

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Department of Commerce TITLE NUMBER: 144

CITE AUTHORITY: W. Va. Code §5B-1-13a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Rules Governing Public Use of West Virginia State Parks, State Forests, and State Hunting and Fishing Areas under the West Virginia Department of Commerce.

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY:

TITLE OF RULE BEING FILED AS AN EMERGENCY:

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Feeding of wildlife by state park, state forest, and state public hunting and fishing area guests has become very prevalent and now constitutes a major recreational area management problem. The practice is very harmful to wildlife, causing animals to rely on humans for food. In extreme weather conditions or when such food is not available, the animals perish having lost the ability or desire to fend for themselves. When the animals become tame, they become very subject to injury from vehicles and guests. More importantly they become a threat or danger to guests, and can cause serious injury, including rabies from a bite or severe bodily injury. This becomes a very real source of state liability. Therefore, the practice must be stopped.

Mountain and trail bicycles are causing severe and unrepairable environmental damage in state recreational area. Therefore, it is necessary to restrict their use to areas where such damage will not occur.

Use Additional Sheets If Necessary.


Charles R. Spears
Acting Commissioner

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 144
LEGISLATIVE RULES
DEPARTMENT OF COMMERCE

SERIES 1
RULES GOVERNING PUBLIC USE OF
WEST VIRGINIA STATE PARKS, STATE FORESTS, AND STATE
HUNTING AND FISHING AREAS UNDER THE WEST VIRGINIA
DEPARTMENT OF COMMERCE

§144-1-1. General.

1.1 Scope.-- These legislative rules govern the public use of West Virginia state parks, state forests, and recreation areas in state public hunting and fishing areas under the jurisdiction and management of the West Virginia Department of Commerce. They shall not be construed to include state forests or state hunting and fishing areas, or any areas or facilities therein, under the jurisdiction and management of the Department of Agriculture or of the Department of Natural Resources, respectively. The rules are 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 5B-1-13a.

1.3 Filing Date.

1.4 Effective Date.

§144-1-2. General Rules Governing Public Use Of State Parks, State Forests, And Recreational Areas In State Public Hunting And Fishing Areas Under The West Virginia Department of Commerce.

2.1. It is unlawful to 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 public hunting and fishing area. This rule does not apply to the erection of temporary blinds or tree stands in public hunting areas.

2.2 It is unlawful to 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 recreational areas in state public hunting and fishing area, except those legally acquired through hunting and fishing in accordance with Article 2, Chapter 20 of the Code of West Virginia, 1931, as amended, or upon proper authorization in writing by the Director of the Division of Parks and Recreation, Department of Commerce.

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 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 one provided specifically for that purpose but only after they are extinguished. Such 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 possession any animal, except as provided in Article 2, Chapter 20 of the Code of West Virginia, 1931, as amended. Hunting is prohibited in all state parks; however, legally authorized hunting is permitted in state forests, and state public hunting and fishing areas.

2.4.1. No person shall attempt to feed, or feed, any animal in a state park, state forest, or state public hunting and fishing 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 and unlawful.

2.6. Swimming is prohibited in state parks, state forests, and state public hunting and fishing 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 and give evidence of having proper training and equipment for the activity. 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 rule 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 public hunting and fishing 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 uses or purchases in a state park, state forest, or state public hunting and fishing 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 hunting and fishing 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 hours they are closed to the general public.

2.12. Dogs and cats are the only pets permitted in state parks, state forests, and state public hunting and fishing 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 and other similar intense public use areas, they shall be restrained at all times on a sturdy leash not to exceed ten (10) feet in length and their owner or master shall clean up its excreta, keep it quiet and from disturbing other guests, and be responsible for all damages it causes.

2.13. Explosives, incendiaries, flammables and other dangerous substances are prohibited in state parks, state forests, and state public hunting and fishing areas.

2.14. Uncased firearms, uncased bows and uncased arrows are prohibited in state parks, state forests, and state public hunting and fishing areas, except:

1. 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 cased from his lodge room, cabin or campsite to open hunting areas, or to an officially designated rifle, pistol, skeet, trap, target or shooting range.

