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Fast-Track Regulation Agency Background Document

Agency name	Department of Conservation and Recreation
Virginia Administrative Code (VAC) citation(s)	4 VAC 5-30
Regulation title(s)	Virginia State Parks Regulations
Action title	Amendments to the Virginia State Parks Regulations
Date this document prepared	09/25/2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Virginia State Park Regulations (4VAC5-30) govern the behavior of all individuals visiting Department-owned or Department-operated properties including all state parks, historical and natural areas, natural area preserves, and other recreational areas in the Commonwealth. The regulation also controls the types of activities allowed on those properties.

A new section (4VAC5-30-95) has been added to the regulation prohibiting public urination or defecation and section 4VAC30-180 (Dressing and undressing) is being repealed. Section 4VAC5-30-150 (Camping) is revised to prohibit the use of generators at campsites and in the campground at all times, rather than only during the quiet hours. Additional amendments to the regulation include updating definitions to reflect current statutory definitions, updating procedures to accurately reflect current technologies, and refining existing language to clarify the intent and expectations for individuals visiting Department properties or using Department facilities.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms used in this document. All terms are defined within the regulation.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On, September 26, 2018, the Director of the Department of Conservation and Recreation approved these amendments to the regulation entitled "Virginia State Parks Regulations" (4VAC5-30 et seq.) for submission through the fast-track regulatory process.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The amendments to this regulation are not expected to be controversial as they reflect operating procedures being currently implemented within Department owned properties. This regulatory action updates definitions to ensure consistency with the Code of Virginia, modernizes procedures to accurately reflect current technologies and policies, and refines existing language to clarify the intent and expectations for individuals visiting Department properties or using Department facilities.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 10.1-104 A.4 of the Code of Virginia authorizes the Department of Conservation and Recreation "to prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law". Additionally, § 10.1-104 B authorizes the Department to promulgate regulations, pursuant to the Administrative Process Act, as necessary to carry out the purposes and

provisions of the subtitle. Section 10.1-104 B also establishes that any violation of the Virginia State Park Regulations shall constitute a Class 3 misdemeanor.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The Virginia State Park Regulations (4VAC5-30) govern the behavior of all individuals visiting Department-owned or Department-operated properties including all state parks, historical and natural areas, natural area preserves, and other recreational areas in the Commonwealth. The regulation also controls the types of activities allowed on those properties.

This regulatory action updates definitions to ensure consistency with the Code of Virginia, modernizes procedures to accurately reflect current technologies and policies, and refines existing language to clarify the intent and expectations for individuals visiting Department properties or using Department facilities.

Many sections of this regulation use out-of-date terms and technologies. For example, 4VAC-5-30-400 (Aviation) currently prohibits the use of "flying machine" within a park; however, there is no reference to drones or other types of unmanned aerial systems. The specific inclusion of "drones" and "unmanned aerial system" clarifies the prohibition for the public. Similarly, 4VAC5-30-230 (Smoking) prohibits smoking but is silent on the use of electronic vaporizing devices; amendments to this section will now prohibit the use of vaporizing devices.

Section 4VAC5-30-150 (Camping) is being amended to accurately reflect the Department's policies and procedures. Individual parks still manage reservations and overnight stays through the park office or the honor system, but amendments reflect the increased reliance by the public on the Department's electronic reservation system. An additional amendment expands the prohibition on the use of generators in a campsite. Currently, the use of generators is prohibited during quiet hours (from 10:00 p.m. until 6:00 a.m.); the amendment prohibits the use of generators at all times. A new section (4VAC5-30-95) has been added to the regulation prohibiting public urination or defecation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

A new section (4VAC5-30-95) has been added to the regulation prohibiting public urination or defecation. Currently, §18.2-387 (indecent exposure) of the Code of Virginia prohibits the intentional obscene display or exposure of a person or private parts. An individual arrested for public urination or defecation by a Department conservation officer, even though there may have been no intentional obscene display, would be charged in accordance with §18.2-387. Under §18.2-387, the individual could

be found guilty of a Class I misdemeanor and required to register on Virginia's Sex Offender and Crimes Against Minors Registry. According to §10.1-104 of the Code of Virginia, a violation of the Virginia State Park Regulations constitutes a Class 3 misdemeanor. Class 3 misdemeanors are eligible to be resolved without a pre-trial and may allow for prepayment of the violation by the individual. The Department believes that, in some situations, charging an individual with a Class 3 misdemeanor is more appropriate for this type of behavior than charging an individual under §18.2-387. Any more significant or serious violation will be charged in accordance with other sections of the Code of Virginia.

An amendment to 4VAC5-30-150 (Camping) expands the prohibition on the use of generators in a campsite. Currently, the use of generators is prohibited during quiet hours (from 10:00 p.m. until 6:00 a.m.); the amendment prohibits the use of generators at all times.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This rulemaking clarifies the activities and behaviors, which are limited or prohibited within facilities and properties owned or operated by the Department. The revisions reflect current terminology, technology, and procedures used by the public and the Department. There are no disadvantages to the public or the Department.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by the proposed regulation. The regulation is only applicable on Department owned or operated properties and facilities.

