

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #7

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AUG 19 1992

Legislative Rule Making
Review Committee

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1992 AUG 19 PM 2:55

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

West Virginia Division
AGENCY: of Tourism and Parks TITLE NUMBER: 144

CITE AUTHORITY: W. Va. Code § 5B-1-13a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☒ 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 Division of Tourism and Parks.

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 AFTER
APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS
FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

1. The rule implements the provisions of W. Va. Code § 5B-1-17c, enacted by the legislature at its 1992 Regular Session. The law grants fifty percent discounts on camping fees in state recreational areas from Labor Day to Memorial Day to West Virginia residents who are permanently and totally disabled. The law requires promulgation of a rule to set forth the documentation required to prove residency and total and permanent disability. Because the first discounts are available September 8, 1992, an emergency rule is needed to effect them in a timely manner.

Continued on attached sheet.

Use Additional Sheets If Necessary.


Rich O. Hartman, Administrative Asst.

2. The rule prohibits all alcoholic beverages in Tomlinson Run State Park, except in reserved picnic shelters. This prohibition is necessary to effectively manage the area and provide for the public's safety, health and welfare.
3. To change agency name designation from public hunting and fishing area(s) to wildlife management area(s).

SUMMARY OF PROPOSAL

1. To prohibit all alcoholic beverages in Tomlinson Run State Park, except in reserved picnic shelters.
2. To implement the provisions of W. Va. Code § 5B-1-17c, enacted by the West Virginia legislature at its 1992 regular session. The law entitles West Virginia residents who are permanently and totally disabled to a fifty percent discount on campground rental fees from the day after Labor Day to four days prior to Memorial Day. In accordance with the law's requirements, the rule establishes the procedures to qualify for and to obtain the discount.
3. State public hunting and fishing area(s) was changed to wildlife management area(s) throughout the rules to comply with their redesignation.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing Public Use of West Virginia State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks.

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Division of Tourism and Parks Address 2101 Washington Street, East, Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$ 16,000	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other		\$16,000			

2. Explanation of above estimates:

Because of the 50% discount on camping fees for West Virginia residents who are permanently and totally disabled, we anticipate a loss in camping revenues of \$16,000 yearly. However, this loss may be offset by an increase in the number of campers during the off-season.

3. Objectives of these rules:

- To prohibit all alcoholic beverages in Tomlinson Run State Park, except in reserved picnic shelters.
- To implement the provisions of W. Va. Code § 5B-1-17c, enacted by the legislature at its 1992 Regular Session, granting 50% discounts on camping fees in state recreational areas during the off-season to West Virginia residents who are permanently and totally disabled.
- To change agency name designation from public hunting and fishing area(s) to wildlife management area(s).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: August 18, 1992

Signature of Agency Head or Authorized Representative



Rich O. Hartman
Administrative Assistant

DATE: August 18, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Tourism and Parks

EMERGENCY RULE TITLE: Rules governing public use of West Virginia State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks

1. Date of filing: August 18, 1992
2. Statutory authority for promulgating the emergency rule:
W. Va. Code § 5B-1-13a
3. Date of filing of proposed legislative rule: August 18, 1992
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Amend current legislative rule
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
 - a. To comply with W. Va. Code §5B-1-17c enacted at 1992 Regular Session requiring rule to set up procedures to grant West Virginia residents who are permanently and totally disabled a 50% discount on camping fees during the off-season starting in September 1992.
 - b. To prohibit all alcoholic beverages in Tomlinson Run State Park, except in reserved picnic shelters, so areas can be effectively managed.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

W. Va. § 5B-1-17c - September 8, 1992 (the day after Labor Day).

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See No. 6

DATE: August 18, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Tourism and Parks

LEGISLATIVE RULE TITLE: Rules Governing Public Use of West Virginia State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks
1. Authorizing statute(s) citation W. Va. Code § 5B-1-13a

2. a. Date filed in State Register with Notice of ~~Hearing~~: Comment Period:

August 18, 1992

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of hearing(s): Comment period ends September 17, 1992

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

f. Name and phone number(s) of agency person(s) to contact for additional information:

Donald R. Andrews

Parks and Recreation

Room B-451

1900 Kanawha Boulevard, East
Charleston, WV 25305-0314

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

- b. Date of hearing: _____

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

- d. Attach findings and determinations and reasons:

