

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 16 2 25 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Natural Resources TITLE NUMBER: 58

RULE TYPE: Legislative; CITE AUTHORITY Ch. 20-5-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 31

TITLE OF RULE BEING AMENDED: Rules governing public use of West Virginia State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources

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

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 21, 2000 AT 12:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Mr. Cordie O. Hudkins, Chief

Parks and Recreation

State Capitol Complex

Building 3, Room 713

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Cordie O. Hudkins

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Summary of Proposed Rule

- 2.12 To amend the existing rule which prohibits pets in state park and state forest cabins and the areas immediately around them to include permitting pets in cabins and the areas immediately around them at Bluestone, Lost River, Cacapon and Cass Scenic Railroad State Parks, and Cabwaylingo and Kumbrabow State Forest as a 3 year pilot program to gauge the demand by guests who travel with their pets for this service, to determine the effect on revenue and occupancy this potential market offers, and determine the overall guest reaction to this service.

- 2.23 To delete this section from Title 58, Series 31, and add it to Title 58, Series 34.

- 2.25 To delete this section from Title 58, Series 31, and add it to Title 58, Series 34.

Statement of Circumstances Which Require This Rule

- 2.12 Until the mid-1980's, guests who stayed in state park and state forest cabins were permitted to bring their pets with them. Those pets were limited to cats and dogs. The first year following this ban the Parks and Recreation Office literally received hundreds of calls objecting to this ban. As the years have passed this number has obviously dropped considerably, but the Parks and Recreation Office continues to receive dozens of calls each year requesting that this policy be reinstated.

As a result of these calls, the Parks and Recreation Office believes there is a strong market that would open itself to the park system by reinstating this policy. Some sectors of the hotel industry are beginning to offer this service to the traveling public. As our population ages and children leave home, many couples and individuals have pets for company and companionship. The Parks and Recreation Section would like to implement a 3 year pilot program to permit pets in cabins at Bluestone, Lost River, Cacapon, and Cass Scenic Railroad State Parks, and Cabwaylingo and Kumbrabow State Forests to study the effect of this potential market on occupancy levels, to gauge demand for this service, and determine overall guest reaction to this market.

- 2.23 This rule applies to the formation of state park foundations and establishes guidelines whereby state park foundations who have adopted a state park or state forest may apply for and be awarded 50% matching grants for projects approved by the Chief of Parks and Recreation. This rule does not pertain to state park, state forest, and state wildlife management area operations, as does rule 2.25, and therefore, should be placed in another series of rules which are being proposed to cover special projects and grants. This change does not affect the administration or enforcement of the rule itself and is only intended as a technical change.
- 2.25 This rule authorizes the Director of the Division of Natural Resources to provide free use of a picnic shelter or cabin in exchange for a donation of materials and labor for the construction of the cabin or picnic shelter. This rule does not pertain to state park, state forest, and state wildlife management area operations, as does rule 2.23, and therefore, should be placed in another series of rules which are being proposed to cover special projects and grants. This change does not affect the administration or enforcement of the rule itself and is only intended as a technical change.

WEST VIRGINIA DIVISION OF NATURAL RESOURCES
PARKS AND RECREATION

Rule Governing Pets in State Parks,
State Forests, and State Wildlife Management Areas

Current Rule

2.12. Dogs and cats are the only pets permitted in state parks, state forests, and state wildlife management areas; however, they are prohibited in state park and state forest cabins and the areas immediately around them, in state park lodges, and in swimming pool and beach swimming areas. In and around campgrounds, picnic areas, playgrounds, designated roads and trails and other similar intense public use areas, they shall be restrained at all times on a sturdy leash not to exceed ten feet in length and their owner or master shall clean up the pet's excreta, keep it quiet and from disturbing other guests, and is responsible for all damages it causes.

Proposed Rule

2.12. Dogs and cats are the only pets permitted in state parks, state forests, and state wildlife management areas; however, they are prohibited in state park and state forest cabins and the areas immediately around them, in state park lodges, and in swimming pool and beach swimming areas, except that pets are permitted in state park and state forest cabins and the areas immediately around them in the following areas: Bluestone State Park, Cacapon Resort State Park, Lost River State Park, Cass Scenic Railroad State Park, Cabwaylingo State Forest, and Kumbrabow State Forest. In and around campgrounds, picnic areas, playgrounds, designated roads and trails and other similar intense public use areas, they shall be restrained at all times on a sturdy leash not to exceed ten feet in length and their owner or master shall clean up the pet's excreta, keep it quiet and from disturbing other guests, and is responsible for all damages it causes.

