

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

Form #3 ■

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2004 APR -8 A 9:16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Hatfield-McCoy Regional Recreation Authority TITLE NUMBER: 204

CITE AUTHORITY: W.Va. Code 20-14-1, et seq.

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

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: 3-17-04

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) Hatfield-McCoy Regional Recreation Authority

Box 539
Rich Creek Road
Lyburn, WV 25632
304-752-3255

LEGISLATIVE RULE TITLE: 204

1. Authorizing statute(s) citation W. Va. Code 20-14-1, et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
January 12, 2004

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
March 15, 2004

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)

March 24, 2004

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

Matthew Ballard, Executive Director

Box 539

Rich Creek Road

Lyburn, WV 25632

304-752-3255 phone

304-752-1134 fax

- 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:

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

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 204 Series 1, Rules for Use of Facilities

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Harfield-McCoy Regional Recreation Authority

Address: Box 539

Rich Creek Road

Lyburn, WV 25632

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	
PERSONAL SERVICES	0	0	0	0	
CURRENT EXPENSE	0	0	0	0	
REPAIRS & ALTERATIONS	0	0	0	0	
EQUIPMENT	0	0	0	0	
OTHER	0	0	0	0	

2. Explanation of Above Estimates:

The personell and equipment are already in place to implement the proposed rules; therefore, the adoption of these rules will be revenue neutral.

3. Objectives of These Rules:

The objective of the rules is to provide method of implemeting standards of conduct for those persons who use the Hatfield-McCoy Trail system. The rules provide limitations on equipment use, restrictions on trespassing and other requiraments for users

Rule Title: Title 204 Series 1, Rules for Use of Facilities

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The overall economic impact to the state will be positive. The Hatfield-McCoy Trail system is a major tourism attraction in the southern part of West Virginia. The rules will allow users to feel safer knowing that there is a governing body overseeing the conduct of users, thus increasing the appeal of the Trail.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: The impact on political subdivisions is revenue positive. Although, some cost will be incurred for prosecuting any offenders, this cost will be overshadowed by the significant positive economic impact of the Trail users on the local economy and tourism industry.

C. Economic Impact on Citizens/Public at Large.

The economic impact on the citizens at large will be positive. The rules will allow the public to know that the biggest tourist draw in southern West Virginia is also the safest. This will increase visitors to the area spurring economic growth in the region.

Date: 11/12/04

Signature of Agency Head or Authorized Representative:

Matthew G. Ball

TITLE 204
LEGISLATIVE RULES
HATFIELD-McCOY REGIONAL RECREATION AUTHORITY

SERIES 1

Rules for Use of Facilities

Summary of Proposed Rules

The rules as proposed by the Hatfield-McCoy Regional Recreation Authority will be used for oversight of the behavior of visitors to the Hatfield-McCoy Regional Recreation Authority Trail System (Trail). The rules apply to all locations that are part of the Trail as well as any facilities that are appurtenant to the Trail. Some violations, such as trespassing may apply to lands that are not part of the Trail.

Person using the Trail must obey all traffic control devices and orders from Hatfield-McCoy rangers. Persons using the Trail must stay on the trails to prevent damage to the surrounding land contours and wildlife. The trails are closed at night. An adult must supervise all children on the Trails. Possession of alcoholic beverages is prohibited.

Serious violations include reckless driving, DUI, fleeing, racing, interfering with traffic control devices, interference with property and trespassing. There are also basic operational rules governing speed, right-of ways and other conduct.

Included within the rules are limitations on passengers and drivers. ATV drivers must meet the minimum age restrictions recommended by the ATV manufacturer. Passengers may be allowed on ATVs, motorcycles and bicycles, if the vehicle is recommended, approved and properly equipped to carry passengers. Visitors are also required to wear helmets and eye protection.

The rules require the following equipment to be present and working on vehicles: headlight, taillight, brake, spark arrester and muffler.

Each person who uses the Trail must hold and display a valid user permit. The permits may be obtained at various locations, usually trail heads or businesses along the Trail and of course the Authority. In addition, each person must carry identification.

User permits may be revoked for various violations of the rules. The most serious violations are considered class A violations and may lead to a one year suspension of any user permits. Class A violations include unlawful user permits, DUI on the Trail and

trespass. The rules provide a notice requirement and hearing process be associated with the revocation of the permit.

There is also available a special utilization license which allows holders to use the Trail for reasons or in a manner outside the rules. For example, the Authority may allow an equestrian endurance race under a special utilization license even though under the rules racing is prohibited.

The Authority is given the power to enforce the rules and rangers are given basic police powers to provide that enforcement.

TITLE 204

FILED

LEGISLATIVE RULES

HATFIELD-McCOY REGIONAL RECREATION AUTHORITY

SERIES 1

Rules for Use of Facilities

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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.

1.2. Authority. W.Va. Code §§20-14-1 through 20-14-8.

1.3. Filing date. [DATE]

1.4. Effective date. [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. Any facility that appertains to the system of recreational trails of the Hatfield-McCoy Recreation Area, 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.

2.3. 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

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

2.5. Authorized emergency vehicle. Any marked law enforcement vehicle operated by a ranger and any vehicle that is an authorized emergency vehicle under W.Va. Code §17C-1-6.

2.6. Bicycle. 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. A person who drives or is in actual physical control of a vehicle or trail animal.

2.8. Executive director. The executive director of the Hatfield-McCoy Regional Recreation Authority.

2.9. Hatfield-McCoy enforcement area. The area within which Hatfield-McCoy rangers have the duty to preserve law and order under 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. A 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. 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. 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. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel or not more than two wheels in contact with the ground.

