

Form #3

F L E E D

2009 JUL 29 AM 8:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE


Authorized Signature

BRIEF SUMMARY OF PROPOSED AMENDMENTS TO:

TITLE 204
LEGISLATIVE RULES
HATFIELD-MCCOY REGIONAL RECREATION AREA
SERIES 1

The Hatfield-McCoy Regional Recreation Authority is proposing amendments to these rules which govern the use of its trail facilities to address the following issues:

1. To standardize and simplify the definition of "ATV", reflecting the definition contained in W.Va. Code §20-15-2(1) effective July 10, 2009.
2. To generalize the definition of "bicycle" so as to include even small bicycles.
3. To establish a definition for "UTV", a new type of recreational vehicle and to regulate the use of the same upon the Hatfield-McCoy trails, reflecting the definition contained in W.Va. Code §20-15-2(6) effective July 10, 2009.
4. To expand current rules regarding trail use to include off road motorcycles and UTVs.
5. To exclude pedestrians from the requirement of wearing a helmet while using the trail system.
6. To prohibit unsanctioned hill climbing competitions.
7. To amend the rule regarding trail permits and how they are to be displayed.
8. To establish a rule for the imposition and collection of new civil penalties as authorized by the Legislature in W.Va. Code §20-14-8 effective March 5, 2008.
9. To incorporate by reference the entirety of West Virginia Code §20-15-1, *et seq.*, (ATV, UTV and Motorcycle Responsibility Act) as amended.

STATEMENT OF CIRCUMSTANCES
WHICH REQUIRE THIS AMENDMENT OF RULE

TITLE 204
LEGISLATIVE RULES
HATFIELD-MCCOY REGIONAL RECREATION AREA
SERIES 1

1. Manufacturers continually modify the specifications of this class of machines and this rule amendment is intended to offer a definition of ATV which is more generic and which will not exclude any future "ATV" from the class. The Legislature has recently amended the definition of "ATV" found in W.Va. Code §20-15-2(1) and this rule amendment is in conformity therewith.
2. The current definition of the term "bicycle" within these rules is so specific that it excludes smaller bicycles that maybe used upon the trail system.
3. "UTV" is a new class of recreational off road motor vehicle that was not previously contemplated by The Hatfield-McCoy Regional Recreation Authority. The Legislature has recently amended W.Va. Code §20-15-2(6) to include a definition of a "UTV." It is necessary that these rules be amended to include "UTV" as a designated class of motor vehicle to be utilized on the The Hatfield-McCoy Regional Recreation Authority facilities and to regulate the same.
4. There are specific subsections, subdivisions, paragraphs, subparagraphs, parts, and/or subparts of the current regulations that inadvertently omit "UTV", "motorcycle", and "snowmobile" and should be corrected.
5. Current regulations can be construed to require pedestrians to wear a helmet while walking or hiking upon the trail system. This was never intended and should be corrected.
6. Current regulations specifically prohibit racing competitions, but do not prohibit hill climbing competitions. This rule amendment will specifically prohibit any type of hill climbing competitions.
7. Current regulations require the trail permit to be displayed on the participant's outer garment. The Hatfield-McCoy Regional Recreation Authority has recently adopted a helmet sticker permit and the new regulation is more generic and will accommodate current permit practices and any future change that the Authority may adopt.
8. W.Va. Code §20-14-8 was recently amended and effective March 8, 2008, the Authority was authorized for the first time to assess civil penalties for certain violations. The new regulations are intended to incorporate these new penalties into the enforcement section of the regulations.
9. West Virginia Code §20-15-5(c) was recently amended and effective July 10, 2009, the limited liability previously afforded to authorized outfitters and licensees will be extended to The Hatfield-McCoy Regional Recreation Authority. The new regulations are intended to incorporate by reference the entirety of West Virginia Code §20-15-1, *et seq.*, (ATV, UTV and Motorcycle Responsibility Act) as amended and impose those duties outlined in said Act upon all participants and authorized outfitters.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 17, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) _____
Hatfield-McCoy Regional Recreation Authority
P.O. Box 539

Lyburn, West Virginia 25632
304-752-3255

LEGISLATIVE RULE TITLE: _____
204-1-1 et seq. Rules for Use of Facilities

1. Authorizing statute(s) citation _____
West Virginia Code 20-14-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 12, 2009

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 14, 2009

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

Attached _____ No comments received X _____

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

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Harry G. Shaffer, III, Counsel for Hatfield-McCoy Regional Recreation Authority
330 State Street

Madison, West Virginia 25130

Phone: 304-369-0511

Fax: 304-369-5431

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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.

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A


Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for Use of Facilities

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Hatfield-McCoy Regional Recreation Authority

Address: PO Box 539
Rich Creek Road
Lyburn, WV 25632

Phone Number: (304) 752-3255 Email: jlushk@trailsheaven.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will not increase any cost to state government, however, the ability to issue civil penalties will increase the revenue of the Hatfield-McCoy Regional Recreation Authority.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	10,000.00	10,000.00	10,000.00

Rule Title: _____

Rule Title:

Rules for Use of Facilities

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

Please include any increase or decrease in fees in your estimated total revenues.