Current Rule

2.23. State park and forest or other public land area foundations may apply for and be awarded 50% matching grants of up to \$7,500 per project as part of an "adopt a state park or forest program" for maintenance and improvement projects approved by the Chief of Parks and Recreation. To qualify, a chartered foundation must formally adopt the area for which it was created and for which it is working. A foundation may adopt a park, forest or recreation area with the approval of the Director of the Division of Natural Resources.

Proposed Rule

~~2.23. State park and forest or other public land area foundations may apply for and be awarded 50% matching grants of up to \$7,500 per project as part of an "adopt a state park or forest program" for maintenance and improvement projects approved by the Chief of Parks and Recreation. To qualify, a chartered foundation must formally adopt the area for which it was created and for which it is working. A foundation may adopt a park, forest or recreation area with the approval of the Director of the Division of Natural Resources.~~

Current Rule

2.25. With prior authorization of the Director of the Division of Natural Resources any individual or group may have free use of a picnic shelter for one day during each calendar year or have free use of a cabin for one week during each calendar year in exchange for donation of materials and labor for the construction of the cabin or picnic shelter. The design and construction of the cabin or picnic shelter must be in accordance with Division standards and specifications. A group is defined as a family, business, corporation or non-profit organization whose by-laws are registered with the Secretary of State. The group shall designate a contact person who is responsible for securing the picnic shelter or cabin reservation each year. The non-transferrable fee waiver expires when the amount of the donation equals the loss of revenue from the fee waiver or until the individual dies or the group ceases to exist. The Director shall determine the donation value by the cost of materials and labor donated and shall divide that value by the standard rental fee charged at the time construction is completed to determine the expiration date of the fee waiver with the Director being the sole judge of the value of donated labor. Construction of cabins is restricted to state parks or state forests which already have cabins. Individuals or groups who are eligible for this fee waiver may make reservations for the use of a picnic shelter or cabin one week in advance of established reservation policies.

Proposed Rule

~~2.25. With prior authorization of the Director of the Division of Natural Resources any individual or group may have free use of a picnic shelter for one day during each calendar year or have free use of a cabin for one week during each calendar year in exchange for donation of materials and labor for the construction of the cabin or picnic shelter. The design and construction of the cabin or picnic shelter must be in accordance with Division standards and specifications. A group is defined as a family, business, corporation or non-profit organization whose by-laws are registered with the Secretary of State. The group shall designate a contact person who is responsible for securing the picnic shelter or cabin reservation each year. The non-transferrable fee waiver expires when the amount of the donation equals the loss of revenue from the fee waiver or until~~

~~the individual dies or the group ceases to exist. The Director shall determine the donation value by the cost of materials and labor donated and shall divide that value by the standard rental fee charged at the time construction is completed to determine the expiration date of the fee waiver with the Director being the sole judge of the value of donated labor. Construction of cabins is restricted to state parks or state forests which already have cabins. Individuals or groups who are eligible for this fee waiver may make reservations for the use of a picnic shelter or cabin one week in advance of established reservation policies.~~

Fiscal Note Worksheet
(Submit 4 copies)

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT: Permitting pets in state park and forest cabins FUND NO 3265

SOURCE OF REVENUE: _____ GENERAL FUND SPECIAL _____ OTHER (specify) _____

COST ESTIMATE BASED ON: AN ORIGINAL ESTIMATE _____ BUDGET BILL _____ OTHER (specify) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE _____ BUDGET BILL _____ OTHER (specify) _____

Show overall effect in items 1 and 2, and in item 3 give explanation of breakdown by fiscal year including long-range effect.

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
	1. Estimated Total Cost	\$2,000			\$2,000
Personal Services					
Current Expenses					
Repairs and Alterations					
Equipment					
Other					
2. Estimated Total Revenues	\$10,000			\$10,000	

3. Explanation of above estimates (including long-range effect):

The park system permitted guests to bring pets with them when they stayed in a state park or state forest cabin until approximately 1986. When this policy change was made the central office received literally hundreds of calls from guests who were now not permitted to bring their pets with them during their stay. As time has passed, the parks central office still receives dozens of calls each spring from callers who want to bring their pets with them on vacation. To gauge the demand by guests who travel with their pets for this service, and to determine the overall effect on revenue and occupancy and overall guest reaction, the Parks and Recreation Section is seeking permission to permit pets in cabins at Bluestone, Lost River, Cacapon, and Cass Scenic Railroad State Parks and Cabwaylingo and Kumbrabow State Forests as a 3 year pilot program to see if we should reinstitute this policy. A major change from the previous policy would be the requirement that guests who wish to bring pets when renting cabins must pay an additional fee of \$15 per night or \$75 per week. The long term affect is the potential to open up our parks to a growing number of senior citizens who travel with their pets and improve our revenue picture.