2.14. Motor vehicle. Every vehicle that is self-propelled except a motorized wheelchair.

2.15. Pedestrian. Any person afoot and any person in a wheelchair, including a motorized wheelchair.

2.16. Person. Every natural person, firm, copartnership, association, or corporation.

2.17. Private way. 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.

2.18. Ranger or Hatfield-McCoy ranger. An authorized law enforcement officer appointed by the Authority under the provisions of W.Va. Code §20-14-6.

2.19. Right-of-way. 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.

2.20. Snowmobile. 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.

2.21. Special utilization license. 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.

2.22. Traffic. Pedestrians, trail animals, and vehicles, either singly or together, while using any highway or trail for purposes of travel.

2.23. Traffic-control device. 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.

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

2.25. Trail. 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.

2.26. Trail animal. Any horse, pony, donkey, mule, or other animal capable of being ridden for recreational purposes on a trail.

2.27. Trail corridor. 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.

2.28. Trail fringe. 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.

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

2.30. Trailhead center. 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 trail users.

2.31. User permit. 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.

2.32. Vehicle. 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. Obedience Required.

3.1. Where rules applicable.

3.1.a. Unless a more limited application is specified for a particular rule, the rules in this series apply to all locations within the Hatfield-McCoy enforcement area.

3.1.b. On streets, highways, and other public lands within the Hatfield-McCoy enforcement area, these rules apply only to the extent they are consistent with other law applicable to those public areas.

3.2. Obedience to rules required.

3.2.a. Except as provided in subsection 3.3 [Exemptions to rules], it is unlawful and a violation for any person to do any act forbidden or fail to perform any act required in this series.

3.2.b. Except as otherwise specified for a particular offense, any violation of these rules is a Class C violation.

3.3. Exemptions to rules.

3.3.a. The following persons are exempt from all the provisions of this series except for the serious violations defined in §204-1-5 [Serious Violations]:

3.3.a.1. 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; and

3.3.a.2. 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.

3.3.a.3. 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.

3.3.a.4. 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 of the Authority.

3.3.b. The foregoing exemptions do not relieve the exempted persons 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.

3.4. Obedience to authorized person directing traffic. No person shall willfully fail or refuse to comply with the lawful order or direction of any firefighter or rescue personnel at the scene of an emergency or of any Hatfield-McCoy ranger, other law enforcement officer, or uniformed Authority staff personnel at any location.

3.5. Obedience to traffic-control devices required.

3.5.a. Every person, whether proceeding as a pedestrian or as the driver of a vehicle or the driver of a trail animal, shall obey the instructions conveyed by any traffic-control device applicable to that person.

3.5.b. No pedestrian and no driver of a vehicle or trail animal shall pass around, beyond, or through any fence or closed gate.

3.5.c. If a barrier is designed to permit the passage of vehicles of a particular width or less but to bar the passage of wider vehicles, the vehicles that meet the width specifications and pedestrians may pass through, but no driver of a vehicle wider than the specified width shall drive his or her vehicle past, around, beyond, or through the barrier.

3.5.d. No person shall operate any vehicle on any trail or within any area that is protected by signs or barriers limiting the width of vehicles that are permitted to use that trail or area if the vehicle being operated is wider than the width permitted by the barriers or signs.

3.5.e. Notwithstanding the other provisions of this subsection 3.5, an authorized person directing traffic as described in subsection 3.4 [Obedience to authorized person directing traffic] may direct traffic contrary to the instructions of a traffic-control device, and in that case there is no violation of this subsection 3.5.

§204-1-4. General Requirements.

4.1. Classes of use allowed.

4.1.a. 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.

4.1.b. Subject to restrictions of particular trails to particular classes or widths of trail traffic as designated with traffic-control devices, trails are open to the following classes of use:

4.1.b.1. Pedestrians, ATVs, motorcycles, bicycles, and ridden trail animals;

4.1.b.2. Other vehicles that are capable of off-highway operation on trails, but only when the driver of the vehicle has been issued a special utilization license by the Authority.

4.1.c. 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 allowed in this subsection 4.1 or in a special utilization license issued by the Authority.

4.1.d. Where a particular trail, segment of trail, or area is designated by traffic-control devices as closed to one or more classes of use or as open only 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.

4.2. Stay on trails.

4.2.a. Every person driving a vehicle or trail animal or proceeding as a pedestrian shall at all times remain within and on a designated and marked trail.

4.2.a.1. Every such person, while proceeding along the trail, shall remain within the trafficway, the portion of the trail that is improved, designed, and ordinarily used for trail traffic.

4.2.a.2. Any such person may cautiously and slowly drive the vehicle or trail animal off the trafficway and onto the trail margin, not more than ten feet from the edge of the trafficway, in order to temporarily halt or park.

4.2.a.3. Any person may proceed on foot, and may lead a trail animal without riding it, into the trail fringe, not more than forty feet from the edge of the trafficway, when necessary.

4.2.b. No person shall drive a vehicle or trail animal, proceed as a pedestrian, or otherwise go:

4.2.b.1. Upon any private way, unless the person has the express permission of the person who owns or controls the private way;

4.2.b.2. Upon any way that is not either a designated and marked trail of the Hatfield-McCoy Recreation Area or a public street or highway; or

4.2.b.3. Upon any private land that is not a designated and marked trail, trailhead center, or other appurtenant facility of the Hatfield-McCoy Recreation Area

unless the person has the express permission of the person who owns or controls the private land.

4.3. Trails closed at night. Except in an emergency, no person shall be on any trail at any time from a half-hour after sunset until a half-hour before sunrise.

4.4. Adult supervision required. Every person 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.

4.5. Plants and animals.

4.5.a. No person driving any vehicle or trail animal shall do so in any manner as to intentionally create an erosive condition or injure, damage, or destroy trees or plants.

