



Virginia Department of Planning and Budget **Economic Impact Analysis**

4 VAC 5-30 Virginia State Park Regulations
Department of Conservation and Recreation
Town Hall Action/Stage: 5136 / 8789
July 9, 2020

Summary of the Proposed Amendments to Regulation

The Department of Conservation and Recreation (DCR) proposes to add language prohibiting public urination or defecation on properties subject to its purview in order to make it possible to bring a lesser charge than currently prescribed by the Code of Virginia. DCR also proposes to make numerous clarifications to reflect current statutes, practices, and policies.

Background

This regulation governs the behavior of all individuals visiting DCR owned or 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 action started as a fast-track regulation. After receiving numerous comments and objections, DCR made a few revisions to the original proposed language. In this revised language, DCR no longer proposes to restrict removal of fungi and also clarifies that the restriction of generator use during quiet hours at campsites only applies to combustion generators.

Estimated Benefits and Costs

In order to avoid a disproportionate consequence for public urination or defecation on properties subject to this regulation, DCR proposes to add language which would allow a lesser charge than currently prescribed by the Code of Virginia. Currently, the regulation does not address public urination or defecation. As a result, the only option available to DCR to address public urination or defecation is to charge the individual in accordance with indecent exposure

under § 18.2-387 of the Code of Virginia. If convicted, the individual would be guilty of a Class 1 misdemeanor. DCR reports that in some jurisdictions this may result in a requirement that the individual register on Virginia's Sex Offender and Crimes Against Minors Registry (Registry). Section 10.1-104 (B) of the Code of Virginia, on the other hand, calls for a Class 3 misdemeanor charge for any violation of this regulation. In essence, adding language to this regulation to prohibit public urination or defecation would allow DCR officers to charge the offender with Class 3 rather than Class 1 misdemeanor and avoid the potential for registration on the Registry. Class 3 misdemeanors may be resolved pre-trial, may allow for prepayment of the violation by the individual, and do not require confinement in jail (per § 18.2-11 of the Code of Virginia). DCR 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. This proposed change will allow for a Class 3 misdemeanor charge where appropriate but does not prevent DCR from bringing other charges in accordance with other sections of the Code of Virginia for more significant or serious violations.

The main economic impact of this particular change is avoidance of confinement in jail for all offenders. Some offenders may also avoid the possibility of the life-long significant adverse consequences resulting from a requirement to register as a sex offender. Under the proposed change, DCR officers will have the flexibility to bring a lesser charge as appropriate.

DCR also proposes to update the language to reflect the current policy prohibiting the use of combustion generators at all times, not just during quiet hours (from 10:00 p.m. until 6:00 a.m.). Even though the regulation currently prohibits the use of generators during quiet hours, since the spring of 2015, DCR have not allowed the use of combustion generators at any time in response to user conflicts. According to DCR, user conflicts occur when campers utilizing campsites operate generators that impact the experience of other visitors due to the noise, fumes, and other safety concerns. DCR believes that there is adequate inventory of campsites available for users that need electricity and that state parks have been able to accommodate the needs of campers (including individuals who require electricity for medical or preference needs) without documented issues. Currently, DCR operates 1,225 electric campsites and 650 nonelectric campsites in 26 state parks. Since generators have been prohibited in practice at all times since 2015, no significant economic effect is expected to occur when this regulation becomes final.

Similarly, the remaining proposed changes are mainly clarifications of existing laws, practice, or policy. Most significant of these include that the portion of Breaks Interstate Park on Virginia soil is subject to this regulation; that the use of drones and unmanned aerial systems are prohibited; that the use of electronic vaporizing devices are prohibited; that the use of wheelchairs and other power-driven mobility devices on trails, paths, and other designated areas are allowed. These clarifications are beneficial in that they will better inform visitors on what is prohibited or allowed and will likely improve compliance and avoid possible misinterpretation of the regulation.

Businesses and Other Entities Affected

The proposed regulation applies to all visitors to Virginia State Parks and Natural Area Preserves. Virginia State Parks had 6,953,911 camping and cabin reservations and day use in 2019. No visitors appear to be disproportionately affected. There were two summons issued for indecent exposure since 2017. Only one was for public urination.

Small Businesses¹ Affected:

The proposed amendments do not appear to adversely affect small businesses.

Localities² Affected³

The proposed regulation does not disproportionately affect particular localities. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment

The proposed regulation does not have a direct impact on employment. However, a few individuals who has to relieve themselves in state parks or natural preserves but has no intention of indecent exposure would avoid having a criminal conviction on their record and maintain being employable for all employment opportunities they otherwise qualify for.

Effects on the Use and Value of Private Property

The proposed amendments do not affect the use and value of private property. The proposed amendments do not affect real estate development costs.

¹ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.