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

3. The Director of the Division of Parks and Recreation, Department of Commerce, may authorize their use for a limited period in conjunction with recreational and arts and crafts programs.

2.15. The Department of Commerce assumes no responsibility for any personal property. If personal property is abandoned or left unattended 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 public hunting and fishing areas without the written permission of the Commissioner of the Department of Commerce.

2.17. Fishing and boating are permitted in state parks, state forests, and state public hunting and fishing areas only in accordance with state law, fishing and boating rules and regulations promulgated thereunder, and rules publicly posted in those areas.

2.18. The speed limit is thirty (30) miles per hour in state parks, state forests, and state public hunting and fishing 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 motor vehicles in state recreational areas shall obey and comply with all applicable state laws, rules and regulations.

2.19.1. Mountain and trail bicycles may be operated only on public roads, and on trails and areas designated for their use by the area superintendent by posted signs.

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

2.21. Beer, wine, liquor, and all other alcoholic beverages are prohibited within the boundaries of all historical, day use and natural area state parks, which are Beartown, Berkeley Springs, Carnifex Ferry Battlefield, Cass Scenic Railroad, Cathedral, Chief Logan, Droop Mountain Battlefield, Fairfax Stone Historic Monument, Grandview, Little Beaver, Pinnacle Rock, Point Pleasant Battle Monument, Prickett's Fort, Valley Falls, and Watters Smith Memorial, and the Greenbrier River Trail; in the following vacation parks: Audra, Babcock, Stonewall Jackson Lake, and Tomlinson Run, in all boat launch ramp parking 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, Camp Creek, Coopers Rock, Greenbrier, Kanawha, Kumbrabow, Panther, and Seneca; in the following state public hunting and fishing areas: Berwind Lake, Big Ditch Lake, Bluestone, Laurel Lake, Moncove Lake, Pleasants Creek, Plum Orchard Lake, and Teter Creek Lake; and in those state park areas where they are prohibited by posted signs. Any person may apply to the Superintendent of the park for a special event permit and pay an application fee for use of fire arms during historical reenactments, or the use of hay, straw, boughs, pine needles or similar materials for special events. The Park Superintendent may issue a permit to limit areas of use of any of these exceptions and require damage assessments, if necessary.

2.22. No person may operate a motor driven vehicle on the Greenbrier River Trail, except (a) those persons who have a vested right of ingress to and egress from the trail, (b) those persons who are authorized by the Commissioner of the Department of Commerce to use them in the management, construction, maintenance and operation of the trail and its facilities; or (c) to fight forest fires and handle other emergencies.

2.23. Any person may be evicted from a state park, state forest, or state public hunting and fishing area for any breach of the rules set forth herein, or for the breach of any other rule which is in effect governing their use. All rentals, charges and fees are forfeited upon such eviction.

§144-1-3. Rules Governing Public Use of Campgrounds in State Parks, State Forests, and State Hunting and Fishing Areas Under the West Virginia Department of Commerce.

3.1. Campsites which are not reserved shall be rented on a first come, first served basis. Campers shall register before occupying a campsite, unless otherwise instructed by posted signs or by other clear means. A campsite is reserved when the rental fee for the site has been paid, which shall be indicated by a camping permit affixed to the numbered campsite post.

3.2. One responsible person who has passed his eighteenth (18) birthday shall be at each rented campsite who is answerable for the actions and safety of the campsite occupants and liable for any damages caused by them.

3.3. Camping in any manner is prohibited in state parks, state forests, and state public hunting and fishing areas, except at numbered sites in areas designated for camping. Campground facilities are provided for the exclusive use of registered campers, except that the area superintendent, at his discretion, may permit cabin guests to use campground laundry facilities during periods of low use by campers, preferably at a designated time.