4.5.b. No person driving any vehicle or trail animal shall run down, pursue, harass, worry, or kill any bird or animal, wild or domestic. Nothing in this subsection 4.5 shall be construed to prohibit lawful hunting activities carried out in compliance with West Virginia laws regulating such hunting.

4.6. No littering. 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.

4.7. No fires. 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.

4.8. No camping. 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.

4.9. No alcoholic beverages.

4.9.a. No person shall consume any alcoholic beverage at any time or any location.

4.9.b. No person shall 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.

4.10. No vehicle operation in water. Except as specifically permitted in this subsection, no person shall operate any vehicle within any lake, river, stream, or watercourse.

4.10.a. A person may operate a vehicle within standing or running water at a location where a designated trail crosses such water, but only as necessary to make a direct crossing while remaining on the trail.

4.10.b. A person may operate a vehicle within standing water while within the boundaries of any water or mud play area established and designated by the Authority and clearly identified with traffic control devices.

§204-1-5. Serious Violations.

5.1. Reckless driving.

5.1.a. Any person who drives any vehicle or trail animal at any location in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

5.1.b. Reckless driving is a Class A violation.

5.2. Driving while under the influence.

5.2.a. Any person who drives any vehicle or trail animal at any location while the person is under the influence of alcohol, or is under the influence of any controlled substance, or is under the influence of any other drug, or is under the combined influence of alcohol and any controlled substance or any other drug, or has an alcohol concentration in his or her blood that is equal to or exceeds the limits in W.Va. Code § 17C-5-2 is guilty of driving while under the influence.

5.2.b. Driving while under the influence is a Class A violation.

5.2.c. The offense shall be charged under W.Va. Code §17C-5-2 if the elements of that offense are established.

5.3. Implied consent to test.

5.3.a. Any person who drives any vehicle or trail animal at any location is deemed to have given his or her consent by the driving thereof to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath, or urine for the purposes of determining the alcoholic content of his or her blood.

5.3.b. Preliminary breath analysis and secondary chemical testing shall be administered under authority of W.Va. Code §17C-5-4 and the related provisions of Article 5, Chapter 17C of the W.Va. Code in all cases where those provisions are applicable. In other cases, preliminary breath analysis and secondary chemical testing shall be administered under authority of this subsection 5.3 and in accordance with the following provisions:

5.3.b.1. A preliminary breath analysis may be administered whenever a ranger or other law enforcement officer has reasonable cause to believe a person has committed an offense prohibited by subsection 5.2 [Driving while under the influence] or an offense prohibited under W.Va. Code §17C-5-2.

5.3.b.2. A secondary test of blood, breath or urine is incidental to a lawful arrest and is to be administered at the direction of the arresting ranger or other law enforcement

officer having reasonable grounds to believe the person has committed an offense prohibited by subsection 5.2 [Driving while under the influence] or an offense prohibited under W.Va. Code §17C-5-2.

5.3.b.3. Tests shall be administered following the same procedures and applying the same standards and requirements specified in W.Va. Code §17C-5-4 and the related provisions of Article 5, Chapter 17C of the W.Va. Code: *Provided,*

5.3.b.3.A. That for purposes of applying this rule, a Hatfield-McCoy ranger shall be considered a law enforcement officer within the meaning of W.Va. Code §17C-5-4 and the related provisions of Article 5, Chapter 17C of the W.Va. Code;

5.3.b.3.B. That no statement, written or oral, advising the person that a refusal of the test will result in revocation of his or her license to operate a motor vehicle in this state will be given to the person; and,

5.3.b.3.C. That no report of refusal of a test administered under authority of these rules shall be submitted to the commissioner of motor vehicles.

5.3.b.4. No person who administers any such test upon the request of a ranger or other law enforcement officer, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered, and no other person, firm, or corporation by whom or with which such person is employed or is in any way associated, shall be in anywise criminally liable for the administration of such test, or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

5.3.c. In all cases where preliminary breath analysis or secondary chemical testing is administered as a result of the driving of a vehicle or trail animal within the Hatfield-McCoy enforcement area, whether the tests are administered under authority of W.Va. Code §17C-5-4 and the related provisions of Article 5, Chapter 17C of the W.Va. Code or under authority of these rules, the following requirements shall apply:

5.3.c.1. The person being requested to submit to testing shall be warned that any refusal to submit to any preliminary or secondary test shall result in immediate seizure and revocation of the person's Hatfield-McCoy user permit and revocation of the privilege to use the Hatfield-McCoy Recreation Area for one year.

5.3.c.2. Upon any refusal to submit to either a preliminary or secondary test, the ranger or other law enforcement officer requesting the person to submit to the test shall within 48 hours submit to the Authority a sworn statement that the person refused 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 or under authority of these rules.

5.4. Fleeing or attempting to elude.

5.4.a. Any driver of a vehicle or trail animal who willfully fails or refuses to bring the vehicle or animal to a stop or who otherwise flees or attempts to elude a pursuing ranger or other law enforcement officer when given visual or audible signal to stop is guilty of fleeing or attempting to elude. The signal given by the ranger or other law enforcement officer may be by hand, voice, flashing emergency light, or siren. The officer giving the signal shall be in uniform, prominently displaying the officer's badge of office, and the officer's vehicle shall be appropriately marked showing it to be an official ranger or other law enforcement vehicle.

5.4.b. Fleeing or attempting to elude is a Class A violation.

5.5. Racing.

5.5.a. Any person who drives a vehicle or trail animal in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record is guilty of racing.

5.5.b. Racing is a Class B violation, but if it is reasonably foreseeable that a death or serious injury to any person could result from the unlawful conduct, then it is a Class A violation.

