



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Conservation and Recreation
Virginia Administrative Code (VAC) citation	4 VAC5-30
Regulation title	Virginia State Park Regulations
Action title	Amend the State Park Regulations to incorporate recommendations of the Attorney General's Regulatory Reform Taskforce and to clarify existing language and procedures
Date this document prepared	October 15, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This regulation incorporates recommendations received from the Attorney General's Government and Regulatory Reform Task Force including conforming the definition of person with the definition used in § 2.2-419 of the Code of Virginia (4VAC5-30-10), striking sections that are redundant because the illegal activities are already covered in the Code of Virginia (4VAC5-30-100, 4VAC5-30-110 and 4VAC5-30-300B), and clarifying existing language to be consistent with similar regulations (4VAC5-30-140, 4VAC5-30-150, 4VAC5-30-160, 4VAC5-30-220, 4VAC5-30-270, 4VAC5-30-280, and 4VAC5-30-310). Section 4VAC5-30-320 is also repealed as it already covered elsewhere in the Code of Virginia. There were also recommendations made to clarify the permitting process for certain activities (4VAC5-30-40, 4VAC5-30-50, 4VAC5-30-220, 4VAC5-30-370, and 4VAC5-30-390). Additionally, several minor technical amendments were made pursuant to the recommendations in 4VAC5-30-150 and 4VAC5-30-340.

Revisions to 4VAC5-30-40, 4VAC5-30-150, and 4VAC5-30-160 allow for the electronic filing of permits and reservations, in a manner determined by the Department (which is often specified in policy), in accordance with Chapter 624 of the 2009 Acts of Assembly.

An additional section (4VAC5-30-32) regarding the potential consequences for failing to comply with the State Park Regulations and all other applicable laws and regulations has been added for clarity.

Three new sections have been created to the Virginia State Park Regulations regarding the importation of firewood, release of animals or wildlife on park property and the feeding of wildlife. The importation of firewood (4VAC5-30-410) may be prohibited by the Director of the Department. This section was created in response to a potential threat by an infecting species, such as the emerald ash borer, which may jeopardize the forest and habitat in state parks. Both sections 4VAC5-30-420 (prohibiting the release of animals or wildlife into park property) and 4VAC5-30-422 (prohibiting the feeding of wildlife) were created to clearly articulate Department practice regarding these actions and to protect the existing wildlife communities at the parks.

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.

The Director of the Department of Conservation and Recreation adopted these amendments to the "Virginia State Park Regulations" and authorized the submittal of this fast-track action on October 15, 2009.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Under §10.1-104.4, the Department has the authority to "prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law". The Department is charged with "foster[ing] the upkeep and maintenance" of parks and recreational areas under § 10.1-200. The Virginia State Park Regulations allow for the public use of these areas within certain parameters.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health,

safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The significant majority of amendments proposed by this regulatory action were recommendations made by the Attorney General's Government and Regulatory Reform Taskforce. The amendments include striking sections that are redundant because the illegal activities are already covered in the Code of Virginia; clarifying existing language to be consistent with similar regulations and the Code; clarifying the permitting process and allowing for electronic filing of permits, applications, and reservations; and several grammatical changes. These suggested amendments will make the State Park Regulations consistent with the Code of Virginia and easier for the public to understand.

An additional section regarding the potential consequences for failing to comply with the State Park Regulations and all other applicable laws and regulations has been added for clarity. It also serves to increase public awareness that all laws and regulations are applicable on park lands.

Three new sections have been created. One new section permits the Director to prohibit the importation of firewood or allow the entry of firewood into state parks only under specified conditions. This section grants the Director the ability, if necessary, to address a potential threat to park forests and habitat from an infesting species of concern, such as an emerald ash borer. One of the primary ways infecting species are spread is through the sale and delivery of firewood. The other new sections regarding the prohibitions on the release of animals and wildlife on park property and the feeding of wildlife clearly state existing practices and procedures already employed by state parks. Prohibiting the release of animals and the feeding of wildlife are necessary to ensure the health and safety of the existing wildlife communities as well as the public.