Date _____ Agency _____

Authorized Representative
Cordie D. Hedlin

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JUN 16 2 26 PM '00

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 31
PUBLIC USE OF WEST VIRGINIA STATE PARKS,
STATE FORESTS, AND STATE WILDLIFE MANAGEMENT AREAS
UNDER THE DIVISION OF NATURAL RESOURCES

§58-31-1. General.

1.1. Scope. -- This legislative rule governs the public use of West Virginia state parks, state forests, and recreation areas in state wildlife management areas under the jurisdiction and management of the Division of Natural Resources. This rule shall not be construed to include the state forests or state wildlife management areas, or any areas or facilities in the state forests or state wildlife management areas, under the jurisdiction and management of the Department of Agriculture or other sections of the Division of Natural Resources, respectively. This rule is necessary to provide for public health, safety and welfare; to protect state property; and to assure state recreational area guests of a safe, beneficial and enjoyable experience.

1.2. Authority. -- W. Va. Code §20-5-2.

1.3. Filing Date. -- May 16, 1996.

1.4. Effective Date -- July 1, 1996.

1.5. This rule repeals and replaces Division of Natural Resources' Rule Governing Public Use of West Virginia State Parks, State Forests, and State Wildlife Management Areas, 58 CSR 5.

§58-31-2. General Rules Governing Public Use of State Parks, State Forests, and Recreational Areas in State Wildlife Management Areas under the Division of Natural Resources.

2.1. No person shall cut, deface, destroy, or drive any object into any tree, shrub, rock, sign, building or other structure or object in a state park, state forest, or state wildlife management

area. This subsection does not apply to the erection of temporary blinds or tree stands in state wildlife management areas.

2.2. No person shall remove any man-made or natural object, material, substance, plant, animal or historical or archeological relic or artifact from a state park, state forest, or state wildlife management area, except those legally acquired through hunting and fishing in accordance with W. Va. Code §20-2-1 et seq. or upon proper authorization in writing by the Chief of Parks and Recreation, Division of Natural Resources.

2.3. Fires may be lighted only in fireplaces, fire rings or grates provided by the State or in places designated by the area superintendent. Those persons responsible for a fire shall extinguish it completely before leaving it. Ashes, charcoal briquets and other materials used for a fire shall be left in the fireplace, fire ring, grate or place designated for the fire, or be deposited in a trash container or a container provided specifically for that purpose but only after they are extinguished. The materials shall not be strewn over the ground.

2.4. No person shall attempt to or hunt, catch, capture, take, kill, trap, pursue or have in his or her possession any animal, except as provided in W. Va. Code §20-2-1 et seq. Hunting is prohibited in all state parks; however, legally authorized hunting is permitted in state forests, and state wildlife management areas.

a. No person shall attempt to feed, or feed, any animal in a state park, state forest, or state wildlife management area, except a pet they

own, or as part of a wildlife management program officially approved by the state agency having lawful jurisdiction over the program.

2.5. Loud or excessive noise, demonstrations, disturbances, disorderly conduct, profanity, public drunkenness, and the possession or use of controlled substances is prohibited.

2.6. Swimming is prohibited in state parks, state forests, and state wildlife management areas, except in places designated for that purpose.

2.7. Recreational activities including, but not limited to, rock climbing, rappeling, hang gliding, parachuting, parasailing, skydiving, spelunking and other like or similar recreational activities that require a high degree of specialized training and equipment are permitted, except where they are prohibited by posted signs. Persons who intend to participate in any such activity shall register at the area superintendent's office before engaging or participating in it and specify where it will take place. Participants in such activities assume full responsibility and liability for any risk or injury related to the activity. Scenic rocks, overlooks and vistas are for providing scenic beauty and aesthetic benefit for guests; therefore, they shall not be used for, or disfigured by, any such recreational activity. This subsection does not apply to golf, skiing, horseback riding, hunting or fishing.

2.8. Garbage, waste, bottles, cans, paper, junk, or any other trash or refuse shall not be dumped, deposited or strewn within the boundary of any state park, state forest, or state wildlife management area.

2.9. Lodge rooms, cabins, campsites, picnic shelters, swimming pools and beaches, or any other facility shall not be subleased by guests or patrons.