5.5.c. 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 5.5.

5.6. Interference with a traffic-control device.

5.6.a. Any person who intentionally interferes with, alters, moves, removes, defaces, damages, or destroys any sign, marker, or other traffic-control device installed by the Authority is guilty of interference with a traffic-control device.

5.6.b. Interference with a traffic-control device is a Class B violation, but if it is reasonably foreseeable that a death or serious injury to any person could result from the unlawful conduct, then it is a Class A violation.

5.6.c. Any person who unintentionally, through collision or otherwise, interferes with, alters, moves, removes, defaces, damages, or destroys any sign, marker, or other traffic-control device installed by the Authority shall attempt to restore the device and shall immediately give notice of the fact to any ranger or to any office of the Authority. Any person who complies with this subdivision 5.6.c shall not be guilty of interference with a traffic-control device. Failure to comply with this subdivision 5.6.c is *prima facie* evidence that the interference with the traffic-control device was intentional.

5.6.d. If a person who violates any provision of this subsection 5.6 is not lawfully entitled to be on the premises, the person may alternatively be charged with criminal

trespass under W.Va. Code, Chapter 61, Article 3B if the elements of that offense are established.

5.7. Interference with property.

5.7.a. Any person who intentionally interferes with, alters, moves, removes, defaces, damages, or destroys any sign, marker, device, structure, fence, gate, barrier, equipment, implement, gravestone, historical artifact, growing tree, or other property is guilty of interference with property.

5.7.b. Interference with property is a Class B violation, but if it is reasonably foreseeable that a death or serious injury to any person could result from the unlawful conduct, then it is a Class A violation.

5.7.c. Any person who unintentionally, through collision or otherwise, interferes with, alters, moves, removes, defaces, damages, or destroys any sign, marker, device, structure, fence, gate, barrier, equipment, implement, gravestone, historical artifact, growing tree, or other property shall attempt to restore the property and shall immediately give notice of the fact to any ranger or to any office of the Authority. Any person who complies with this subdivision 5.7.c shall not be guilty of interference with property. Failure to comply with this subdivision 5.7.c is prima facie evidence that the interference with the property was intentional.

5.7.d. If a person who violates any provision of this subsection 5.7 is not lawfully entitled to be on the premises, the person may alternatively be charged with criminal trespass under W.Va. Code, Chapter 61, Article 3B if the elements of that offense are established.

5.8. Trespass.

5.8.a. Any person who does not hold a currently valid user permit issued by the Authority under §204-1-9 [User Permits and Identification], who knowingly and without being authorized, licensed, or invited by the landowner or leaseholder enters or remains on any trail, trailhead center, or other appurtenant facility of the Hatfield-McCoy Recreation Area is guilty of trespass.

5.8.b. Any person who has had his or her user permit and privilege to use the Hatfield-McCoy Recreation Area revoked under subsection 9.8 [Revocation of user permit] who during the period of that revocation knowingly and without being authorized, licensed, or invited by the landowner or leaseholder enters or remains on any trail, trailhead center, or other appurtenant facility of the Hatfield-McCoy Recreation Area is guilty of trespass.

5.8.c. Any person who fails to comply with the requirements of subsection 4.2 [Stay on trails] is guilty of trespass.

5.8.d. Trespass is a Class A Violation.

5.8.e. A person who fails to comply with the requirements of this subsection 5.8 may alternatively be charged with criminal trespass under W.Va. Code, Chapter 61, Article 3B if the elements of that offense are established.

5.9. Duty when involved in accident.

5.9.a. The driver of any vehicle or trail animal involved in an accident resulting in injury or death of any person shall immediately stop at the scene of the accident and, if able to do so, render reasonable assistance to any person or persons injured in the accident. Unless unable to do so, the driver shall immediately summon a ranger or other law enforcement officer and, if necessary, emergency medical personnel to the scene of the accident. A violation of this subdivision 5.9.a. is a Class A violation.

5.9.b. The driver shall display his drivers license or photo identification card and his Hatfield-McCoy user permit and shall provide full identifying information to the investigating ranger or other law enforcement officer and to the driver of any other vehicle or trail animal involved in the accident.

§204-1-6. Operational Rules.

6.1. Basic speed rule. No person shall drive any vehicle or trail animal at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and traversing an intersection or stream crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding trail, and when special hazards exist with respect to steep grades, sight distances, the presence of other traffic, weather, or trail conditions.

6.2. Stop sign. The driver of a vehicle or trail animal approaching a stop sign shall stop before entering the intersection and shall yield the right-of-way to any vehicle or trail animal in the intersection or approaching on the intersecting trail or highway under such circumstances of direction, speed, and proximity as to give rise to danger of collision.

6.3. Yield sign. The driver of a vehicle or trail animal approaching a yield sign shall slow down to the extent required to see and evaluate traffic on the intersecting trail or highway and shall yield the right-of-way to any vehicle or trail animal in the intersection or approaching on the intersecting trail or highway under such circumstances of direction, speed, and proximity as to give rise to danger of collision.

6.4. Intersection right-of-way.

6.4.a. At an intersection of two or more trails, where right-of-way is not indicated by the presence of stop or yield signs, when two drivers approach or enter the intersection from different ways at approximately the same time, the driver of the vehicle or trail animal on the left shall yield the right-of-way to the driver of the vehicle or trail animal on the right.

6.4.b. At an intersection of a trail or trails with a highway, where right-of-way is not indicated by the presence of stop or yield signs, when two drivers approach or enter the intersection from different ways at approximately the same time, the driver of the vehicle or trail animal on the trail shall yield the right-of-way to the driver of the vehicle or trail animal on the highway.