These regulations are necessary to protect the public health, safety and welfare while visiting Virginia state parks. These regulations define the unique conducts expected by visitors to the parks. Examples include the prohibitions on removing flowers and plants, camping and cabin policies, hunting and fishing procedures, and the correct use of numerous types of park trails.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendments are believed to be non-controversial. The majority are recommendations of the Attorney General's Government and Regulatory Reform Task Force and

Chapter 624 of the 2009 Acts of Assembly. The additional section regarding the potential consequences for failing to comply with the State Park Regulations and all other applicable laws and regulations has been added for clarity and to increase public awareness. The new sections regarding the prohibitions on the release of animals and wildlife on park property and the feeding of wildlife clearly state existing practices and procedures already employed by state parks. These prohibitions protect the existing wildlife communities at the parks and the general public. The section regarding the importation of firewood allows the Director to act, if necessary, to protect the forest and habitat of the parks. One of the primary ways infecting species are spread is through the importation of infected or infested firewood into any park.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

No substantive changes are being proposed to the existing regulation.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

There are no disadvantages to the public, the Department or others regarding any of the recommendations of the Attorney General's Government and Regulatory Reform Task Force and Chapter 624 of the 2009 Acts of Assembly. The recommendations of the Task Force will make the State Park Regulations consistent with the Code of Virginia, potentially make the filing of permit applications and reservations more efficient, and make the regulations more easily understood by the public.

There are no disadvantages to the public, the Department or others regarding the section regarding the potential consequences for failing to comply with the State Park Regulations and all other applicable laws and regulations.

There are no disadvantages to the public, the Department or others regarding the sections prohibiting the prohibitions on the release of animals and wildlife on park property and the feeding of wildlife. The addition of these sections clearly state existing park policies and procedures and will serve to ensure the continued health and welfare of the existing wildlife populations and the general public.

There may be some minor disadvantages to the public and the Department regarding the new section on the importation of firewood. Should the rare need for the implementation of such a prohibition occur, visitors will need to bring firewood that has been treated in a manner set out by the United States Department of Agriculture, buy firewood from the park itself, or collect firewood from within the confines of the park in accordance with park policy. The Department will have to enforce this provision if it is enacted. However, the primary advantage is the continued safety of the forests and habitats of the parks. One of the primary methods infecting species are spread is through the importation of infested or infested firewood. By significantly curtailing the arrival of firewood into state parks, the health of the forests will be protected when it is shown to be necessary.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The recommendations of the Attorney General's Government and Regulatory Reform Taskforce and Chapter 624 of the 2009 Acts of Assembly have no impact on small businesses. The section regarding the potential consequences for failing to comply with the State Park Regulations and all other applicable laws and regulations has no impact on small businesses. The sections regarding the releasing and feeding of wildlife have no impact on small businesses.

The prohibition of the importation of firewood, if enacted, may have an impact on small business. If a small business collects and sells firewood, they may be affected if they do not meet necessary criteria, such as United States Department of Agriculture specifications in the rare case where importation may be prohibited. However, there is not a viable alternative to restricting firewood entering the park if an infecting or infesting species is a threat. One of the primary methods infecting species are spread is through the importation of infested or infested firewood. By significantly curtailing the arrival of firewood into state parks, the health of the forests will be further protected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	In the rare occasion that a firewood ban may be necessary, the department will have nominal charges required to public notice and enforce the ban.
Projected cost of the regulation on localities	There are no projected costs to localities due to this regulatory action.
Description of the individuals, businesses or other entities likely to be affected by the regulation	In the rare occasion that a firewood ban may be necessary, a business that collects and sells firewood would possibly be affected if the importation of firewood was curtailed to address a threat. However, other certified firewood retailers might benefit.
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 (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.	As the implementation of such a firewood ban would be extremely rare and as alternatives are provided (such a bans of only certain types of firewood), it is anticipated that the number of small businesses affected would be nearly negligible.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	As the implementation of such a firewood ban would be extremely rare and the number of business affected would be nearly negligible, likewise the costs would be nominal.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

The changes recommended by the Attorney General's Government and Regulatory Reform Taskforce and in Chapter 624 of the 2009 Acts of Assembly are minor and it was not necessary to consider any alternatives.

There is not a viable alternative to restricting firewood entering the park if an infecting or infesting species is a threat. One of the primary methods infecting species are spread is through the importation of infested or infested firewood. By significantly curtailing the arrival of firewood into state parks, the health of the forests will be further protected.

The Agency has examined other states' effective approaches to controlling and preventing the spread of infecting species and has chosen the least burdensome and costly strategies. A suite of viable alternatives are provided in the regulation should in the rare case importation of firewood or certain types of firewood be prohibited.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The Virginia State Park Regulations do not directly impact the institution of the family and family stability. However, a well run State Park System does provide a safe environment in which families may learn about the environment and enjoy outdoor recreational opportunities.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC5-30-10		Section 10 contains definitions that apply throughout the Chapter.	Amendments are proposed to the existing definitions including: Replacing the term "handicapped" with "disabled" for consistency with the Code of Virginia.