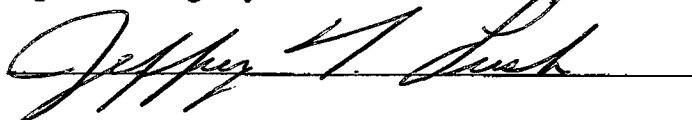
These estimates are derived from a projection that the Hatfield-McCoy Regional Recreation Authority Rangers will continue to write no less than 110 civil citations per year. These projections assume that 90 percent of all citations would be paid and that the amount of civil penalties would not increase in the near future. In the first year of this program, the Rangers issued 117 civil citations with an approxiamte 92 percent collection rate.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 15, 2009

Signature of Agency Head or Authorized Representative



FILED

TITLE 204

2009 JUL 29 AM 8:54

LEGISLATIVE RULES

HATFIELD-MCCOY REGIONAL RECREATION AREA

SERIES 1

OFFICE OF THE SECRETARY OF STATE

Recreation Area, including trailhead centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, event sites, and other facilities that are a part of the system operated and managed by the Hatfield-McCoy Regional Recreation Authority.

Rules for Use of Facilities

§204-1-1. General

1.1. Scope. This series establishes rules for use of the Hatfield-McCoy Recreation Area and the adjacent public and private property that is included within the Hatfield-McCoy enforcement area. Unless otherwise specified, these rules apply to all areas within the Hatfield-McCoy enforcement area, provided, that as to public streets, highways, and other public lands within the Hatfield-McCoy enforcement areas, these rules apply only to the extent they are consistent with other applicable state and federal law. This rule is necessary to provide for public health, safety and welfare; to protect the property within the Hatfield-McCoy Regional Recreational Area; and to assure the recreational area guests of a safe, beneficial and enjoyable experience.

1.2. Authority. *W.Va. Code §20-14-1 et. seq.*

1.3. Filing date

1.4. Effective date

§204-1-2. Definitions.

2.1. Definitions of words and phrases—The following words and phrases, when used in this series, shall have the meanings respectively ascribed to them herein.

2.2. "Appurtenant facility" means any facility that appertains to the system of recreational trails of the Hatfield-McCoy

2.3. "ATV or all-terrain vehicle" ~~Any motor vehicle designed for off-highway travel or three or four low pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single driver and no passenger.~~ means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

2.4. "Authority" means The Hatfield-McCoy Regional Recreation Authority created under *W.Va. Code §20-14-3*.

2.5. "Authorized emergency vehicle" means any marked law enforcement vehicle operated by a ranger and any vehicle that is an authorized emergency vehicle pursuant to *W.Va. Code § 17C-1-6*.

2.6. "Bicycle" means every vehicle that is propelled by human power having two or more tandem wheels, ~~either of which is more than 20 inches in diameter.~~

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

2.8. "Executive Director" means the Executive Director of the Hatfield-McCoy Regional Recreation Authority.

2.9. "Hatfield-McCoy enforcement area" means the area within which Hatfield-McCoy rangers have the duty to preserve law and order pursuant to *W. Va. Code* § 20-14-6, which encompasses any premises which are part of the Hatfield-McCoy Recreation Area, the immediately adjacent property of landowners who are making land available for public use under agreement with the Authority, any streets, highways, or other public lands utilized by the trails, parking areas, or related recreational facilities, and other immediately adjacent public lands.

2.10. "Hatfield-McCoy Recreation Area" means the system of recreational trails and appurtenant facilities, including trailhead centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities that are a part of the system operated and managed by the Hatfield-McCoy Regional Recreation Authority.

2.11. "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.

2.12. "Intersection" means the area located at the junction of two or more trails, or at the junction of one or more trails with one or more roadways, within which vehicles or pedestrians traveling on different ways may come in conflict. For purposes of determining the area of an intersection, the width of the trafficway of a trail shall determine the width of the intersection.

2.13. "Motorcycle" means any motor vehicle manufactured with no more than two wheels and having a seat or saddle for the use of the operator.

2.14. "Motor vehicle" means every vehicle

that is self-propelled except a motorized wheelchair.

2.15. "Officer" means Hatfield-McCoy ranger or other authorized law enforcement officer.

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

2.17. "Person" means every natural person, firm, copartnership, association, or corporation.

2.18. "Petitioner" means a person requesting a formal hearing before the Authority pursuant to § 9.2 of this series.

2.19. "Private way" means any way that is in private ownership and is not maintained by the Authority for recreational use and that is not marked and designated by the Authority on official maps and on the way with traffic-control devices to regulate, warn, and guide public recreational use.

2.20. "Ranger" or "Hatfield-McCoy ranger" means an authorized law enforcement officer appointed by the Authority pursuant to the provisions of *W. Va. Code* §20-14-6.

2.21. "Right-of-way" means the right of a pedestrian or the driver of one vehicle or trail animal to proceed in a lawful manner in preference to another pedestrian or the driver of another vehicle or trail animal approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

2.22. "Snowmobile" means a motor vehicle designed for travel over snow or ice that utilizes sled-type runners, skis, an endless belt tread, or any combination of these or

other similar means of contact with the surface on which it is operated.

2.23. "Special utilization license" means a license issued by the Authority that, during the term of the license and subject to its conditions, restrictions, and requirements, authorizes the use of specified facilities of the Hatfield-McCoy Recreation Area by a class of vehicle use that would not be permitted in the absence of the license.

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

2.25. "Traffic-control device" means all signs, signals, markings, devices, fences, barriers, and gates not inconsistent with the rules in this series placed or erected by the Authority or by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic, or to close or control access to a particular way or area.

2.26. "Trafficway" means the portion of a trail that is improved, designed, and ordinarily used for vehicular and animal traffic on the trail.