Localities Particularly Affected

There are no localities particularly affected by the proposed regulation. The regulation is only applicable on Department owned or operated properties and facilities.

Other Entities Particularly Affected

This regulation will affect visitors to Virginia State Parks and Natural Area Preserves. Virginia State Parks reported 10, 474,134 visitors during 2017.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	The Department currently implements and enforces the regulation through existing general fund and nongeneral funds sources. There is no expected increase in implementation costs to the Department with this regulatory action.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There is no cost to other state agencies in response to this regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There is no cost to other state agencies in response to this regulatory change.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	Localities do not implement or enforce the regulation. There is no cost to localities in response to this regulatory action.
Benefits the regulatory change is designed to produce.	Localities do not implement or enforce the regulation. There is no cost to localities in response to this regulatory action.

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>This regulation addresses the use of Department facilities and behavior of park visitors. As many of the amendments to these regulations are clarifying or technical in nature, it is anticipated that most visitors will be unaffected by the action.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Many of the revisions to the regulation are to clarify terms or current procedures of the Department. It is anticipated that most park visitors will be unaffected by this action. No small businesses are projected to be impacted.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>There are no increased costs anticipated with the regulatory revisions.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is expected to clarify the intent and expectations for individuals visiting parks and utilizing Department facilities there.</p>

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no viable alternatives to this proposal. This regulatory action revises an existing regulation to ensure clarity, conformance with current operating procedures, and to reflect technological advances. This regulatory action does not impact small businesses.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business.

Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternate regulatory methods. The regulation is applicable to all individuals accessing facilities and properties owned or operated by the Department. As there are no requirements related to small business contained in this regulations, there are no reporting requirements, performance standards, or exemptions for small businesses.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
4VAC5-30-10 (Definition of term)		This section defines the terms that are utilized in the regulation.	Revisions to this section include: 1. amending the term "bathing area" to "swimming area"; 2. including trail in the definition of "bicycle path" for clarification; 3. including the definitions of "electric power-assisted bicycle", "other power-driven mobility device", and "wheelchair" to reflect definitions in §46.2-100 and §10.1-204; and

			<p>4. amending the definition of park to include areas managed by the Department such as Natural Bridge State Park.</p> <p>All revisions reflect updated usage of terms (bathing versus swimming) or definitions used in the Code of Virginia that refine the prohibitions contained in this regulation.</p>
4VAC5-30-20 (Construction of regulations)		This section sets out the interpretations of the regulation.	The section has been revised to reference the laws set out in the Code of Virginia and has removed specific reference to the state vehicle and traffic laws. Department law enforcement officers utilize the civil and criminal provisions in the Code including under Title 18.2 (Crimes and Offenses Generally), rather than specific vehicle and traffic laws.
4VAC5-30-30 (Territorial Scope)		This section specifies where the regulations are effective.	Breaks Interstate Park has been specifically included in the jurisdictions subject to these regulations; the park was established pursuant to the Breaks Interstate Park Compact of 1954 (§10.1-205.1 of the Code of Virginia). This amendment reflects current statutory authority and operational practice.
4VAC5-30-32 (General)		The potential penalties for failing to comply with this regulation has been set out in this section.	Reservation has been included to reflect the change of a permit to reservation for camping. Citation and arrest has been included as possible consequences for failure to comply with these regulations. These additions reflect current possible consequences established in Title 18.2 of the Code of Virginia.
4VAC5-30-50 (Flowers, plants, minerals, etc.)		The prohibition on the removal or destruction of certain materials including trees, minerals, historical artifacts, rocks and plants is contained in this section.	An additional prohibition for defacing items within a park has been included. Fungi has been included in the list of items that are protected. A provision has been added which allows edible fruits, berries, or nuts to be collected for personal use. Language has been added including a natural area or a natural area preserve in the list of locations a special permit is needed for scientific collection. Outdated addresses have been stricken. These amendments are technical and reflect current procedures and policies of the Department.
	4VAC5-30-95 (Public urination)		This section will prohibit urination or defecation except in designated areas or facilities such as restrooms, portable toilets, bathhouses, camping

	or defecation)		units or cabins, but does allow for an exception when out on trails and in the back country. The Department believes that, in some situations, charging an individual with a Class 3 misdemeanor (the penalty established for this regulation in §10.1-104) is more appropriate for this type of behavior than charging an individual under §18.2-387. Any more significant or serious violation will be charged in accordance with other sections of the Code of Virginia.
4VAC5-30-150 (Camping)		This section prescribes the rules that must be observed while camping at a park including limits on occupancy, camping units, camping periods, and motor vehicles.	Amendments have been made to reflect the public's increased use of the online reservation center. The regulation has been amended to refer to a "camping reservation" rather than camping permit; this reflects the terms used by the reservation center and the individual parks. Use of generators in a campground or campsite has been amended to prohibit the use at all times rather than just during the quiet hours (between 10:00 p.m. and 6:00 a.m.). The Department receives numerous complaints concerning the use of generators. A majority of park campgrounds offer campsites with electricity and the Department is working to ensure all park campgrounds offer such campsites. Language has been included regarding damages, not considered normal wear and tear, of any campground or campsite. Currently, a person procuring the camping reservation authorizes the Department to recover the costs for damages during the reservation process. This amendment reflects that current operating policy and procedure.
4VAC5-30-160 (Cabins)		The section governs the use of cabins in parks.	Amendments have been made that reflect the increased lodging options available at parks. Both camping cabins and yurts are now available at certain parks and are considered cabins under current reservation and operating procedures. Language has been included regarding damages, not considered normal wear and tear, of any cabin, camping cabin, or yurt. Currently, a person procuring the reservation authorizes the Department to recover the costs for damages during the reservation process. This amendment reflects that current operating policy and procedure.
4VAC5-30-170 (Swimming,		This section allows swimming only	The term bathing has been revised to swimming. Additional clarification has been added to specify <i>department-owned</i> waters. Many parks have