6.5. Pass to the right of oncoming traffic. The driver of a vehicle or trail animal shall pass to the right of vehicles and trail animals proceeding in the opposite direction, and each driver shall give to the other at least one-half of trafficway, as nearly as possible.

6.6. Turns.

6.6.a. The driver of a vehicle or trail animal shall not turn from a direct course or move right or left until such movement can be made with reasonable safety.

6.6.b. The driver of a vehicle or trail animal preparing to turn across the path of another vehicle or trail animal approaching from any direction shall yield the right-of-way.

6.7. Following too closely. The driver of a vehicle or trail animal shall not follow another vehicle or trail animal more closely than is reasonable and prudent under the circumstances.

6.8. Authorized emergency vehicles. Upon the approach of any authorized emergency vehicle making use of flashing lights and a siren or horn, the driver of every other vehicle or trail animal shall yield the right-of-way to the authorized emergency vehicle and shall pull to the right side of the trail, clear of any intersection, and stop until the authorized emergency vehicle has passed.

6.9. Stopping or parking on trail.

6.9.a. Except in an emergency or when necessary to avoid conflict with other traffic or to comply with the directions of a traffic-control device or authorized person directing traffic, the driver of a vehicle or trail animal shall not stop on the trafficway or at any location where other traffic would be endangered or obstructed by the stopped vehicle or trail animal.

6.9.b. A driver shall not park a vehicle or tether a trail animal on the trafficway or at any location where the parked vehicle or tethered animal would endanger or obstruct other traffic due to limitations of sight distance or other circumstances.

6.9.c. The driver of a trail animal shall not leave a trail animal unattended at any location on a trail.

6.10. Starting stopped vehicle or trail animal. The driver of a stopped vehicle or trail animal shall not place the vehicle or trail animal in motion until such movement can be made with reasonable safety.

§204-1-7. Drivers and passengers.

7.1. Driver age restrictions. No person shall drive an ATV unless that person meets the minimum age recommendation specified by the ATV manufacturer for the ATV that is being driven.

7.2. Drivers license required. No person shall drive any 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 currently valid drivers license issued by his or her state of residence. The driver 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.

7.3. Vehicular passenger restrictions.

7.3.a. No person shall operate any ATV while carrying another person as a passenger unless such ATV is, in the opinion of the Authority, designed, properly equipped and approved by the manufacturer for such use, i.e. extra seat and foot pegs. Likewise, no person shall ride as a passenger on an ATV that is not designed, properly equipped and approved by the manufacturer for such use.

7.3.b. No person shall operate any motorcycle while carrying another person as a passenger unless such motorcycle is, in the opinion of the Authority, designed, properly equipped, and approved by the manufacturer for such use, i.e. extra seat and foot. Likewise, no person shall ride as a passenger on a motorcycle that is not, in the opinion of the Authority, designed, properly equipped and approved by the manufacturer for such use.

7.3.c. No person operate a bicycle while carrying another person as a passenger or additional operator unless such bicycle is, in the opinion of the Authority, designed, properly equipped and approved by the manufacturer for such use, i.e. extra seat, handlebars or handgrips, and pedals or foot pegs. Likewise, no person shall ride as a passenger or additional operator on a bicycle that is not in the opinion of the Authority, designed, properly equipped and approved by the manufacturer for such use.

7.4. Driver and passenger size restrictions.

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

7.4.b. 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.

7.4.c. No person shall drive 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.

7.5. Helmet requirements.

7.5.a. Every person driving or riding upon any ATV, motorcycle, 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, motorcycles, 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.

7.5.b. Every person driving or riding upon any bicycle shall at all times wear, securely fastened on his or her head by either a neck or chin strip, 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 bicycles by a nationally recognized standard setting authority or it must meet the performance specifications for such a helmet established by such an authority.

7.5.c. 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, 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.

7.5.d. Every person driving or 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.

7.5.e. For purposes of this subsection 7.5, 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.

7.6. Eye protection requirements. Every person driving or riding upon any ATV, 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.

§204-1-8. Equipment Requirements.

8.1. Compliance required. No person shall drive any vehicle or trail animal that does not comply in all respects with the equipment and special restrictions set out in this Article.

8.2. Headlight.

8.2.a. When operated from one-half hour after sunset to one-half hour before sunrise or at other times when visibility is limited by conditions of darkness, every motor 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.

8.2.b. When operated from one-half hour after sunset to one-half hour before sunrise or at other times when visibility is limited by conditions of darkness, every bicycle shall be equipped with at least one lighted white headlight directed toward the front of the vehicle.

8.3. Taillight.

8.3.a. When operated from one-half hour after sunset to one-half hour before sunrise or at other times when visibility is limited by conditions of darkness, every motor vehicle shall be equipped with at least one lighted red taillight which shall be clearly visible from the rear.

8.3.b. When operated from one-half hour after sunset to one-half hour before sunrise or at other times when visibility is limited by conditions of darkness, every bicycle shall be equipped with at least one lighted red taillight or at least one red reflector which shall be clearly visible from the rear.

8.4. Brake. Every vehicle shall be equipped with a service brake system that is in good working order and adequate to control the movement of and to stop and hold the vehicle, to the limit of the vehicle's traction, under all conditions of loading and upon any grade on which it is operated.

8.5. Spark arrester. Every motorcycle and ATV shall be equipped with a United States Forest Service qualified type spark arrester.

8.6. Muffler. Every motor vehicle shall at all times be equipped with an adequate muffler in constant operation and properly maintained to prevent excessive or unusual noise, and no muffler or exhaust system shall be equipped with a cutout, bypass, or similar device.

8.7. Noise abatement.

8.7.a. Except as otherwise specified in this subsection 8.7, no person shall operate any motor vehicle that emits unusual or excessive engine exhaust noise.