2.27. "Trail" means a way within a trail corridor that is maintained by the Authority for recreational use and that is marked and designated by the Authority on official maps and on the trail itself with traffic-control devices to regulate, warn, and guide public recreational use. The trail includes the trafficway, the trail margin, and the trail fringe.

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

2.29. "Trail corridor" means a lineal corridor which is defined in a license agreement between the Authority and the relevant landowner and within which the Authority maintains a trail for permissive public recreational use.

2.30. "Trail fringe" means the portion of a trail that, where conditions permit, extends outward beyond the trail margin for a maximum of forty feet from the edge of the trafficway.

2.31. "Trail margin" means the portion of a trail that, where conditions permit, extends outward for a maximum of ten feet from the edge of the trafficway.

2.32. "Trailhead center" means an area maintained by the Authority that connects with both the trail system and the highway system and that provides parking and other facilities for recreational users.

2.33. "User permit" means a permit issued by the Authority that authorizes the holder of the permit to utilize the facilities of the Hatfield-McCoy Recreation Area in a manner consistent with the rules set forth in this series.

2.34. "UTV or utility terrain vehicle" means any motor vehicle with four or more low-pressure tires designed for off-highway use having bench or bucket seating for each occupant and a steering wheel for control.

2.345. "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.

§204-1-3. General Rules Governing Public Use of the Hatfield-McCoy Recreation Area.

3.1. Facilities of the Hatfield-McCoy Recreation Area are open only to users who are in compliance with the rules set forth in this series and with the instructions of all traffic-control devices.

3.2. Subject to restrictions of particular trail widths as designated by traffic-control devices, trails are open to the following: Pedestrians, ATVs, UTVs, motorcycles, bicycles, ridden trail animals, and other vehicles that are capable of off-highway operation on trails: provided, that the driver of said vehicle has been issued a special utilization license by the Authority. The Executive Director shall have the authority to limit the size and power of any vehicle on any or all of the trails within the Hatfield McCoy Recreation Area.

3.3. It is unlawful and a violation for any person to enter or remain upon any trail with a type of vehicle or trail usage that is not specifically permitted by this section or without a special utilization license issued by the Authority.

3.4. Where a particular trail, segment of trail, or area is designated by traffic-control devices as closed to one or more classes of use, it is unlawful and a violation for any person to enter or remain on that trail, trail segment, or area in violation of those restrictions.

3.5. All traffic laws, traffic-control device, and directions shall be strictly observed.

3.6. No person may operate an ATV, UTV, or motorcycle on any road or highway with a center line or more than two lanes within the Hatfield-McCoy enforcement area

except for the purpose of crossing the road or highway at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing or as otherwise permitted by any state statute or local ordinances. An ATV, UTV or motorcycle operator is permitted to crossing the road or highway if:

3.6.a. The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

3.6.b. The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

3.6.c. Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped.

3.7. It is unlawful for any unauthorized person, motor vehicle or trail animal to go beyond a gate, cable, or other obstruction, or to proceed beyond any sign prohibiting such travel.

3.8. All persons shall at all times remain within and on a designated and marked trail or the trafficway.

3.9. Persons operating a vehicle or riding a trail animal may halt or park on the trail margin, provided that they are not more than ten feet from the edge of the trafficway.

3.10. Pedestrians and persons leading trail animals are permitted onto the trail fringe, not more than forty feet from the edge of the trafficway, when necessary.

3.11. No person, vehicle or trail animal is permitted:

3.11.a. Upon any private way, without the express permission of the person owning

or controlling the private way;

3.11.b. Upon any way that is not designated or marked as trail of the Hatfield-McCoy Recreation Area, a public street or a highway; or

3.11.c. Upon any private land that is not a designated and marked as a trail, trailhead center, or other appurtenant facility of the Hatfield-McCoy Recreation Area without the express permission of the owner or person controlling the private land.

3.12. Except in an emergency, no person shall be on any trail at any time from one half-hour after sunset until one half-hour before sunrise.

3.13. Every person, except a pedestrian, 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.

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

3.15. No person operating a vehicle or riding a trail animal shall run down, pursue, harass, worry, or kill any bird or animal, wild or domestic: provided that nothing in this section shall be construed to prohibit lawful hunting activities carried out in compliance with West Virginia laws regulating such hunting.

3.16. No person shall throw or deposit any item or substance not biodegradable or not naturally occurring in the environment at

any location except in a properly designated trash receptacle maintained by the Authority.

3.17. Except at a clearly marked location designated by the Authority within a trailhead center or other appurtenant facility, no person shall ignite or maintain any campfire or bonfire.

3.18. Except at a clearly marked location designated by the Authority within a trailhead center or other appurtenant facility, no person shall camp, erect any tent or other camping equipment, or establish or maintain any site for purposes of an overnight stay.

3.19. No person shall consume any alcoholic beverage at any time or any location within the Hatfield-McCoy enforcement area nor shall any person transport or possess on any trail any alcoholic beverage in any container, sealed or unsealed, on their person or in or on their vehicle or trail animal within the Hatfield-McCoy enforcement area.

3.20. No person shall operate any vehicle within any lake, river, stream, or watercourse: provided that, the operation of a vehicle within standing or running water at a designated trail crossing is permitted to make a direct trail crossing or while within the boundaries of any water or play area established and designated by the Authority.