3.4. The length of stay in any camping area shall not exceed fourteen (14) consecutive nights, except after Labor Day until the first day of May of the following year campsites may be rented for longer periods, at the discretion of the area superintendent, when there are vacant campsites. At the end of a rental exceeding fourteen (14) consecutive nights the area superintendent, at his discretion, may request the camper to move to another

campsite for conservation and maintenance of the first rental site. In no case may occupancy of a campsite be extended by the camper registering under a different name.

3.5. Not more than two (2) motor vehicles are permitted on a campsite at any time. A non-family camping group may have only one (1) camping unit (tent, trailer, motor home, camper van, etc.) on its campsite. A family camping group, at the discretion of the area superintendent, may be permitted to have one (1) or two (2) small tents on its campsite in addition to the main camping unit, but in no case may the additional units be ecologically detrimental to the campsite. A family is defined as parents or guardians and their dependent children.

3.6. Campsites shall be vacated by 12:00 noon on the day the campsite rental permit expires, unless the area superintendent extends the time at the request of the camper. No extension may extend beyond 4:00 p.m.

3.7. The campsite rental fee does not include the use of any other facilities or services for which a fee or rental is charged.

3.8. The washing of any equipment, paraphernalia, clothing, pet or the body is prohibited at water fountains and water pumps, and in lakes, ponds, pools and streams. The washing of cooking utensils, tableware, flatware or any other cooking or eating paraphernalia is prohibited at water fountains and water pumps, and in comfort stations, bathhouses and washrooms.

3.9. Hay, straw, boughs, pine needles or other similar materials shall not be kept or used in tents or screened rooms or under shelters for bedding or any other purpose, except the Director of the Division of Parks and Recreation, Department of Commerce, may permit the use of hay and straw in conjunction with special events or programs.

3.10. No object may be driven into any tree, shrub, rock, sign, building or other object or structure in a state campground. Trenching or digging in a campsite is prohibited

3.11. Quiet hours are in effect, and they shall be observed and enforced from 10:00 p.m. to 7:00 a.m. Generators shall not be operated during quiet hours. Motorbike riding is prohibited in camping areas, except to go to and from the campsite.

3.12. No bicycle may be ridden in a campground after dark, unless it is equipped with lights on both its front and rear and the lights are turned on while it is being ridden.

§144-1-4. Rules Governing Public Use Of Swimming Areas In State Parks, State Forests, And State Public Hunting And Fishing Areas Under The West Virginia Department of Commerce.

4.1. Swimming is prohibited in state parks, state forests, and state public hunting and fishing areas, except in places designated for that purpose. Each person entering a designated swimming area shall pay the admission fee, except cabin and lodge guests are exempt. Children who have not reached their tenth (10) birthday shall be accompanied at all times they are in the swimming area by a responsible person at least twelve (12) years of age. Persons who have reached their twelfth (12th) birthday are required to purchase an adult ticket for admission to the swimming area.

4.2. Any person may be denied admission to the swimming area who has a skin abrasion, cold, cough, inflamed eye, infection, rash, bandage or cast. Admission shall be denied to any person who is under the influence of alcohol, controlled substance or medication.

4.3. Glass, food, ice chests, picnic supplies, beer, wine, alcoholic beverages, controlled substances and pets are prohibited in swimming areas. Food and drink purchased from the concession stand may be consumed only in the area designated for that purpose.

4.4. Plastic or rubber rafts, inner tubes, balls, inflatable water wings, and similar paraphernalia, toys and man-made objects of any kind are prohibited within the swimming area, except that exceptions may be made for the handicapped and for organized activities at the discretion of the lifeguard in charge.

4.5. No person is permitted in the swimming pool unless he is dressed in recognized swimming apparel. No street wear, cutoffs or similar apparel may be worn in the water. Parents and guardians who have purchased an adult ticket may enter the swimming area in street clothes to accompany and supervise their children who have not reached their twelfth (12th) birthday and

have purchased a children's ticket. Parents and guardians who enter the swimming area and are not dressed in recognized swimming apparel are prohibited from entering the water. These restrictions do not apply to swimming areas which are natural bodies of water.