8.7.b. Except as otherwise specified in this subsection 8.7, no person shall operate any ATV or motorcycle 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.

8.7.c. No owner or driver of an ATV or motorcycle 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.

8.7.d. A ranger or other law enforcement officer, having determined that a vehicle is not in compliance with this subsection 8.7, 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.

§204-1-9. User Permits and Identification.

9.1. User permit required.

9.1.a. Except as specified in subdivision 9.1.c of this section, no person shall be upon any trail of the Hatfield-McCoy Recreation Area, whether as a pedestrian or as a driver, rider, or occupant of any vehicle or trail animal, unless the person holds and properly displays a currently valid user permit issued by the Authority for that person.

9.1.b. At any trailhead center, parking area, or camping area of the Hatfield-McCoy Recreation Area, no person shall drive any ATV, motorcycle, bicycle, or trail animal, capable of being operated on the trails, and no person shall unload any such vehicle or animal from a highway transport vehicle, unless the person holds and properly displays a currently valid user permit issued by the Authority for that person. A person who is entitled to receive a user permit and who immediately makes application for a user permit and pays the required fee shall not be charged with a violation of this subdivision 9.1.b.

9.1.c. Any person using the Hatfield-McCoy Recreation Area under a special utilization license issued by the Authority under §204-1-10 [Special Utilization Licenses] may be exempted from the requirements of this subsection 9.1 by the express terms of the special utilization license.

9.2. Display of user permit.

9.2.a. The user permit shall be prominently displayed upon the outer garment of the permit holder at all times while within the Hatfield-McCoy Recreation Area.

9.2.b. The permit holder shall allow any ranger or other law enforcement officer to inspect the user permit, and, upon request, shall physically surrender the permit into the hands of the officer for inspection.

9.3. Identification required.

9.3.a. Every person shall at all times carry in the person's immediate possession a currently valid drivers license or photo identification card issued by the person's state of residence, except as provided in subdivision 9.3.b of this section with regard to persons under the age of 16 years.

9.3.b. Every person shall display his or her license or photo identification card at the request of any ranger or other law enforcement officer. If a person under 16 years of age does not have a valid drivers license or photo identification in his or her immediate possession, the adult providing supervision for the person as required in subsection 4.4 [Adult supervision required] 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.

9.4. Application for and issuance of user permit.

9.4.a. 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.

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

9.5. Persons not eligible to hold user permit. Any person who has had his or her user permit and privilege to use the Hatfield-McCoy Recreation Area revoked under subsection 9.8 [Revocation of user permits] of this section 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.

9.6. Unlawful user permit uses. It is a violation for any person to commit any of the following acts:

9.6.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;

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

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

9.6.d. In any application for a Hatfield-McCoy user permit, to do any of the following:

9.6.d.1. To use a false or fictitious name or any false or fictitious documentation;

9.6.d.2. To knowingly make a false statement or knowingly conceal a material fact; or

9.6.d.3. To otherwise commit a fraud in any such application.

9.6.e. Any violation of this subsection 9.6 is a Class B violation.

9.7. Immediate seizure of user permit and issuance of temporary permit. 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:

9.7.a. When a person fails to provide satisfactory identification.

9.7.a.1. Any person who is unable to provide satisfactory identification in compliance with subsection 9.3 [Identification required] of this section shall immediately surrender any user permit in the person's possession to the ranger or other law enforcement officer who requested the identification, and the officer shall immediately seize and retain the permit. 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.

9.7.a.2. Whenever a ranger or other law enforcement officer seizes the user permit of any person under this subdivision 9.7.a, the officer shall dispose of the user permit as follows:

9.7.a.2.A. 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.

9.7.a.2.B. 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.

9.7.a.3. 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 9.3 [Identification required], 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.

9.7.b. When a person refuses to submit to implied consent testing.

9.7.b.1. Whenever any person refuses to submit to either 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 or under authority of subsection 5.3 [Implied consent to test], the person shall immediately surrender any user permit in the person's possession to the ranger or other law enforcement officer requesting the test who shall immediately seize and retain the user permit.

9.7.b.2. Whenever a ranger or other law enforcement officer seizes the user permit of any person under this subdivision 9.7.b, the officer shall promptly forward the seized permit to the Authority along with the sworn statement of facts required by paragraph 5.3.c.2 of subsection 5.3 [Implied consent to test].

9.7.c. When a person is charged with unlawful permit use.

9.7.c.1. Any person charged with a violation of subsection 9.6 [Unlawful user permit uses] shall immediately surrender any user permit in the person's possession to the ranger or other law enforcement officer who shall immediately seize and retain the permit. The officer shall not issue a temporary permit in this case.

9.7.c.2. Whenever a ranger or other law enforcement officer seizes the user permit of any person under this subdivision 9.7.c, the officer shall promptly forward the seized permit to the Authority along with a full statement of the facts relevant to the seizure.

9.7.c.3. Whenever a person whose user permit has been seized under this subdivision 9.7.c 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.

9.7.d. When a person is charged with a mandatory revocation violation.

9.7.d.1. Any person charged with any violation that, upon conviction, requires revocation of the user permit under subsection 9.8 [Revocation of user permit] shall immediately surrender any user permit in the person's possession to the ranger or other law enforcement officer who shall immediately seize and retain the permit. 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.

9.7.d.2. Whenever a ranger or other law enforcement officer seizes the user permit of any person under this subdivision 9.7.d, the officer shall promptly forward the seized permit to the Authority along with a full statement of the facts relevant to the seizure.

9.7.d.3. Whenever a person whose user permit has been seized under this subdivision 9.7.d 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.