3.21. No person shall operate a vehicle or ride a trail animal in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance or climbing ability, exhibition of speed or acceleration, or for the purpose of making a speed record: provided that participants in a sanctioned competitive event held under a special utilization license issued by the Authority may be exempted by the terms of the special utilization license from the requirements of this subsection.

3.22. No person shall cut, deface, destroy, or drive any object into any tree, shrub, rock, traffic-control device, sign, building or other structure or object in the Hatfield-McCoy enforcement area

3.23. No person shall remove any man-made or natural object, material, substance, plant, animal or historical or archeological relic or artifact from the Hatfield-McCoy enforcement 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 Authority.

3.24. No person shall enter or remain on any trail, trailhead center, or other appurtenant facility of the Hatfield-McCoy Recreation Area without valid user permit issued by the Authority pursuant to § 204-1-6 of this rule [User Permits and Identification] or without the permission of a landowner or leaseholder.

§204-1-4. Drivers and passengers.

4.1. No person shall drive an ATV, UTV or motorcycle unless that person meets the minimum age recommendation specified by the manufacturer for the vehicle that is being driven.

4.2. No person under the age of eighteen may operate an ATV, UTV or motorcycle without a written statement, signed by the minor's parent or guardian certifying that:

4.2.a. Any machine operated by the minor will be of a model that is recommended by the manufacturer as appropriate to the minor's age and size;

4.2.b. All rules governing the use of the Area have been reviewed by the parent or

guardian and explained to the minor in sufficient detail to enable the minor to abide by the rules; and

4.2.c. Any minor under the age of sixteen will remain under the supervision of and within the sight of the parent or guardian at all times.

4.3. No person shall operate a motor vehicle with four or more wheels that is registered for highway use on any trails or other facilities of the Hatfield-McCoy Recreation Area unless the person holds a special utilization license issued by the Authority and a currently valid drivers license issued by his or her state of residence. The operator of the motor vehicle shall have the license in his or her possession at all times and shall display it at the request of any ranger or other law enforcement officer.

4.4. No person shall operate any ATV, UTV, motorcycle, snowmobile, or bicycle while carrying another person as a passenger unless such ATV, UTV, motorcycle, snowmobile, or bicycle is, in the opinion of the Authority, designed, properly equipped and approved by the manufacturer for such use, i.e. extra seat, seatbelts, handlebars or handgrips, and pedals or foot pegs. Likewise, no person shall ride as a passenger on an ATV, UTV, motorcycle, snowmobile, or bicycle that is not designed, in the opinion of the Authority, properly equipped and approved by the manufacturer for such use. No person may operate an ATV, UTV, motorcycle or snowmobile with a passenger under the age of eighteen unless the operator has, at a minimum, a level two intermediate driver's license or its equivalent or is eighteen years of age or older.

4.5. No person shall drive any vehicle unless the person is able to reach and operate all controls necessary to safely drive the

vehicle.

4.6. No person shall drive any motorcycle or bicycle while carrying another person as a passenger unless the passenger is able to reach and firmly place his or her feet on the available foot pegs or pedals. No person shall ride as a passenger on any motorcycle or bicycle unless the passenger is able to reach and firmly place his or her feet on the available foot pegs or pedals.

4.7. No person shall ride any trail animal unless the person is able to reach and firmly place his feet into the stirrups and unless the person has the maturity and strength needed to control the animal.

4.8. Every person driving or riding upon any ATV, UTV, motorcycle, bicycle, or snowmobile shall at all times wear, securely fastened on his or her head by either a neck or chin strap, a protective helmet designed to deflect blows, resist penetration, and spread impact forces. The helmet must be of a type approved for the use of persons riding on ATVs, UTVs, motorcycles, bicycles, or snowmobiles by a nationally recognized standard setting authority or it must meet the performance specifications for such a helmet established by such an authority.

~~4.9. Every person driving or riding in or upon any motor vehicle or portion of a motor vehicle that is open and that does not provide vehicular body protection for the heads of the occupants shall at all times wear, securely fastened on his or her head by either a neck or chin strap, a protective helmet designed to deflect blows, resist penetration, and spread impact forces. The helmet must be of a type approved for the use of persons riding on ATVs, UTVs, motorcycles, snowmobiles, or other open vehicles by a nationally recognized standard setting authority or it must meet the performance specifications for such a helmet~~

~~established by such an authority.~~

4.10 9. Every person riding upon any trail animal shall at all times wear, securely fastened on his or her head by either a neck or chin strap, a protective helmet designed to deflect blows, resist penetration, and spread impact forces. The helmet must be of a type approved for the use by equestrians or persons riding bicycles by a nationally recognized standard setting authority or it must meet the performance specifications for such a helmet established by such an authority.

4.11 10. For purposes of this section the following are nationally recognized standard setting authorities with respect to helmets: the American National Standards Institute, the United States Department of Transportation, the Snell Memorial Foundation, the American Society for Testing and Materials, and other similar entities that approve helmets or publish performance standards for helmets designed for the uses described in this subsection.

4.12 11. Every person operating or riding upon any ATV, UTV, motorcycle, snowmobile, bicycle, or other vehicle or portion of a vehicle that is open and not equipped with a shatter-resistant windshield in front of the vehicle occupants shall at all times wear eye goggles or a face shield that is designed to protect the eyes by deflecting blows, resisting shattering and penetration, and spreading impact forces.

4.12. Every person operating or riding upon any UTV shall at all times be restrained by a safety belt as installed by the manufacturer and meeting, at a minimum, applicable federal motor vehicle standards.