Attached _____

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1992 AUG 19 PM 3:02

TITLE 144
LEGISLATIVE RULES
DIVISION OF TOURISM AND PARKS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 1
RULES GOVERNING PUBLIC USE OF
WEST VIRGINIA STATE PARKS, STATE FORESTS, AND STATE
~~HUNTING-AND-FISHING~~ WILDLIFE MANAGEMENT AREAS UNDER THE DIVISION OF
TOURISM AND PARKS

§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~~ wildlife management areas under the jurisdiction and management of the Division of Tourism and Park. They shall not be construed to include the state forests or state ~~hunting-and-fishing~~ wildlife management areas, or any areas or facilities therein, under the jurisdiction and management of the Department of Agriculture or of the Division 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~~ Wildlife Management Areas under the Division of Tourism and Parks.

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~~ wildlife management area. This rule does not apply to the erection of temporary blinds or tree stands in ~~state public-hunting~~ wildlife management 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,

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Legislative Rule Making

or state ~~public-hunting-and-fishing~~ 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 Director of Parks and Recreation, Division of Tourism and Parks.

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 a container 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 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 ~~public-hunting-and-fishing~~ wildlife management 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~~ 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 and unlawful.

2.6. Swimming is prohibited in state parks, state forests, and state ~~public-hunting-and-fishing~~ 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 and give evidence that they have 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 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 uses or purchases in a state park, state forest, or state public-hunting-and-fishing 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 public-hunting-and-fishing 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 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 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 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 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 wildlife management areas.

2.14. Uncased firearms, uncased bows and uncased arrows are prohibited in state parks, state forests, and state public-hunting-and-fishing wildlife management areas, and on state trails, 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 Parks and Recreation, Division of Tourism and Parks, may authorize their use for a limited period in conjunction with recreational and arts and crafts programs.

2.15. The Division of Tourism and Parks 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~~ wildlife management areas without the written permission of the Commissioner of the Division of Tourism and Parks.

2.17. Fishing and boating are permitted in state parks, state forests, and state ~~public-hunting-and-fishing~~ wildlife management 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 for motor vehicles is thirty (30) miles per hour in state parks, state forests, and state ~~public hunting-and-fishing~~ 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 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, trails and other readily recognizable passageways such as logging roads and oil/gas well roads, except that 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. 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, 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, Camp Creek, and Moncove Lake, in Tomlinson Run except in reserved picnic shelters, 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 wildlife management areas: Berwind Lake, Big Ditch Lake, Bluestone, Laurel Lake, Meneeve-Lake, Pleasants Creek, Plum Orchard Lake, and Teter Creek Lake; and in those state park areas where they are prohibited by posted signs.

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 Division of Tourism and Parks 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 wildlife management area for any breach of these rules, 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.

2.24. Any person may apply to the superintendent of a state park, state forest, or state ~~public-hunting-and-fishing~~ wildlife management area for a special event permit and pay an application fee for the use of firearms during historical reenactments, or the use of hay, straw, boughs, pine needles or similar materials for special events. The superintendent may issue a permit to limit areas use of any of these exceptions and require damage assessments, if necessary.

§144-1-3. Rules Governing Public Use of Campgrounds in State Parks, State Forests, and State ~~Public-Hunting-and-Fishing~~ Wildlife Management Areas under the Division of Tourism and Parks.

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 (18th) birthday and who is answerable for the actions and safety of the campsite occupants and liable for any damages caused by them shall be at each rented campsite.

3.3. Camping in any manner is prohibited in state parks, state forests, and state ~~public-hunting-and-fishing~~ wildlife management 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 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 human 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 Parks and Recreation, Division of Tourism and Parks, 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.

3.13. In accordance with W. Va. Code §5B-1-17c, West Virginia residents who are totally and permanently disabled are entitled to a fifty percent discount on campground rental fees from the day after Labor Day to four days prior to Memorial Day only. To qualify for the discount, they shall submit an application and certification of state residency and disability form to the Commissioner of Tourism and Parks. The Commissioner shall issue each qualified applicant a permanent campground discount card. The application and qualification forms are available in all Parks and Recreation state recreational areas and the Charleston office.

