for inspection, during normal business hours, upon request of a Natural Resources Police Officer.

§58-25-12. Penalties.

12.1. Any person convicted of a violation of this rule is subject to the penalties provided for in the W. Va. Code §20-7-9.