§204-1-5. Equipment Requirements.

5.1. No person shall operate any vehicle or ride a trail animal that does not comply in all respects with the equipment and special restrictions set out in this section.

5.2. When operated from sunset to sunrise or at other times when visibility is limited by conditions of darkness, every vehicle shall be equipped with at least one lighted white headlight directed toward the front of the vehicle, which shall be of sufficient intensity to reveal persons and vehicles at a distance of at least 200 feet and at least one lighted red taillight or at least one red reflector which shall be clearly visible from the rear.

5.3. Every ATV, UTV, motorcycle, and snowmobile shall be equipped with a United States Forest Service qualified type spark arrester.

5.4. No person shall operate any ATV, UTV, motorcycle or snowmobile after it has been determined that the vehicle emits noise in excess of 96dBA at 20 inches using the SAE J1287 (July 1998) test procedure until the vehicle's exhaust system has been repaired or modified and the vehicle has been retested to show compliance with the noise standard.

5.5. No owner or driver of an ATV, UTV, motorcycle, or snowmobile shall refuse to submit the vehicle to testing in accordance with the SAE J1287 test procedure at the request of any ranger or other law enforcement officer.

5.6. Every UTV shall be equipped with a manufacturer installed safety belt without modification for the driver and all passengers meeting, at a minimum, applicable federal motor vehicle standards.

5.6. 7. A ranger or other law enforcement officer, having determined that a vehicle is not in compliance with this subsection, may permit the vehicle to be operated as necessary, by a direct route designated by the officer, to return the vehicle to its home base, its highway transport vehicle, or to a place where the vehicle can be repaired. The vehicle shall be operated only at low speed so as to minimize noise emission.

§204-1-6. User Permits and Identification.

6.1. All persons without a valid user permit or special utilization license issued by the Authority are prohibited from using any trail of the Hatfield-McCoy Recreation Area, provided, that the following persons are exempt from the provisions of this section:

6.1.a. A properly identified landowner or leaseholder while on the land that the person owns or leases for purposes related to the ownership or lease of the land and not for trails-related recreational purposes;

6.1.b. A properly identified officer, employee, or agent of a landowner or leaseholder, while on the land that is owned or leased by that person's company and while on that land in the scope and course of their office, employment, or agency and not for trails-related recreational purposes;

6.1.c. The driver of an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law, but only when the vehicle, while in motion, sounds an audible signal by bell or siren and, when the vehicle, if so equipped, displays a flashing light; and,

6.1.d. An employee, agent, or contractor of the Authority who is identified by clearly visible credentials, uniform, or by appropriate markings on the vehicle they are operating, when acting within the scope and course of their employment, agency, or contract only to the extent that the exemption is necessary to the work being done or has been specifically authorized by the Executive Director.

6.2. The exemptions provided in subsection 6.1., do not relieve the exempted person from the duty to use the trails and appurtenant facilities of the Hatfield-McCoy Recreation Area with due regard for the safety of all persons.

6.3. Application for a user permit shall be made to the Authority by such means and through such agencies as the Authority shall establish and designate. Application for the user permit shall be accompanied by the user fee specified by the Authority for the type of permit for which application has been made.

6.4. Applicants for a reduced-fee resident's permit shall provide acceptable proof of residence in the state of West Virginia at the time of application.

6.5. Any person who has had his or her user permit and privilege to use the Hatfield-McCoy Recreation Area revoked is not eligible to apply for, receive, or hold a user permit during the period of revocation. Any user permit issued in error to such person by the Authority or any of its agents is null and void. Any user fee collected in error from such person shall be refunded by the Authority upon surrender of the erroneously issued user permit.

6.6. User permits shall be prominently displayed ~~upon the outer garment of~~ by the permit holder according to the directives of the Authority at all times while within the

Hatfield-McCoy Recreation Area and, upon request, the permit holder shall allow any ranger or other law enforcement officer to inspect the user permit.

6.7. All persons over the age of 15 shall carry, at all times, a valid drivers license or photo identification card issued by the person's state of residence and, upon request, allow any ranger or other law enforcement officer to inspect license: provided that the adult providing supervision for the person as required in subsection ~~3.12~~ 3.13 of this rule, shall display his or her own license or identification at the request of any ranger or other law enforcement officer and shall properly identify the person under 16 years of age. A person required to display his or her license or identification card shall physically surrender the license or identification card into the hands of the officer for inspection.

6.8. It is a violation of these rules for any person to commit any of the following acts:

6.8.a. To display or cause or permit to be displayed or have in the person's possession any fictitious, counterfeit, or fraudulently altered Hatfield-McCoy user permit;

6.8.b. To lend the person's Hatfield-McCoy user permit to any other person or knowingly allow its use by another;

6.8.c. To display or represent as the person's own any Hatfield-McCoy user permit not issued to the person;

6.9. A Hatfield-McCoy ranger or other law enforcement officer is authorized to seize a user permit and to issue a temporary user permit in accordance with the following rules:

6.9.a. Any person who is unable to provide satisfactory identification in compliance with subsection 6.7 of this rule

shall immediately surrender any user permit in the person's possession to the ranger or other law enforcement officer requesting the identification. If the seized user permit is currently valid, the officer shall issue a temporary user permit to the person which shall be valid for 24 hours or until the expiration date of the seized permit, whichever is sooner.