2.10. It is unlawful for any person not to pay the rental, charge or fee for any facility, service, activity or good he or she uses or purchases in a state park, state forest, or state wildlife management area.

2.11. Only registered lodge, cabin, and camping guests, licensed hunters, and fishermen while hunting or fishing and persons who have authorized, legitimate business in a state park, state forest, or state wildlife management area are permitted on the premises between the closing hour of 10:00 P.M. and the opening of 6:00 A.M. during which hours the premises are closed to the general public.

2.12. Dogs and cats are the only pets permitted in state parks, state forests, and state wildlife management areas; however, they are prohibited in state park and state forest cabins and the areas immediately around them, in state park lodges, and in swimming pool and beach swimming areas. In and around campgrounds, picnic areas, playgrounds, designated roads and trails and other similar intense public use areas, they shall be restrained at all times on a sturdy leash not to exceed ten feet in length and their owner or master shall clean up the pet's excreta, keep it quiet and from disturbing other guests, and is responsible for all damages it causes.

2.13. Explosives, incendiaries, flammables and other dangerous substances are prohibited in state parks, state forests, and state wildlife management areas.

2.14. Uncased firearms, uncased bows and uncased arrows are prohibited in state parks, state forests, and state wildlife management areas, and on state trails, except:

a. When the area is open for hunting (hunting is prohibited in state parks) or when a registered park or forest guest has the written permission of the area superintendent to carry them in a case from his or her lodge room, cabin or campsite to open hunting areas, or to an officially designated rifle, pistol, skeet, trap, target or shooting range;

b. Area superintendents may authorize their use in historical reenactments and plays; and

c. The Chief of Parks and Recreation, Division of Natural Resources, may authorize

their use for a limited period in conjunction with recreational and arts and crafts programs.

2.15. The Division of Natural Resources assumes no responsibility for any personal property. If personal property is abandoned or left unattended by park guests more than forty-eight (48) hours, it will be removed from the public use area and disposed of according to law.

2.16. Hawking, peddling, soliciting, begging, advertising, or carrying on any business or commercial enterprise is prohibited in state parks, state forests, and state wildlife management areas without the written permission of the Director of the Division of Natural Resources.

2.17. Fishing and boating are permitted in state parks, state forests, and state wildlife management areas only in accordance with state law, fishing and boating rules promulgated under the law, and rules publicly posted in those areas.

2.18. The speed limit for motor vehicles is thirty (30) miles per hour in state parks, state forests, and state wildlife management areas, except where a lower speed limit is posted. All traffic laws, signs and directions shall be strictly observed. Driving of motor vehicles in any manner that creates a nuisance to any guest by repetitive or continuous cruising or operation is prohibited.

2.19. Motor vehicles including, but not limited to, trail bikes, motorbikes, snowmobiles, and all terrain vehicles may be operated only on public roads usable by automotive vehicles, and on trails and areas designated for their use by the area superintendent by posted signs. It is unlawful for any unauthorized motor vehicle to go beyond a gate, cable, or other obstruction, or to proceed beyond any sign prohibiting such travel. All person operating motor vehicles in state recreational areas shall obey and comply with all applicable state laws and rules.

a. Mountain and trail bicycles may be operated only on public roads, trails and other readily recognizable passageways such as logging

roads and oil or gas well roads. They shall not be operated on horseback riding trails when they are open and operating as horseback riding trails, nor shall they be operated on any trail or road where their use is prohibited by posted signs.

"Mountain and trail bicycles" means any devices designed for operation on mountains and trails having two tandem wheels and pedals for propelling it by human power.

2.20. No person may operate a vehicle in a manner so as to harass, chase or annoy any person or animal.

2.21. No person shall have in his or her possession beer, wine, liquor, and all other alcoholic beverages within the boundaries of all historical, day use and natural area state parks, which are Beartown, Berkeley Springs, Brush Creek Falls day-use area managed by Pipestem State Park, Carnifex Ferry Battlefield, Cass Scenic Railroad, Cathedral, Chief Logan, Droop Mountain Battlefield, Fairfax Stone Historic Monument, Little Beaver, Pinnacle Rock, Point Pleasant Battle Monument, Prickett's Fort, Valley Falls, and Watters Smith Memorial, the Greenbrier River Trail and the North Bend Rail Trail; in the following vacation parks: Audra, Babcock, Camp Creek, Moncove Lake, Tomlinson Run except in reserved picnic shelters, in all boat launch ramp parking areas, and all camping areas within the boundary of Bluestone State Park, and in all of Hawks Nest State Park except the lodge; in all state forests, which are Cabwaylingo, Calvin Price, Coopers Rock, Greenbrier, Kanawha, Kumbrabow, Panther, and Seneca; in the following state wildlife management areas: Berwind Lake, Big Ditch Lake, Bluestone, Laurel Lake, Pleasant Creek, Plum Orchard Lake, and Teter Creek Lake; and in those state park areas where they are prohibited by posted signs: Provided, That any person, group or association sponsoring a private party at the restaurant at Chief Logan State Park or the multi-purpose log barn at Prickett's Fort State Park may provide beer, wine, liquor and all other alcoholic beverages for guests at the private party as long as the party is not open to the general public.