§144-1-4. Rules Governing Public Use of Swimming Areas in State Parks, State Forests, and State ~~Public-Hunting-and-Fishing~~ Wildlife Management Areas under the Division of Tourism and Parks.

4.1. Swimming is prohibited in state parks, state forests, and state ~~public-hunting-and-fishing~~ wildlife management 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 (10th) 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, a 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 manmade 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 a swimming pool unless he is dressed in recognized swimming apparel. No street wear, cutoffs or similar apparel may be worn in a swimming pool. Parents and guardians who purchase 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 who 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 Wildlife Management Areas under the Division of Tourism and Parks 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 wildlife management areas to enforce all of the provisions of this rule.

5.2. 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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

September 23, 1992

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 23, 1992
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Division of Tourism & Parks

RULE: Amendments, Series 1, Rules Governing Public Use of West Virginia State Parks, State Forests, and State Hunting & Fishing Areas Under the Division of Tourism and Parks

DATE FILED AS AN EMERGENCY RULE: August 19, 1992

DECISION NO. 24-92

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

A handwritten signature in cursive script, reading "Ken Hechler".

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION (ERD 24-92)

AGENCY: West Virginia Division of Tourism & Parks
RULE: Amendments, Series 1 Rules Governing Public Use of
West Virginia State Parks, State Forests, & State
Hunting and Fishing Areas Under the Division of
Tourism and Parks

FILED AS AN EMERGENCY RULE: August 19, 1992

- par. 1 The West Virginia Division of Tourism and Parks (Division) has filed the above amendments as an emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(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 Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State August 19, 1992 and with the LRMRC August 19, 1992.
- par. 7 It is the determination of the Secretary of State that the Division 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:
In addition to the powers and duties in the commissioner elsewhere in this chapter, he shall have the power and duty to establish and maintain a state park and public recreation system, and to do all things necessary and incident to the development and administration thereof.
- par. 9 WV Code §5B-1-17c further reads:
The commissioner shall issue a discount card to West Virginia residents who are totally and permanently disabled which would provide a fifty percent reduction in campground rental fees for each campsite to be used exclusively by the eligible camper: Provided, That in order to be eligible for the reduction that person shall document that he or she is a resident of this state and that he or she has a total and permanent disability. The commissioner shall promulgate rules in accordance with §29-3-1 et seq, of this code setting forth the documentation which is necessary to prove residency and total and permanent disability; Provide, however, That the fifty percent reduction in campground rental fees applies only to those rentals occurring during the period of time beginning on the day after Labor Day and ending four days prior to Memorial Day.
- par. 10 The emergency justification indicated that the West Virginia Code contained a statutory deadline for promulgating rules to implement the reduced fee for the elderly and disabled. Although the Code clearly states the period during which the reduced fee will be available each year, from Labor Day until four days before Memorial Day, and there is no Legislative mandate that the rule be made effective during 1992, hereby satisfying the criteria for promulgation on an emergency basis. For these reasons, the Division is to go through normal rule making channels to promulgate this rule.
- par. 11 It is the determination of the Secretary of State that the Division has exceeded its statutory authority in promulgating this as an emergency rule.
- par. 12 (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. 13 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. 14 The facts and circumstances as presented by the Division are as follows:

The rule implements the provisions of WV Code §5B-1-17c, enacted by the legislature at its 1992 Regular Session. The law grants fifty percent discounts on camping fees in state recreational areas from Labor Day to memorial Day to West Virginia residents who are permanently and totally disabled. The law requires promulgation of a rule to set forth the documentation required to prove residency and total and permanent disability. Because the first discounts are available September 8, 1992, an emergency rule is needed to effect them in a timely manner.

The rule prohibits all alcoholic beverages in Tomlinson Run State Park, except in reserved picnic shelters. This prohibition is necessary to effectively manage the area and provide for the public's safety, health and welfare. To change agency name designation from public hunting and fishing area(s) to wildlife management area(s).

par. 15 It is the determination of the Secretary of State that this proposal does not qualify under the definition of an emergency as defined in §29A-3-15(g).

par. 16 This decision shall be cited as Emergency Rule Decision 24-92 or ERD 24-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Division of Tourism and Parks, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Sept. 23, 1992

Entered ADMINISTRATIVE LAW DIVISION