6.9.b. Whenever a ranger or other law enforcement officer seizes the user permit of any person under this section, the officer shall dispose of the user permit as follows:

6.9.b.1. If the person is able, within 24 hours, to produce and display to the officer proper identification establishing that the person is the same person to whom the permit was issued by the Authority, the officer shall then return the user permit to the person upon surrender of any temporary user permit issued to the person by the officer.

6.9.b.2. If the person does not reclaim his or her user permit within 24 hours, the officer shall immediately forward the seized user permit to the Authority along with a full statement of the facts relevant to the seizure.

6.10. Whenever, the Authority receives a user permit that has been seized by an officer because the person bearing the permit was unable to provide satisfactory identification as required by subsection 6.7. of this rule, the Authority shall cancel the user permit and the permit holder shall not be entitled to return of the user permit or refund of the permit fee.

§204-1-7. Revocation of User Permit.

7.1. Any person charged with any violation that, upon conviction, requires revocation of the user permit shall immediately surrender any user permit in the person's possession to

the ranger or other law enforcement officer. If the seized user permit is currently valid, the officer shall issue a temporary user permit to that person, in form specified by the Authority, which shall be valid until the court appearance date for the violation charged or until the expiration date of the seized permit, whichever is sooner.

7.2. Whenever a ranger or other law enforcement officer seizes the user permit of any person, the officer shall promptly forward the seized permit to the Authority along with a full statement of the facts relevant to the seizure.

7.3. The Authority shall immediately revoke for a period of one year the user permit of any person upon receiving notice of the conviction of the person for any of the following violations or crimes:

7.3.a. Unlawful use of a user permit;

7.3.b. Violation of *W.Va. Code* § 17C-5-2 (driving while under the influence), where the offense arises out of the operation of a vehicle within the Hatfield-McCoy enforcement area;

7.3.c. Violation of *W.Va. Code* §§ 61-3B-2 or 61-3B-2 (criminal trespass), where the offense arises out of trespass within the Hatfield-McCoy enforcement area;

7.3.d. Refusal to submit to a preliminary or secondary test administered under authority of *W.Va. Code* § 17C-5-4 and the related provisions of Article 5, Chapter 17C of the *W.Va. Code* when the refusal arises out of the operation of a vehicle within the Hatfield-McCoy enforcement area;

7.3.e. Violation of *W.Va. Code* § 17C-5-3 (reckless driving), where the offense arises within the Hatfield-McCoy enforcement area;

7.3.f. Violation of *W.Va. Code* § 61-5-17 (obstructing officer, fleeing from officer, making false statement to officer), where the offense arises within the Hatfield-McCoy enforcement area;

7.3.g. Violation of *W.Va. Code* § 17C-6-8 (racing), where the offense arises within the Hatfield-McCoy enforcement area and it is reasonably foreseeable that a death or serious injury to any person could result from the unlawful conduct; and

7.3.h. Violation of *W.Va. Code* § 17C-3-9 (interference with official traffic-control devices), where the offense arises within the Hatfield-McCoy enforcement area and it is reasonably foreseeable that a death or serious injury to any person could result from the unlawful conduct.

7.4. The Authority shall immediately revoke the user permit of any person upon receiving notice from a circuit court, magistrate court, or municipal court of this state that the person has failed to appear in court in response to a notice to appear, or that the person has defaulted on the payment of costs, fines, forfeitures, penalties, or restitution imposed on the person by the court upon conviction, when the person is charged with any violation of these rules or with any criminal offense committed or alleged to have been committed within the Hatfield-McCoy enforcement area. This revocation shall remain in effect indefinitely until such time as the Authority receives notice from the court that the person had made an appearance in response to the charges or has cleared the default by making the required payments to the satisfaction of the court.

7.5. Whenever the Authority revokes the user permit of any person, that person's

privilege of applying for or holding a user permit or special utilization license and the privilege of using the Hatfield-McCoy Recreation Area for any purpose are also concurrently revoked. Revocation shall be imposed notwithstanding the fact that the person subject to revocation may not at the time of revocation be the holder of a then valid user permit.

7.6. Whenever the Authority revokes a user permit, the Authority shall immediately send notice of the revocation by regular mail to the person at the address of record in the Authority's files. The notice shall advise the person as follows:

7.6.a. That his or her Hatfield-McCoy user permit is revoked and that any Hatfield-McCoy user permit currently in his or her possession is now null and void and should be immediately surrendered to the Authority;

7.6.b. That he or she is not be entitled to refund of any portion of the user permit fee;

7.6.c. The reason for the revocation;

7.6.d. The term of the revocation, if the term is definite, or the steps the person must take to reinstate the permit if the revocation is for an indefinite term;

7.6.e. The steps the person must take to request a hearing, if one is desired;

7.6.f. That his or her privilege of applying for or holding a user permit and the privilege of using the Hatfield-McCoy Recreation Area for any purpose are also concurrently revoked; and

7.6.g. That he or she is prohibited from using the Hatfield-McCoy Recreation Area during the period of the revocation.

7.7. Revocation shall commence when the subject of the revocation receives actual notice of the revocation. It shall be presumed that the subject has received actual notice of the revocation five days after the revocation notice required is posted in the U.S. Mail.

7.8. At the expiration of the term of revocation, or whenever the Authority receives notice from the court that the appearance or payment default that was the basis of the revocation has been corrected, the Authority shall terminate the revocation status in its records and shall send notice to the person at the address of record in the Authority's files advising the person that the revocation has been terminated. Any surrendered user permit that has not expired and that otherwise remains valid shall be returned to the permit holder with this notice.