9.7.e. A temporary user permit issued by a ranger or other law enforcement officer upon seizure of the standard user permit shall be displayed by the permit holder in the same manner as the standard user permit and shall entitle the permit holder to all the same privileges except that the duration of the permit is limited by its terms.

9.8. Revocation of user permit.

9.8.a. 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:

9.8.a.1. Any Class A violation under these rules;

9.8.a.2. Any violation of subsection 9.6 [Unlawful user permit uses];

9.8.a.3. Driving while under the influence under §17C-5-2 of the W.Va. Code arising out of the operation of a vehicle within the Hatfield-McCoy enforcement area; or

9.8.a.4. Criminal trespass under §61-3B-2 or §61-3B-2 of the W.Va. Code arising out of trespass within the Hatfield-McCoy enforcement area.

9.8.b. The Authority shall immediately revoke for a period of one year the user permit of any person upon receiving the sworn statement of a ranger or other law enforcement officer that the person refused 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 or under authority of subsection 5.3 [Implied consent to test] when the refusal arises out of the operation of a vehicle within the Hatfield-McCoy enforcement area.

9.8.c. 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 was 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.

9.8.d. 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.

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

9.8.e.1. 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;

9.8.e.2. The reason for the revocation;

9.8.e.3. 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;

9.8.e.4. The steps the person must take to request a hearing, if one is desired;

9.8.e.5. That the person's 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

9.8.e.6. That it is a violation for the person to use the Hatfield-McCoy Recreation Area during the period of the revocation.

9.8.f. Revocation under this subsection 9.8 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 notice required by subdivision 9.8.e is posted in the mail.

9.8.g. 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.

9.8.h. Whenever a user permit is revoked under this subsection 9.8, the permit holder shall not be entitled to refund of any portion of the user permit fee.

9.9. No use while user permit revoked.

9.9.a. No person shall be upon any trail of the Hatfield-McCoy Recreation Area, whether as a pedestrian or as a driver, rider, or occupant of any vehicle or trail animal, at

any time when the person's Hatfield-McCoy user permit and privilege to use the Hatfield-McCoy Recreation Area is revoked.

9.9.b. At any trailhead center, parking area, or camping area of the Hatfield-McCoy Recreation Area, no person shall drive any ATV, motorcycle, bicycle, or trail animal, capable of being operated on the trails, and no person shall unload any such vehicle or animal from a highway transport vehicle, at any time when the person's Hatfield-McCoy user permit and privilege to use the Hatfield-McCoy Recreation Area is revoked.

9.9.c. Any violation of this subsection 9.9 is a Class A violation.

§204-1-10. Special Utilization Licenses

10.1. Issuance. 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. Special utilization licenses are issued for vehicles rather than for each trail user as follows:

10.1.a. Single vehicle. Upon application, a special utilization license may be issued to the owner or operator of a single vehicle. The license shall be carried and displayed in or on the vehicle at all times.

10.1.b. Multiple-vehicle. Upon application, a multiple-vehicle special utilization license may be issued to an event promoter or sponsor or to a responsible organized user group. A copy of the license shall be carried in or on each vehicle covered by the license at all times.

10.1.b.1. 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.

10.1.b.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 provide to the Authority before the beginning of the event complete identification data relating to each vehicle and each trail user participating in the event.

10.2. User permits and identification required with license.

10.2.a. 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 as required by §204-1-9 [User Permits and Identification] of these rules 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.

10.2.b. Every person driving or riding as a passenger in any vehicle covered by any special utilization license must hold and display proper identification as required by §204-1-9 [User Permits and Identification] of these rules.

10.3. Validity period. 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.

10.4. Discretion in issuance. No person shall have any right to receive a special utilization license. Special utilization licenses are issued entirely in the discretion of the executive director based on consideration of the following factors:

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

10.4.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;

10.4.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;

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

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

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

10.4.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;

10.4.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;

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

10.4.j. Any other factors deemed appropriate under the circumstances by the executive director.

10.5. Conditions, restrictions, and requirements. A special use 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:

10.5.a. Restrictions on specific trails and facilities to be used;

10.5.b. Restrictions on specific dates and times of use;

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

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

10.5.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;

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

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

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

10.5.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.

10.6. Display of special utilization license.

10.6.a. 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.

10.6.b. 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.

10.7. Special utilization license fees.

10.7.a. 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.

10.7.b. 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.

10.8. Persons not eligible to receive special utilization license. Any person who has had his or her user permit and privilege to use the Hatfield-McCoy Recreation Area revoked under subsection 9.8 [Revocation of user permit] is not eligible to apply for, receive, or hold a special utilization license during the period of revocation. Any license issued in error to such person by the Authority or any of its agents is null and void. Any fee collected in error from such person shall be refunded by the Authority upon surrender of the erroneously issued license.

§204-1-11. Review, Hearing, and Appeal

11.1. Right to review by executive director. Whenever any person is aggrieved by any action of the Authority, the person may at any time request a review of the Authority's action by the executive director. The request 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, it is not a prerequisite to a hearing request, and the decision is not a final order appealable under the provisions of W.Va. Code §29A-5-4.

11.2. Right to a hearing before the Authority. Whenever any person is aggrieved by any action of the Authority, the person may request a 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:

11.2.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.

11.2.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 on the written request of the petitioner.

11.2.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.

11.2.d. Either the executive director or a duly authorized agent of the executive director shall act as the hearing officer.

11.2.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.

11.2.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.

11.2.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.

11.2.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.

11.2.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.

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

11.4. Stay of Authority action. 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.

§204-1-12. Penalties and Enforcement.

12.1. Classification of violations and penalties.

12.1.a. Unless otherwise specified with respect to a particular violation, any violation of these rules shall constitute a Class C violation for purposes of the penalties specified in this subsection 12.1.

