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Final Regulation Agency Background Document

Agency name	Department of Conservation and Recreation
Virginia Administrative Code (VAC) Chapter citation(s)	4 VAC5-30
VAC Chapter title(s)	Virginia State Parks Regulations
Action title	Amendments to the Virginia State Park Regulations
Date this document prepared	05/20/2021

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The intent of this regulatory action is to amend the regulations to address current practices, update terminology and remove and replace outdated requirements. The goals are to refine existing language to clarify the intent and expectations for individuals visiting Department properties or using Department facilities.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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

Statement of Final Agency Action

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 Department of Conservation and Recreation Director adopted these amendments to the Virginia State Park Regulations as final regulations based upon applicable law, including Article 1 of Chapter 1 and Article 1 of Chapter 2 of Title 10.1 of the Code of Virginia on June 11, 2021.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

This regulatory action updates definitions to ensure consistency with the Code of Virginia, modernizes procedures to 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

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

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 Parks 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 reflect current technologies and policies accurately, 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 reflect the Department's policies and procedures accurately. 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 combustion 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. This section does not prohibit an individual from public urination or defecation when out on a trail or backcountry as long as they are a minimum of 200 feet from a trail or waterway and not observable by the public.

Substance

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.

1. Revises definition section for clarity, amends outdated terminology and adds definitions for "Immediate family", "Electric power assisted bicycle", "Power-driven mobility device" and "Wheelchair".
2. Revises the construction, territorial scope and general sections to reference the laws set out in the Code of Virginia, includes the Breaks Interstate Park to reflect current statutory authority and revises potential penalties of failing to comply with these regulations reflected in Title 18.2 of the Code of Virginia.

3. Includes an additional prohibition regarding the removal or destruction of certain materials, adds a provision to allow for the collection of edible materials. Includes natural areas and natural area preserves in the list of locations for special permitted scientific collection.
4. Creates a new section (4VAC5-30-95) to address public urination or defecation. Currently, the only option available to address public urination or defecation (when appropriate) is to issue a summons for indecent exposure under § 18.2-387, that if convicted would result in a Class 1 misdemeanor. The concern is that while a conviction of § 18.2-387 does not require mandatory registration for the Virginia Sex Offender and Crimes Against Minors Registry, under § 9.1-902 (B), it may be required under the laws of the jurisdiction where the offender was convicted (§ 9.1-202 A. 5). Including this in the regulation would allow the Department to charge an individual with a lower Class 3 misdemeanor (the penalty for this regulation as set out in § 10.1-104 of the Code of Virginia) and more appropriate to address this issue.
5. Expands the prohibition on the use of combustion generators in a non- electrical campsite. Amends language to reflect current reservation practices and policies, clarifies the number of camping units allowed per campsite, adds language to allow for special permit provisions and includes language regarding damage liability.
6. Includes language addressing the use of electronic vaporizing devices, power-driven mobility devise, electric power assisted bicycles and unmanned aerial systems.

Issues

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.

The primary advantage of the proposed amendments is to clarify the activities and behaviors that 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

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

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

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comments were received during the proposed stage.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements

No changes have been made to the text since the proposed stage was published in the Virginia Register of Regulations.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter section number	New chapter section number if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
4VAC5-30-10 (Definition of term)		This section defines the terms 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 definition of "immediate family"; 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 4. amending the definition of park to include areas <i>managed</i> by the Department such as Natural Bridge State Park. 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.
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.	Citation and arrest have 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,	An additional prohibition for defacing items within a park has been included. A provision has been added which allows edible fruits, fungi, berries, or nuts to be collected for personal use.

		historical artifacts, rocks, and plants is contained in this section.	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.
New	4VAC5-30-95 (Public urination or defecation)	This section will prohibit urination or defecation except in designated areas or facilities such as restrooms, portable toilets, bathhouses, camping units or cabins.	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 of combustion generators 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. Camping cabins, lodges and yurts are now available at certain parks and are considered cabins under current

			<p>reservation and operating procedures. Under the advice of the Office of the Attorney General, the Department intends to repeal 4VAC5-36, so the reference to that regulation has been stricken. 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.</p>
4VAC5-30-170 (Swimming, where permitted)		<p>This section allows swimming only during times and areas designated by the Department.</p>	<p>The term bathing has been revised to swimming. Additional clarification has been added with the inclusion of department-owned. Many parks have 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.</p>
4VAC5-30-180 (Dressing)		<p>Limits dressing and undressing to specific areas</p>	<p>This section is being repealed.</p>
4VAC5-30-190 (Boating)		<p>Boating in any swimming area is prohibited by this section.</p>	<p>There are no changes to the requirements of the section. The only change is that the term bathing has been revised to swimming consistent with the revision to the definition.</p>
4VAC5-30-220 (Fires)		<p>This section prescribes the limitations on using fire on parks.</p>	<p>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.</p>
4VAC5-30-230 (Smoking)		<p>Smoking is prohibited by this section.</p>	<p>The inclusion of electronic vaping devices has been included to reflect new technology.</p>
4VAC5-30-250 (Fishing)		<p>This section prescribes the limitations on fishing in parks.</p>	<p>The Department of Game and Inland Fisheries has been amended to the Department of Wildlife Resources.</p>
4VAC5-30-260 (Animals at large)		<p>This section requires all animals brought</p>	<p>There are no changes to the requirements of the section. The only change is that the</p>

		by their owner to the park to be on a leash.	term bathing has been revised to swimming consistent with the revision to the definition.
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.
4VAC5-30-280 (Bridle path use)		This section governs the use of bridles paths in parks.	An amendment has been make to replace trail safety sign with park rules and regulations.
4VAC5-30-290 (Vehicles; where prohibited)		This section prescribes the limitations of vehicle use.	An amendment has been made to replace fire control to fire management.
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 clarifies the restriction of landing on park land or unlawful operation in accordance with federal guidelines. 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 certain quarantined firewood into parks.	An amendment to this section allows for the prohibition of wood product packing materials as determined by the director in addition to the 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 wildlife on park property.	An amendment has been added to clarify the prohibition of releasing domestic animals as well as fish on a park property and includes an exception if approved by park management.
FORMS		This section lists the forms required to be used in conjunction with this regulation.	This section has been amended to reflect current forms used in conjunction with this regulation.