4.6. The wearing of indecent swimming or other apparel, the commission of any indecent act, and the commission of any act of indecent exposure are prohibited in the swimming area. Commission of any such act is cause for immediate eviction from the swimming area.

4.7. Only one (1) person is permitted on a diving board at a time. Running, pushing, wrestling, roughhousing or causing undue disturbance, noise or commotion is prohibited in the swimming area.

4.8. Only state employees or other authorized personnel are permitted behind counters where cash registers are located, behind concession stand counters, or in concession stand food storage areas, basket rooms, swimming area storage supply rooms, filtration rooms or chlorine rooms.

4.9. Every person entering a swimming area shall comply with all swimming rules and every instruction or directive of the lifeguards. Any person who fails to comply may be evicted immediately from the swimming area by a lifeguard or other state employee. Any person evicted forfeits the fee he paid to enter the swimming area.

4.10. No refunds may be given for any reason to any person who leaves the swimming area.

144-1-5. Enforcement Of Rules Governing Public Use Of State Parks, State Forests, And Recreation Areas In State Public Hunting And Fishing Areas Under The West Virginia Department Of Commerce And Penalties.

5.1. 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 public hunting and fishing areas to enforce the rules set forth in this Series 1.

5.2. Violation of Rules and Penalties.

Any person violating any of the rules set forth in this Series 1 shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished in accordance with Section 9, Article 7, Chapter 20 of the said Code.



KEN HECHLER
Secretary of State

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help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

June 16, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Commerce

RULE: Amendments to Series 1; Rules Governing Public Use of
West Virginia State Parks, State Forests, and State Hunt-
ing and Fishing Areas under the West Virginia Department
of Commerce

DATE FILED AS AN EMERGENCY RULE: May 12, 1989

DECISION NO. 3-89

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

FILED

JUN 16 1989

SECRETARY OF STATE

KEN HECHLER
Secretary of State

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Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION
(ERD 3-89)

AGENCY: Department of Commerce

RULE: Amendments to Series 1, Rules Governing Public Use of West Virginia State Parks, State Forests, and State Hunting and Fishing Areas under the West Virginia Department of Commerce

FILED AS AN EMERGENCY RULE: May 12, 1989

- par. 1 The Department of Commerce (Commerce) has filed as an emergency the above amendments to Series 1.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 Commerce has filed this emergency rule with supporting documents with the Secretary of State on May 12, 1989 and with the LRMRC on May 16, 1989.

par. 7 It is the determination of the Secretary of State that Commerce has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §5B-1-13a reads in part:

§5B-1-13a. Definitions; state parks and recreation system.

The purposes of such system shall be to promote conservation by preserving and protecting natural areas of unique or exceptional scenic, scientific, cultural, archaeological or historic significance, and to provide outdoor recreational opportunities for the citizens of this state and its visitors. In accomplishing such purposes the commissioner shall, insofar as is practical, maintain in their natural condition lands that are acquired for and designated as state parks. The commissioner may promulgate rules and regulations to control such uses. . . .

par. 9 It is the determination of the Secretary of State that Commerce has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

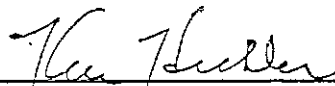
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by Commerce are as follows:

Feeding of wildlife by state park, state forest, and state public hunting and fishing area guests has become very prevalent and now constitutes a major recreational area management problem. The practice is very harmful to wildlife, causing animals to rely on humans for food. In extreme weather conditions or when such food is not available, the animals perish having lost the ability or desire to fend for themselves. When the animals become tame, they become very subject to injury from vehicles and guests. More importantly they become a threat or danger to guests, and can cause serious injury, including rabies from a bite or severe bodily injury. This becomes a very real source of state liability. Therefore the practice must be stopped.

Mountain and trail bicycles are causing severe and unrepairable environmental damage in state recreational area. Therefore, it is necessary to restrict their use to areas where such damage will not occur.

- par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.
- par. 15 This decision shall be cited as Emergency Rule Decision 3-89 or ERD 3-89 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with Department of Commerce, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

Entered June 16, 1989