12.1.b. Class A violations. Any person convicted of a Class A violation shall be fined not less than three hundred dollars nor more than five hundred dollars.

12.1.c. Class B violations. Any person convicted of a Class B violation shall be fined not less than one hundred and fifty dollars nor more than three hundred dollars.

12.1.d. Class C violations. Any person convicted of a Class C violation shall be fined not less than fifty dollars nor more than one hundred and fifty dollars.

12.1.e. Class D violations. Any person convicted of a Class D violation shall be fined not more than fifty dollars.

12.2. Parties to a violation. Every person who commits, attempts to commit, conspires to commit, or knowingly aids or abets in the commission of any act declared in these rules to be a violation, whether individually or in connection with one or more other persons, and whether as a principal, agent, or accessory, shall be guilty of the violation. Every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of these rules is guilty of the violation.

12.3. Responsibility for enforcement.

12.3.a. The Hatfield-McCoy Regional Recreation Authority, through its appointed executive director and rangers, shall be charged with the duty and responsibility of enforcing the provisions of these rules and to this end may call upon the attorney general, the prosecuting attorneys of the several counties, the department of public safety, and all other law enforcement officers of the state.

12.3.b. The executive director is authorized to compel compliance with and to prevent violations and threatened violations of any provisions of these rules and may, when acting at the direction of the Authority board, invoke the processes of any court for coercive, remedial, or preventive relief by injunction, mandamus, or other appropriate proceedings.

12.3.c. The executive director may cause complaints to be made and proceedings to be instituted and prosecuted against any violations of these rules without the sanction of the prosecuting attorney of the county wherein such proceedings are instituted, and in all such cases no security for costs shall be required of the executive director. The executive director may employ an attorney other than those described in 12.3.a or other attorneys to represent the state in prosecutions and proceedings under provisions of these rules and shall pay costs and fees for such services from Authority funds.

12.4. Powers of rangers. On 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, and on streets, highways, or other public lands utilized by the trails, parking areas, or related recreational facilities, and other immediately adjacent public lands Hatfield-McCoy rangers are law enforcement officers and, as to offenses committed within those areas, have and may exercise all the powers and authority and are subject to all the requirements and responsibilities of a law enforcement officer. Without limiting this authority in any way, rangers are specifically authorized to:

12.4.a. Arrest on sight, without warrant or other court process, any person or persons committing a criminal offense in violation of these rules or any of the laws of this state in the presence of the officer or upon probable cause to believe the person has committed a felony;

12.4.b. Carry a firearm or other dangerous weapon, as may be prescribed by the executive director, in the course and performance of their duties;

12.4.c. Within their jurisdiction, execute and serve search warrants and arrest warrants issued under authority of this state;

12.4.d. Make searches and seizures consistent with law incident to a lawful arrest or on probable cause as necessary to protect the ranger or to secure evidence of a violation of these rules or any other crime;

12.4.e. Require any person found upon any part of the Hatfield-McCoy Recreation Area to stop and display his or her user permit and identification;

12.4.f. Summon aid in making arrests, and they shall have the same rights and powers as sheriffs have in their respective counties in so doing; and

12.4.g. Enter upon private lands and waters within the state while engaged in the performance of their official duties.

12.5. Arrest procedure.

12.5.a. A person arrested shall be immediately taken before a magistrate or court when the person is arrested for a felony offense, on an outstanding arrest warrant, or in any circumstance where other law requires the person to be taken immediately before a magistrate or court.

12.5.b. A person arrested may, in the discretion of the arresting officer, be immediately taken before a magistrate or court in the following cases:

12.5.b.1. When the person is arrested upon a charge of driving while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug, or under the combined influence of alcohol and any

controlled substance or any other drug; provided that no person arrested for this offense shall be released from custody without being taken before a magistrate or court unless released into the custody of a sober and responsible friend or relative;

12.5.b.2. When the person is arrested and charged with any of the serious violations defined by §204-1-5 [Serious Violations] and the arresting officer has reason to believe that the person will fail to comply with a written notice to appear, based on the person's prior record or on the person's residence in a state that is not expected to cooperate in enforcing the person's appearance;

12.5.b.3. When the person arrested is unable to provide satisfactory identification; or

12.5.b.4. When the person arrested refuses to accept the written notice to appear in court.

12.5.c. Whenever a person is arrested is not immediately taken before a magistrate or court, the arresting officer shall prepare a written notice to appear in court using the form of the West Virginia uniform traffic complaint and containing all necessary information identifying the alleged violator, the specific facts of the violation, the time when the alleged violator must appear in court, the location and phone number of the court having jurisdiction, and the identification of the arresting officer.

12.5.c.1. The time specified in the notice to appear must be at least five days after the arrest unless the person arrested demands an earlier hearing.

12.5.c.2. The location specified in the notice to appear must be before a magistrate or court having jurisdiction within the county in which the offense charged is alleged to have been committed.

12.6. Disposition and records of violation complaints.

12.6.a. 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.

12.6.b. Upon the deposit of the original or a copy of a violation notice with a court having jurisdiction, the violation notice may be disposed of only by trial in the court 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.

12.6.c. 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 12.6 and other applicable state law.

12.6.d. The Executive Director or his 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.

12.7. Court records. Whenever a conviction is had in any court for a violation of any provision of this series of rules or for any other violation of state law which occurs within the Hatfield-McCoy enforcement area and for which the complaining law enforcement officer is a Hatfield-McCoy ranger, the clerk or other responsible officer of every such court shall in each case transmit to the Hatfield-McCoy Regional Recreation Authority within seventy-two hours after such conviction is had a certified abstract of the judgment on such conviction. For the purposes of this series, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

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