

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2001 JUN 26 P 3:26

OFFICE 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 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 26 AT 12:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Mr. John R. Pope, 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.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Summary of Proposed Rule

- 2.11 To amend the existing rule in which 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 hour of 6:00 a.m. during which they are closed to the general public, by adding the phrase "unless other operating hours are posted at all park entrances".

Statement of Circumstances Which Require This Rule

This rule modification is being made to provide state park, state forest, and state wildlife management area superintendents the management flexibility to make reasonable adjustments in operating hours to meet changing seasonal needs. For example, superintendents of day use areas would have the flexibility to close their respective areas at sunset during the off season when we turn our clocks back to standard time and darkness falls around 6:00 p.m. The advantages to this rule modification would be improved off season security and protection of state property from vandalism. Since most park, forest, and wildlife management area recreational activities take place during daylight hours, this rule would not hinder guests recreational experiences.

WEST VIRGINIA DIVISION OF NATURAL RESOURCES
PARKS AND RECREATION
Title 58, Series 31

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

Current Rule

- 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.

Proposed Rule

- 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. unless other operating hours are posted at all park entrances, during which hours the premises are closed to the general public.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing Public Use of West Virginia State Parks, State Forests, State Wildlife Management areas under the Division of Natural Resources.

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: State Capitol Complex

Building 3, Room 713

Charleston, WV 25305

1. Effect of Proposed rule:

| | ANNUAL FISCAL YEAR | | | | |
|----------------------------------|--------------------|----------|---------|------|------------|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | \$2,000 | | | | \$500 |
| PERSONAL SERVICES | | | | | |
| CURRENT EXPENSE | | | | | |
| REPAIRS & ALTERATIONS | | | | | |
| EQUIPMENT | | | | | |
| OTHER | | | | | |

2. Explanation of Above Estimates:

There will be minimal costs for the initial construction of signs to post new hours where needed. Thereafter costs would be minimal to maintain signs.

3. Objectives of These Rules:

To permit management flexibility to make reasonable adjustments in operating hours to meet changing seasonal needs. This rule change would provide added off-season security and protection of state property from vandalism.

Rule Title: Rules Governing Public Use of West Virginia State Parks, State Forests, State Wildlife Management areas under the Division of Natural Resources.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

There should be a reduction in vandalism and subsequent repair costs to state facilities.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

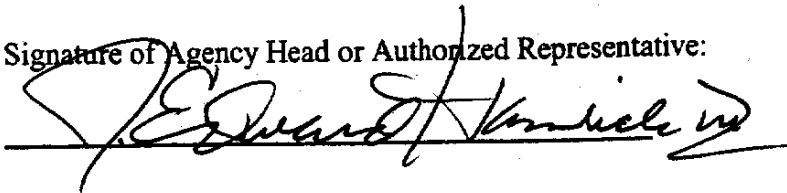
None

C. Economic Impact on Citizens/Public at Large.

None

Date: 6/26/01

Signature of Agency Head or Authorized Representative:



Summary of Proposed Rule

- 2.21 To modify the existing rule prohibiting the possession of beer, wine, liquor, and all other alcoholic beverages to include all camping areas within the boundaries of Beech Fork State Park.

An additional modification to this rule would be to permit beer, wine, liquor, and all other alcoholic beverages at the Hawks Nest golf course which is operated as a part of Hawks Nest State Park.

Statement of Circumstances Which Require This Rule

The consumption of alcoholic beverages in the campground at Beech Fork State Park has created management problems in recent years. Along with the consumption of alcoholic beverages comes loud music, profanity, unruliness and a total disregard for other campers. The park superintendent and assistant park superintendent are forced to deal with, or secure assistance from other local law enforcement authorities to deal with campers who become intoxicated and whose behavior results in complaints from other campers. This problem is affecting the image of Beech Fork State Park as a family destination and without the ability of the park superintendent to control and eliminate this problem we could possibly lose revenue.

The park system assumed operational responsibility of the Hawks Nest golf course last year as a part of its operation at Hawks Nest State Park. We wish to amend this particular rule to permit beer, wine, liquor, and all other alcoholic beverages to be consumed at this facility. At the other golf courses operated by the park system we permit golfers to consume beer while playing a round of golf, and we believe this courtesy should be extended to golfers at Hawks Nest. Furthermore, many groups rent the clubhouse facilities for private functions and we believe that permitting the consumption of alcoholic beverages by patrons at these functions will enhance the revenue potential of this facility.

WEST VIRGINIA DIVISION OF NATURAL RESOURCES
PARKS AND RECREATION
Title 58, Series 31

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

Current Rule

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.

Proposed Rule

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 all camping areas within the boundary of Beech Fork State Park, and in all of Hawks Nest State Park except the lodge and Hawks Nest golf course which is operated as part of Hawks Nest State Park; 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.

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing Public Use of West Virginia State Parks, State Forests, State Wildlife Management Areas under the Division of Natural Resources
 Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: State Capitol Complex

Building 3, Room 713

Charleston, WV 25305

1. Effect of Proposed rule:

| | ANNUAL FISCAL YEAR | | | | |
|----------------------------------|--------------------|----------|---------|------|------------|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | \$500 | | | | \$250 |
| PERSONAL SERVICES | | | | | |
| CURRENT EXPENSE | | | | | |
| REPAIRS & ALTERATIONS | | | | | |
| EQUIPMENT | | | | | |
| OTHER | | | | | |

2. Explanation of Above Estimates:

There are no direct costs associated with this proposed rule change on possession of beer, wine, liquor, and all other alcoholic beverages at Beech Fork State Park. There will be minimal costs to construct and erect proper signing.

3. Objectives of These Rules:

The prohibition of beer, wine, liquor and all other alcoholic beverages within the campground at Beech Fork State Park is designed to eliminate disturbances by intoxicated and unruly campers.

Rule Title: Rules Governing Public Use of West Virginia State Parks, State Forests, State Wildlife Management Areas under the Division of Natural Resources.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

While there is no minimal economic impact on state government from this rule change the potential exists for continued disturbances which could result in a loss of revenue because campers will find other places to take their families.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

Could result in a loss of operating revenue to the park system.

C. Economic Impact on Citizens/Public at Large.

None

Date: 6/26/01

Signature of Agency Head or Authorized Representative:

A handwritten signature in cursive script, appearing to read "Edward H. ...", written over a horizontal line.

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

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

FILED
2001 JUN 26 P 3:26
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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, rappelling, 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. 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.

§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.