			<p>Revising the definition of "park" for clarity.</p> <p>Revising the definition of "person" to the definition found in § 2.2-419 of the Code of Virginia. This was a recommendation of the Attorney General's Government and Regulatory Reform Taskforce.</p> <p>Striking the definition of "regulations" as it is redundant.</p>
4VAC5-30-20		This section details the regulation format, and enforcement provisions.	Under (iv), the term officer has been clarified by inserting "law enforcement" and "as defined by § 9.1-101.
4VAC5-30-30		This section states the territorial scope of the regulations.	<p>The term "natural area preserves" have been inserted to add clarity.</p> <p>The term "jurisdiction" has been replaced with "management or control" to be consistent with the Code of Virginia.</p>
	4VAC5-30-32	There is no current requirement.	This section has been added to clarify the potential consequences of not adhering to the State Park Regulations and other applicable law and regulations.
4VAC5-30-40		This section details the use of permits and the consequences of violating those permits.	<p>Additional language explains that a permit may be issued for activities otherwise prohibited by the Chapter.</p> <p>It also explains how to obtain the necessary permit and the ability to file the permits electronically, in a manner specified by the Department. These were recommendations of the Attorney General's Government and Regulatory Reform Taskforce and Chapter 624 of the 2009 Acts of Assembly.</p>
4VAC5-30-50		This section details how to obtain a scientific collecting permit necessary to remove flowers, plants, minerals, and other materials from a park.	Additional language stating how to obtain a scientific collecting permit from the Department has been added. This was a recommendation of the Attorney General's Government and Regulatory Reform Taskforce.
4VAC5-30-70		This section details the disposal of refuse and other types of garbage.	Additional language has been added to include plastics and cigarette and cigar butts. The word tin as been stricken in reference to cans. These changes reflect the current practice and use at the parks.
4VAC5-30-90		This section explains the types of behavior that is prohibited by park visitors.	This section was clarified by simply stating that a lawful order given by a conservation officer must be obeyed. Additional language was stricken as the illegal activities are already covered by the Code of Virginia.
4VAC5-30-100		This section prohibits gambling in any park.	This section has been repealed as the illegal activities are already covered by the Code of Virginia. This was a recommendation of the Attorney General's Government and Regulatory Reform Taskforce.

4VAC5-30-110		This section prohibits the public use of intoxicating liquors or beverages in any park.	This section has been repealed as the illegal activities are already covered by the Code of Virginia. This was a recommendation of the Attorney General's Government and Regulatory Reform Taskforce.
4VAC5-30-120		This section establishes the operating hours of the parks.	The hours the parks are considered open has been clarified to include special park sanctioned activities, which would include special hunting and fishing opportunities. Unless it is a park sanctioned hunting and fishing event, a person is not currently allowed to enter the park either before or after regular operating hours, unless such person is a cabin guest or camper.
4VAC5-30-140		This section establishes the areas in any park where picnicking is allowed.	The changes in the section were a recommendation of the Attorney General's Government and Regulatory Reform Taskforce. The recommendation was made to conform the wording of this section to other sections within this regulation.
4VAC5-30-150		This section establishes the rules by which camping is permitted in state parks.	The changes in the section clarify the rules by which camping is permitted in state parks. Rules pertaining to occupancy, camping units, camping periods, check-in times, motor vehicles allowed on site, visitors, quiet hours, and pets are all described and clarified.
4VAC5-30-160		This section establishes the rules by which use of the cabins at state parks is permitted.	The changes in this section clarify that the use of cabins is permitted only in accordance with established department regulations (4VAC5-36) and policy dealing with reservations, registration, occupancy, prices, length of stay, and rental period.
4VAC5-30-190		This section established that boating is prohibited in a bathing area.	The revisions to this section remove the provision allowing boating as is necessary to ensure the area is properly protected and policed. Law-enforcement officers have the authority to ensure the area is properly protected and policed without the stricken language.
4VAC5-30-210		This section prohibits the transporting or possession of explosives in any state park.	This section has been repealed as the illegal activities are already covered by the Code of Virginia. This was a recommendation of the Attorney General's Government and Regulatory Reform Taskforce.
4VAC5-30-220		This section prohibits the building or use of fire in any state park except for in areas designated for such purposes.	The changes in the section were a recommendation of the Attorney General's Government and Regulatory Reform Taskforce. The recommendation was made to conform the wording of this section to other sections within this regulation.
4VAC5-30-230		This section prohibits smoking in certain areas of the park.	The changes to this section remove the requirement that a fire hazard potential is required before the department is authorized to prohibit smoking.
4VAC5-30-240		This section prohibits hunting in parks, except in designated areas.	The changes to this section remove the requirement that the department post boundaries to any area that has been closed for hunting. In