where permitted)		during times and areas designated by the Department.	water access that the Department is unable to designate as appropriate for swimming. Only on those waters that are department-owned will designated swimming times and swimming areas be established. This amendment reflects current operating procedures.
4VAC30-180 (Dressing)		This section prohibits dressing and undressing in areas outside of bathhouses, camps and cabins.	This section is being repealed as it is outdated and is not clearly defined as what is considered dressing and undressing. Any issues can be handled by Department law enforcement officers utilizing the civil and criminal provisions in the Code including under Title 18.2 (Crimes and Offenses Generally),
4VAC5-30-190 (Boating)		Boating in any swimming area is prohibited by this section.	The term bathing has been revised to swimming.
4VAC5-30-220 (Fires)		This section prescribes the limitations on using fire on parks.	Charcoal has been included as a substance that must be thoroughly extinguished before being discarded. Charcoal is used frequently by visitors and should be subject to the same public safety provisions as other lighted materials. Ensuring that charcoal is thoroughly extinguished before discarding ensures public safety and protects the natural resources of the area.
4VAC5-30-230 (Smoking)		Smoking is prohibited by this section.	The inclusion of electronic vaping devices has been included to reflect new technology.
4VAC5-30-260 (Animals at large)		This section requires all animals brought by their owner to the park to be on a leash.	The term bathing has been revised to swimming.
4VAC5-30-274 (Foot path or trail use)		This section governs the use of paths and trails in parks.	Language has been included that allows the use of wheelchairs and other power-driven mobility devices on trails, paths, and other areas designated by the Department as appropriate for such use. This language clarifies where such devices will be allowed in parks.
4VAC5-30-276 (Bicycle path use)		This section governs the use of bicycle paths in parks.	An amendment has been made which prohibits the use of electric power-assisted bicycles except for on designated bicycle paths. This language

			clarifies where such devices will be allowed in parks.
4VAC5-30-300 (Parking)		This section governs parking in parks.	A clarifying amendment has been added to this section. Current language regarding the discharge or receiving of passengers is confusing. The amended language would allow passengers to be picked up or discharged in a reasonable amount of time from any area that does not prohibit standing vehicles; this expands the areas in the park that are allowed to be used as pick-up and discharge locations. Additional language has been included that prohibits parking in designated parking spaces for camping sites or cabins except by the registered occupant or visitor of such site or cabin.
4VAC5-30-370 (Advertising)		This section prohibits advertising of all exhibitions.	An amendment has been added which allows advertisements for services, programs, and events that are approved by the park management. This reflects current operating procedures. There are events, programs, and services that parks would like to advertise including local fairs and festivals.
4VAC5-30-390 (Alms and contributions)		This section prohibits the solicitation or contribution of any person in a park.	Organization has been included in the prohibition; this is a technical amendment. Language has been added that allows for the solicitation or contribution to persons or organizations within parks if the action is approved by park management. There are organizations, such as "Friends of" groups, that do receive contributions at parks. This amendment reflects current policy allowing for the soliciting of donations or contributions when approved by park management.
4VAC5-30-400 (Aviation)		This section prohibits the use of aircraft in parks.	Helicopters, unmanned aerial systems, and drones have been included in the items that are prohibited. Currently, these types of aircraft are prohibited from being used in a park. This amendment reflects technological advances and also clarifies the restriction for the public. An exemption has been included for all rescue and evacuation aircraft as well as training exercises. Many law enforcement agencies use parks for training exercises; this amendment reflects current policy allowing these types of exercises.
4VAC5-30-410 (Importation of firewood)		The section prohibits the importation of	An amendment to this section allows for the prohibition of wood product packing materials as determined by the director in addition to the

		certain quarantined firewood into parks.	current restriction on wood pallets. An additional amendment removes specific reference to ash tree material and instead references quarantined tree species. Ash trees are not the only tree species that has been quarantined. The Department must prohibit the importation of quarantined firewood into parks in a responsive manner to protect the trees and other natural resources in parks.
4VAC5-30-420 (Release of animals)		This section prohibits the release of animals or captured wildlife into any park.	The amendment allows for an exception if approved by park management.
FORMS		This section lists the forms that are required to be used in conjunction with this regulation.	This section is being repealed. The forms are outdated and, in many instances, are now submitted through online processes.