7.9. Whenever a person whose user permit has been seized is found by the court to be not guilty of the violation that was the basis of the permit seizure, the Authority shall immediately return the seized user permit to the proper permit holder unless the Authority makes an independent determination that the user permit is invalid, in which case, the Authority shall cancel the user permit and the permit holder shall not be entitled to return of the user permit or refund of the permit fee.

§204-1-8. Special Utilization Licenses

8.1. The Executive Director may issue a special utilization license to authorize the use of specified facilities of the Hatfield-McCoy Recreation Area by a class of vehicle use that would not be permitted in the absence of the license. Upon application, a special utilization license may be issued to the owner or operator of a single vehicle or to an event promoter or sponsor or to a responsible

organized user group.

8.2. Where a multiple-vehicle special utilization license is issued to an event promoter, sponsor, or user group, it shall be the responsibility of the promoter, sponsor, or user group to assure that each vehicle operator participating in the event has received a copy of the license; is aware of and has agreed to comply with all of the conditions, restrictions, and requirements applicable to that license; and is properly displaying the license in or on the vehicle.

8.3. Every person driving or riding as a passenger in any vehicle covered by any special utilization license must hold and display a currently valid user permit except that where the special utilization license expressly exempts all or some specific persons in the covered vehicle from the user permit requirements, such persons need not hold and display a user permit.

8.4. A special utilization license shall be valid only during the specific dates and times specified on the face of the license, which may be any limited period up to and including one year.

8.5. Special utilization license fees—Application for a special utilization license shall be made to the Executive Director by such means as the Authority shall establish accompanied by the basic fee specified by the Authority for such license. Where unusual expenses or loss of income will be incurred by the Authority as a result of the use of the trail system contemplated by the special utilization license application, the Executive Director may negotiate with the license applicant and assess any additional fee necessary to recover those expenses.

8.6. Special utilization licenses are issued entirely in the discretion of the Executive

Director based on consideration of the following factors:

8.6.a. The availability and suitability of trail or other facility to accommodate the contemplated recreational use;

8.6.b. The number of trail users expected for the licensed activity, and the volume of other recreational traffic anticipated at the time the licensed activity would be undertaken;

8.6.c. The ability of the Authority staff to adequately and properly provide staffing assistance to the licensed activity while also carrying on normal staff functions;

8.6.d. The need to protect all trail users from unnecessary hazards;

8.6.e. The need to protect trails and other facilities from damage;

8.6.f. The condition of the trail tread and other facilities due to weather and other variables;

8.6.g. The potential of the anticipated use to cause damage, problems, or hazards due to the size, weight, footprint, and cargo capacity of the vehicles that would use the facilities;

8.6.h. The desirability of opening the trail system to new user markets and the need to experiment with particular kinds or classes of use to determine suitability and compatibility;

8.6.i. The demonstrated responsibility, including financial and organizational responsibility, of the applicant for the license; and,

8.6.j. Any other factors deemed

appropriate under the circumstances by the Executive Director.

8.7. A special utilization license shall be subject to such conditions, restrictions, and requirements as are set out in the license document, which may include any of the following or others:

8.7.a. Restrictions on special trails and facilities to be used;

8.7.b. Restrictions of specific dates and times of use.

8.7.c. Restrictions based on weather and changing trail tread conditions, including a requirement that the activity be cancelled or postponed if necessary;

8.7.d. Restrictions on the direction of travel, speed, and grouping or dispersal of trail users;

8.7.e. Requirement that the special use be monitored and supervised by one or more licensed Hatfield-McCoy trail guides accompanying the trail users on the trails;

8.7.f. Requirement that the vehicles operating under the license must be inspected by a Hatfield-McCoy ranger immediately prior to entering the trail system;

8.7.g. Requirements for provision of insurance or bonding, or the payment of a damage deposit by the license holder;

8.7.h. Requirements for provision of necessary auxiliary staffing and temporary resources by the license holder; and,

8.7.i. Any other conditions, restrictions, or requirements deemed appropriate and necessary by the Executive Director, whether or not the conditions,

restrictions, or requirements are similar to those enumerated above.

8.8. The special utilization license issued for a vehicle, or a copy of a multiple-vehicle license under which the vehicle is operating, shall be displayed in the lower-front windshield of a vehicle with a windshield or in another clearly visible location on a vehicle without a windshield at all times.

8.9. The operator of the vehicle shall allow any ranger or other law enforcement officer to inspect the special utilization license, and, upon request, shall physically surrender the license into the hands of the officer for inspection.

§204-1-9. Review, Hearing, and Appeal

9.1. Informal review—Whenever any person is aggrieved by any action of the Authority, the person may at any time request an informal review of the Authority's action by the Executive Director. The request for an informal review shall be submitted in writing and shall include any evidence the petitioner believes to be relevant to the issue. The Executive Director shall, within 15 days of receipt of the request, review the evidence submitted and the action of the Authority and shall determine whether or not the Authority's action was proper and justified, was taken with respect to the correct individual, and is in accordance with applicable laws and these rules. The Executive Director shall prepare a written decision and mail a copy to the petitioner within 25 days of receipt of the petitioner's request for review. This review does not constitute a hearing; is not a prerequisite to a hearing request; or is a final order appealable under the provisions of *W.Va. Code* § 29A-5-4.

