



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Natural Resources TITLE-SERIES: 58-36
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 58-36 Cabwaylingo State Forest Trail System Two Year Pilot Project Permitting ATVs and ORVs

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §§20-3-3a(e) and 20-7-9

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

§20-3-3a-(e) authorizes rule making specific to the Cabwaylingo Two Year ATV and ORV Pilot Project. §20-7-9 provides for penalties of any violation of Chapter 20

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED:

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

PUBLIC HEARING:

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

RELEVANT FEDERAL STATUTES OR REGULATIONS:

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

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

The purpose of this rule is to provide for the regulation of the two-year pilot project permitting all-terrain or off-highway recreational vehicles on designated roads and trails in Cabwaylingo State Forest.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

§20-3-3a requires the establishment of the Cabwaylingo Pilot Project for ATVs and ORVs and provides rule making authority for the project.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The revenues will include increased cabin, camping and other revenue resulting from the program.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Revenue generated will go into the Parks & Recreation Special Revenue Account, as does all park generated revenue.

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

The costs will include equipment and labor necessary to implement and operate the program to assure proper resource protection and user safety.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	37,250	41,250
Personal Services	0	20,000	40,000
Current Expenses	0	1,250	1,250
Repairs and Alterations	0	1,000	0
Assets	0	0	0
Other	0	7,200	72,000
2. Estimated Total Revenues	0	7,200	72,000

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

This fiscal year we expect to Hire an Assistant Superintendent which would be employed half the year. Additional assets will include the purchase of a UTV and four wheel drive pickup truck for patrolling. Repairs and Alterations include signs and other materials for implementation. Additional current expenses include operation expenses such as items for resale, linens and other usual operational expenses. Revenue includes an anticipated 10% increase in overall revenue for the year through an increase in occupancy and retail sales. Full implementation year expenses includes labor for an Assistant Superintendent and full year current expenses for operations. The revenue is an estimated 100% increase in overall forest revenue due to an increase in occupancy in the cabins, campground and group camp and an increase in retail sales. Revenue average for the past 3 fiscal years was \$72,000.

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

Yes

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

TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 36
RULES FOR CABWAYLINGO STATE FOREST TRAIL SYSTEM
TWO YEAR PILOT PROJECT PERMITTING ATVs AND ORVs

§58-36-1. General.

1.1. Scope and Purpose. -- The purpose of this rule is to provide for the regulation of the two-year pilot project permitting all-terrain or off-highway recreational vehicles on designated roads and trails in Cabwaylingo State Forest.

1.2. Authority. -- W.Va. Code §§20-3-3a(e), 20-7-9.

1.3. Filing Date. -- ~~March 27, 2019.~~

1.4. Effective Date. -- ~~March 28, 2019.~~

1.5. Sunset Provision. -- ~~This rule shall terminate and have no further force or effect on March 28, 2021.~~ This rule shall terminate and have no further force or effect upon the expiration of three years from its effective date.

§58-36-2. Definitions.

2.1. "Bicycle" means every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device.

2.2. "Cabwaylingo State Forest" means the entire recreation area, including all forest acreage and facilities located within the recreation area, managed by the state.

2.3. "Cabwaylingo State Forest Trail System" means the system of recreational trails and appurtenant facilities within Cabwaylingo State Forest as designated in consultation with the director of the Division of Forestry and approved by the director and marked as included in Cabwaylingo State Forest Trail System.

2.4. "Director" means the director of the Division of Natural Resources.

2.5. "Division" means the Division of Natural Resources.

2.6. "Driver" means a person who drives or is in actual physical control of a vehicle or trail animal.

2.7. "Highway or street" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, except any trail.

2.8. "Motor vehicle" means every vehicle that is self-propelled except a motorized wheelchair.

2.9. "Multi-Use Trail" means a way within Cabwaylingo State Forest Trail System that is maintained by the Trail System Operator for ATV, ORV, UTV, Bicycle, Motorcycle, Pedestrian, and/or Trail Animal recreational use that is marked and designated by the Trail System Operator on official maps and on the trail itself with traffic-control devices to regulate, warn, and guide public recreational use.

2.10. "Pedestrian" means any person afoot and any person in a wheelchair, including a motorized wheelchair.

2.11. "Person" means every natural person, firm, co-partnership, association, or corporation.

2.12. "Traffic" means pedestrians, trail animals, and vehicles, either singly or together, while using any highway or trail for purposes of travel.

2.13. "Traffic-control device" means all signs, signals, markings, devices, fences, barriers, and gates not inconsistent with the rules in this series placed or erected at the discretion of the division by the Trail System Operator having jurisdiction for the purpose of regulating, warning, or guiding traffic, or to close or control access to a particular way or area.

2.14. "Trail animal" means any horse, pony, donkey, mule, or other animal capable of being ridden for recreational purposes on a trail.

2.15. "Trail System Operator" means any person, partnership, limited liability company ("LLC"), corporation, joint development entity, other organization, or any combination thereof, who has contracted with the division for operational responsibility of Cabwaylingo State Forest Trail System that includes ATV, ORV, UTV, Bicycle, Motorcycle, Pedestrian, and/or Trail Animal recreational use designated by the division for either non-profit or monetary profit or gain.