2.22. The Director of the Division of Natural Resources is authorized to issue special use permits and enter into written agreements with persons who demonstrate to the satisfaction of the Director that they have good cause to utilize a motor driven vehicle on the Greenbrier River Trail or the North Bend Rail Trail. The Director may also authorize persons with legitimate need to utilize motorized vehicles on the trails as authorized in subdivision 2.22.3.

2.22.1. The Director may, upon application in writing and for good cause shown, issue a written special use permit authorizing limited use of motorized vehicles on either the North Bend Rail Trail or Greenbrier River Trail. A separate permit is required for each use. Each permit shall specify the limitation on access, including such things as the date, time not to exceed three days, place, method and distance the applicant will be allowed to have access to the trail. As part of the permit process, the Director shall enter into a written agreement to allow the use of motorized vehicles on the trails. The agreement shall specify the limitations of the use and require, in exchange for such use, that the persons allowed to use motorized vehicles on the trails shall maintain a specified area of the trail for a specified length of time. The terms of the maintenance portion of the agreement shall depend on the length and nature of the use.

2.22.2. Good cause may be shown by (a) those persons in need of limited access to adjacent land that the applicant owns or leases for agriculture purposes and who have demonstrated no other reasonable means to gain entry to the adjacent land; (b) those persons who have a vested right of ingress to and egress from the trail and (c) those persons required by law to plug or reclaim oil or gas wells.

2.22.3. Persons with a legitimate need to use motorized vehicles on the trails are exempt from the permit requirements. A legitimate need is limited to (a) those persons who are authorized by the Director to use motorized vehicles in the management, construction, and maintenance and operation of the trails and facilities and (b)

persons and equipment to fight forest fires and handle other emergencies.

2.23. State park and forest or other public land area foundations may apply for and be awarded 50% matching grants of up to \$7,500 per project as part of an "adopt a state park or forest program" for maintenance and improvement projects approved by the Chief of Parks and Recreation. To qualify, a chartered foundation must formally adopt the area for which it was created and for which it is working. A foundation may adopt a park, forest or recreation area with the approval of the Director of the Division of Natural Resources.

2.24. Any person may be evicted from a state park, state forest, or state wildlife management area for any breach of this rule, or for the breach of any other rule which is in effect governing their use. All rentals, charges and fees are forfeited upon an eviction.

2.25. With prior authorization of the Director of the Division of Natural Resources any individual or group may have free use of a picnic shelter for one day during each calendar year or have free use of a cabin for one week during each calendar year in exchange for donation of materials and labor for the construction of the cabin or picnic shelter. The design and construction of the cabin or picnic shelter must be in accordance with Division standards and specifications. A group is defined as a family, business, corporation or non-profit organization whose by-laws are registered with the Secretary of State. The group shall designate a contact person who is responsible for securing the picnic shelter or cabin reservation each year. The non-transferrable fee waiver expires when the amount of the donation equals the loss of revenue from the fee waiver or until the individual dies or the group ceases to exist. The Director shall determine the donation value by the cost of materials and labor donated and shall divide that value by the standard rental fee charged at the time construction is completed to determine the expiration date of the fee waiver with the Director being the sole judge of the value of donated labor.

Construction of cabins is restricted to state parks or state forests which already have cabins. Individuals or groups who are eligible for this fee waiver may make reservations for the use of a picnic shelter or cabin one week in advance of established reservation policies.

§58-31-3. Enforcement of Rules Governing Public Use of State Parks, State Forests, and Recreation Areas in State Wildlife Management Areas under the Division of Natural Resources and Penalties.

3.1. Responsibility for enforcing the rules.

It is the duty and responsibility of Conservation Officers, Special Conservation Officers, and the superintendents, assistant superintendents and managers of state parks, state forests, and state wildlife management areas to enforce all of the provisions of this rule.

3.2. Violation of rules and penalties.

Any person violating any of the provisions of this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.