9.2. Formal review—As an alternative, or

in addition, to the informal review by the Executive Director, an aggrieved person may request a formal hearing before the Authority. The hearing shall be conducted in accordance with the requirements of Article 5, Chapter 29A (State Administrative Procedures Act) of the *W.Va. Code* and in accordance with the following rules:

9.2.a. The request for a hearing shall be made in writing to the Executive Director within 60 days of the date of the Authority's action that is being questioned.

9.2.b. The Authority shall hold the hearing within 30 days after the receipt of a written request for a hearing, unless the hearing is delayed upon the written request of the petitioner.

9.2.c. The hearing shall be conducted at a time and at a location within the Hatfield-McCoy enforcement area designated by the Executive Director. The Executive Director will attempt to cooperate with the petitioner in selecting a time and place for the hearing that is most convenient for all parties. Written notice of the time and location of the hearing shall be given to the petitioner at least ten days prior to the hearing, unless the petitioner waives this notice requirement in writing. The petitioner shall be granted one postponement of the hearing date and may, with good cause, be granted additional postponement in the discretion of the Executive Director.

9.2.d. Either the Executive Director or a duly authorized agent of the Executive Director shall act as the hearing officer.

9.2.e. The issue before the hearing shall be whether or not the Authority's action is proper and justified, is taken with respect to the correct individual, and is in accordance with applicable laws and these rules.

9.2.f. An opportunity shall be afforded for all parties to present evidence and arguments with respect to the matters and issues involved. A record of all evidence and testimony will be maintained so that a complete written report can be transcribed and assembled if necessary for a judicial review.

9.2.g. The petitioner may respond and participate in the hearing either in person, through legal counsel, or solely through telephonic communications if his attendance through counsel or in person is impracticable. Testimony may be taken from witnesses in person or by telephonic communications, provided that no testimony shall be taken by telephone until the person giving testimony has been advised and has agreed that the testimony will be recorded. Documents may be transferred in the course of the hearing through electronic means of communication, in the discretion of the hearing officer,

9.2.h. Within 30 days after the hearing, the hearing officer shall issue a finding and the reasons for the finding that either upholds or reverses or modifies the Authority's action. The Authority shall immediately send written notice of the finding to the petitioner and shall take such action, if any, as is required to comply with the finding.

9.2.i. The finding of the hearing officer constitutes a final order of the Authority which is appealable under the provisions of *W. Va. Code* §29A-5-4.

9.3. Whenever any person is aggrieved by the final action of the Authority following a hearing, the person may appeal pursuant to the provisions of *W. Va. Code* § 29A-5-4.

9.4. In the sole discretion of the Executive Director, the action of the Authority may be temporarily stayed during the time when a

hearing before the Authority or a judicial appeal is pending. Upon written request of the petitioner made to the Executive Director and for good cause shown, the Executive Director is authorized to take necessary and appropriate action to temporarily stay the Authority action that is the subject of the hearing or appeal.

§204-1-10. Enforcement of Rules Governing Public Use of the Hatfield-McCoy Recreation Area.

10.1. Responsibility for enforcing the rules—Rangers, the Executive Director or designee, shall enforce all of the provisions of this rule.

10.2. Criminal violation of rules and penalties:

10.2.a. 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* § 20-14-8.

10.2.b. Every ranger or other law enforcement officer upon issuing a violation notice for a violation of any provision of this series of rules or for any other violation of state law that occurs within the Hatfield-McCoy enforcement area shall promptly deposit the original or a copy of the violation notice with a court having jurisdiction over the alleged violation.

10.2.c. Upon the deposit of the original or a copy of a criminal violation notice with a court having jurisdiction, the violation notice may be disposed of only by trial or other official action by a judge of the court, including by forfeiture of bail or collateral or payment of the fine and costs by the person who was cited for the violation.

10.3. ~~Every ranger or other law enforcement officer upon issuing a violation notice for a violation of any provision of this series of rules or for any other violation of state law that occurs within the Hatfield-McCoy enforcement area shall promptly deposit the original or a copy of the violation notice with a court having jurisdiction over the alleged violation.~~ Civil violation of rules and penalties:

10.3.a. Any person who violates any of the provisions of these rules relating to permits or failure to purchase a permit, safety violations or other civil violations may be charged with a lesser civil violation which is subject to a civil penalty of one hundred dollars.

10.3.b. Authority rangers shall issue citations for civil violations.

10.3.c. All civil penalties for civil violations received pursuant to this rule shall be remitted to the Authority for deposit.

10.5.4. It shall be unlawful and shall constitute official misconduct for any ranger, other law enforcement officer, employee of the Authority, officer or employee of the court, or other public officer or employee to dispose of a violation notice or the record of the issuance of a violation notice other than as required by this subsection, subsection 10.2. or 10.3. of this rule, and other applicable state law.

10.6.5. The Executive Director or his or her designated chief ranger shall require the return of a copy of every violation notice issued by any ranger to a violator and of every violation notice form provided to any ranger that has been spoiled or written upon and not issued to a violator.

§204-1-11. Incorporation of Duties Imposed on Participants and Authorized Outfitters and Licensees by West Virginia Code §20-15-1, et seq., (ATV, UTV and Motorcycle Responsibility Act).

11.1. All persons using the Hatfield-McCoy Recreation Area and the adjacent public and private property that is included within the Hatfield-McCoy enforcement area and all authorized outfitters and licensees shall comply with West Virginia Code §20-15-1, et seq., (ATV, UTV and Motorcycle Responsibility Act), which is incorporated herein by reference.

* * *