2.16. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a trail or highway, excepting devices used exclusively on stationary rails or tracks.

2.17. All other terms shall have the meaning prescribed in W. Va. Code §20-15-1 *et seq.*

§58-36-3. Incorporation of Duties Imposed on Participants and Authorized Outfitters and Licensees by W. Va. Code §20-15-1 *et seq.*, (ATV, UTV and Motorcycle Responsibility Act) and W. Va. Code §20-4-1 *et seq.*, (Equestrian Activities Responsibility Act)

3.1. All persons using Cabwaylingo State Forest Trail System and all Trail System Operators shall comply with W. Va. Code §20-15-1, *et seq.*, (ATV, UTV and Motorcycle Responsibility Act), which is incorporated herein by reference.

3.2. All persons using Cabwaylingo State Forest Trail system and all Trail System Operators shall comply with W. Va. Code §20-4-1, *et seq.* (Equestrian Activities Responsibility Act), which is incorporated herein by reference.

§58-36-4. General Rules Governing Public Use of Trails and Facilities of Cabwaylingo State Forest Trail System.

4.1. A person may not enter or remain upon the Cabwaylingo State Forest Trail System without authorization from the Trail System Operator.

4.2. Each person shall obey all traffic laws, traffic-control devices, and signs within the Cabwaylingo State Forest Trail System, including those which restrict trails to certain types of motor vehicles, motorcycles, those equipped with roll cages, bicycles, trail animals and pedestrian use.

4.3. Each person on any vehicle, bicycle, or trail animal shall at all times remain within and on a designated and marked trail while within the Cabwaylingo State Forest Trail System.

4.4. A person may not consume or possess any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, wine, or controlled substances at any time or any location within the Cabwaylingo State Forest Trail System.

4.5. A person may not operate a vehicle or ride a trail animal on any multi-use trail within the Cabwaylingo State Forest Trail System at any time from one half-hour after sunset until one half-hour before sunrise, except in an emergency.

4.6. No person operating a vehicle or riding a trail animal shall do so in any manner that intentionally creates an erosive condition or intentionally injures, damages, or destroys trees or plants.

4.7. A person may not possess a glass container on any multi-use trail within the Cabwaylingo State Forest Trail System.

4.8. A person within the Cabwaylingo State Forest Trail System may not operate a vehicle or ride a trail animal in any competition or exhibition of speed acceleration, racing, test of physical endurance, or climbing ability unless in an event approved by a Trail System Operator and area superintendent.

4.9. All persons using Cabwaylingo State Forest Trail System shall comply with the provisions of 58 CSR 31, Public Use of West Virginia State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources, except where inconsistent with the provisions of this rule and except as to those provisions of 58 CSR 31 which by their nature can have no application and may not act in violation of those provisions.

§58-36-5. Drivers and passengers Using Cabwaylingo State Forest Trail System.

5.1. Every person operating a motor vehicle within the Cabwaylingo State Forest Trail System is subject to all the duties applicable to the driver of a motor vehicle by the provisions of W. Va. Code §17C-1-1 *et seq.*, except where inconsistent with the provisions of this rule and except as to those provisions of W. Va. Code §17C-1-1 *et seq.* which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

5.2. A person may not operate or ride in a utility terrain vehicle, as defined in W. Va. Code §17F-1-1 *et seq.* or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting a minimum federal motor vehicle safety standard and properly worn by the driver and all passengers.

5.3. All persons operating or riding upon an ATV, UTV, or motorcycle as defined in W. Va. Code §20-15-1 *et seq.* shall follow the manufacturer's recommendations for that vehicle relating to age and size limitations for operators and passengers.

5.4. Every person within the Cabwaylingo State Forest Trail System who is under 16 years of age shall at all times be under the immediate supervision of, and within sight of, a person who is at least 18 years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent, guardian, or supervising adult may allow a child under the age of sixteen years to leave that person's sight and supervision within the Cabwaylingo State Forest Trail System.

5.5. No child under the age of six may be allowed on any motor vehicle while being operated on any trail within Cabwaylingo State Forest Trail System.

5.6. No child under the age of eight years who is required to be placed in a child passenger safety device system meeting applicable federal motor vehicle safety standards pursuant to W. Va. Code §17C-15-46 while occupying a motor vehicle may be allowed on any trail within Cabwaylingo State Forest Trail System.

5.7. The operator and all passengers of a motor vehicle in Cabwaylingo State Forest Trail System shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard no. 218 or Snell Memorial Foundation safety standards for protective headgear for vehicle users.

§58-36-6. Enforcement of Rules Governing Public Use of Cabwaylingo State Forest.

6.1. It is the duty and responsibility of Natural Resource Police Officers, Special Natural Resource Police Officers, and other authorized law enforcement officers to enforce these rules.

6.2. Criminal Violation of rules and penalties: A person who violates any provision of this rule is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.