			<p>many instances, areas would be closed quickly in response to a foreseeable threat, such as fire danger. In these instances, the department would not have time to post the boundaries before closing the area.</p> <p>As the “Department of Conservation and Recreation” is already defined as “department” the full name of the Agency is replaced by the use of the term “department”.</p>
4VAC5-30-250		This section authorizes fishing in parks.	Changes have been made to this section to explain the term "fishing" and to clarify that the rules and regulations of both the Department of Game and Inland Fisheries and the Virginia Resources Commission are applicable when fishing in parks within the limitations set in the regulation.
4VAC5-30-260		This section prohibits domestic animals running at large.	The new language clarifies that domestic animals must be attended by its owner at all times, unless the animal is housed in a designated stable or is identifiable as a service or hearing dog.
4VAC5-30-270		This section prohibits games and athletic contests in parks, except for in designated areas.	The changes in the section were a recommendation of the Attorney General's Government and Regulatory Reform Taskforce. The recommendation was made to conform the wording of this section to other sections within this regulation.
	4VAC5-30-274	There is no current requirement.	This section requires park users to use paths, trails, or other designated areas in parks to protect the plants and animals living in the park as well as to obey all trail safety signs.
	4VAC5-30-276	There is no current requirement.	This section requires park users to only use bicycles or other similarly propelled devices on designated bicycle paths to protect the plants and animals living in the park as well as to obey all trail safety signs.
4VAC5-30-280		This section requires horses to be ridden or driven only on designated bridle paths.	The section has been clarified to specify that the driving or riding of a horse or other similar animal is permitted only on bridle paths or to and from a parking area associated with the bridle path as well as for the need to obey all trail safety signs.
4VAC5-30-300		This section prohibits the parking or standing of any vehicle in a park except for in designated areas.	Language was struck in this section that is redundant with the Code of Virginia.
4VAC5-30-310		This section prohibits the obstruction of traffic by the unnecessary stopping of a vehicle.	The changes in the section were a recommendation of the Attorney General's Government and Regulatory Reform Taskforce. The recommendation was made to conform the wording of this section to other sections within this regulation.
4VAC5-30-320		This section prohibits a rate of speed in excess of twenty-five miles per hour.	This section has been repealed as it is redundant with the Code of Virginia.

4VAC5-30-330		This section prohibits the use of excessively loaded vehicles within a park.	The term "park manager" was struck and "park management" was inserted. There are instances when the park manager may not be present at the park, and it would be appropriate for other park staff, such as law-enforcement officers, to prohibit this behavior.
4VAC5-30-340		This section prohibits commercial enterprises in any park.	The changes in the section were recommendations of the Attorney General's Government and Regulatory Reform Taskforce. The recommendations were made to conform the wording of this section to other sections within this regulation and to clarify the meaning of this section.
4VAC5-30-350		This section prohibits the taking of pictures in any park for the purpose of selling.	This section has been repealed to reflect current park policy and practice.
4VAC5-30-360		This section prohibits the use of a bus, taxicab, or other commercial transportation vehicle within any park.	The changes in the section were a recommendation of the Attorney General's Government and Regulatory Reform Taskforce. The recommendation was made to conform the wording of this section to other sections within this regulation. The section also clarifies that an arranged pickup or delivery of park users is allowed.
4VAC5-30-370		This section prohibits the use of any musical instrument, radio or any type of noise to attract attention to any exhibit within a park.	The changes in the section were a recommendation of the Attorney General's Government and Regulatory Reform Taskforce. The recommendation was made to conform the wording of this section to other sections within this regulation.
4VAC5-30-380		This section prohibits the erecting of any structure, stand or platform, the holding of any meeting or exhibition, the performance of any ceremony, and the making of any speech or address in any park.	The language in this section is clarified to prohibit meetings or gatherings that will limit or impact the ability of the general public to utilize the park as it was intended, if the natural resources of the park will be injured or harmed, or if park operations will be impaired. These changes reflect current park policy and practice.
4VAC5-30-390		This section prohibits the solicitation alms or contributions for any purpose in a park.	The changes in the section were a recommendation of the Attorney General's Government and Regulatory Reform Taskforce. The recommendation was made to conform the wording of this section to other sections within this regulation.
4VAC5-30-400		This section prohibits the flying or landing of any airplane or other similar apparatus for aviation.	Language has been added in this section to include remote control model aircraft. This change reflects current park policy and practice.
	4VAC5-30-410	There is no current requirement.	This section has been added to allow the director to impose a ban on imported firewood or certain types of firewood to prevent the spread of infesting or infecting species of concern. If necessary, the ban will protect the plants and animals that live in the park.
	4VAC5-30-420	There is no current requirement.	This section was added to prohibit the release of animals and wildlife into any park. The

			prohibition on releasing animals and wildlife will protect the animals and wildlife living in the park by reducing the chance of spreading diseases, as well as the general public. This section reflects current park policy and practice.
	4VAC5-30-422	There is no current requirement.	This section was added to prohibit the feeding of animals, unless it is through a park sponsored programmatic activities. This new section will protect both park visitors (from potential bites and scratches) and animals living in the park.