



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Department of Conservation and Recreation
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC5-30
<b>Regulation title</b>	Virginia State Parks Regulations
<b>Action title</b>	Repeal of § 4VAC5-30-200 that prohibits the open carry of firearms in Virginia State Parks
<b>Final agency action date</b>	April 2, 2012
<b>Document preparation date</b>	April 7, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulatory action repeals § 4VAC5-30-200 (Firearms) of the Virginia State Parks Regulations. The section stipulates that “[n]o person except employees, police officers, or officers of the department shall carry or possess firearms of any description, or airguns, within the park. This regulation shall not apply in areas designated for hunting by the Department of Conservation and Recreation. This regulation also shall not apply to the carrying of concealed handguns within state parks by holders of a valid concealed handgun permit issued pursuant to § 18.2-308 of the Code of Virginia.”

The stated authority for the regulation may be found in § 10.1-104(A)(4) of the Code of Virginia where the Department has broad authority “[t]o prescribe rules and regulations necessary or

incidental to the performance of duties or execution of powers conferred by law". However, it is the lack of specific statutory authority to regulate firearms upon which amendments to this regulation have been directed and now the repeal.

Section 4VAC5-30-200 is part of the Virginia Administrative Code (VAC) and has been part of the VAC or Department regulations since at least 1965 and likely since the State Park System was created in 1936. This regulation originally prohibited all carrying of firearms by anyone other than police officers, other employees of the Department, or those engaged in approved hunting activities, but was amended in 2002 to permit the carrying of concealed handguns by those in possession of a valid concealed handgun permit. In response to a September 9, 2002 opinion from Attorney General Kilgore (Opinion 02-074) to Delegate Richard H. Black that found that the Department of Conservation and Recreation exceeded its statutory authority in prohibiting the carrying of concealed handguns by holders of valid permits, Governor Warner by letter on September 23, 2002 instructed the Department to amend the regulation in accordance with the opinion. The Attorney General's Office further found that the Department could amend the regulation as an exempt action pursuant to §2.2-4006(A)(4)(a) of the Code of Virginia. The amendments were effective February 12, 2003 (Virginia Register Volume 19, Issue 9).

On September 26, 2008, then Attorney General McDonnell (Opinion 08-043) issued an opinion to then Senator Kenneth T. Cuccinelli, II that found that the Department of Conservation and Recreation has only such authority to restrict the open carrying of firearms which is expressly provided by law. The opinion stated that "I find no specific statutory authority granting the Department the authority to prohibit the open carrying of firearms in state parks. A person's right to carry a firearm openly is considered universal within the Commonwealth, subject to definite and limited restrictions upon certain locations and classifications of individuals. Section 18.2-287.4 is the only statute that specifically addresses carrying of firearms in public parks. In the context of parks and public spaces, the General Assembly merely limits certain classifications of firearms and not firearms generally. Under accepted rules of statutory construction, the mention of one thing in a statute implies the exclusion of another. Further, the Department's enabling legislation does not specifically authorize a prohibition against the open carry of firearms."

The opinion further stated that "[i]n light of the General Assembly's explicit statements regarding limitations on carrying and possessing firearms, the Department may not infer such authority from its enabling legislation and prohibit the carrying of firearms not otherwise prohibited within state parks. It is within the sole discretion of the General Assembly to limit the carrying of firearms in parks beyond that restricted by § 18.2-287.4. Additionally, the General Assembly could grant explicit statutory authority to the Department to accomplish such purpose. I find no authority, express or implied, for the Department to prohibit the carrying and possession of firearms within state parks beyond that currently prohibited by law."

On January 14, 2011, Governor McDonnell issued a letter to the Director of the Department of Conservation and Recreation. In the letter, the Governor noted that "I have reviewed the opinion I provided in September of 2008 as Attorney General to then Senator Ken T. Cuccinelli, II regarding the authority of the Department of Conservation and Recreation to issue a regulation prohibiting the open carrying of firearms in State Parks. In summary, the opinion states that

because the General Assembly enacted § 18.2-287.4 of the Code of Virginia, it had no intention of further restricting the carrying of firearms in public parks. I am not aware of any legislative action since the issuance of that opinion which would change the conclusion reached therein. Lacking specific legislative authorization to further regulate firearms, the Department of Conservation and Recreation cannot promulgate a regulation that does so. Therefore, I am directing the Department of Conservation and Recreation to cease enforcement of § 4VAC5-30-200. The Department should notify all state park officials immediately of this change. Further, I am directing that § 4VAC5-30-200 be repealed through an exempt Administrative Process Act regulatory action to bring it into conformity with this opinion and law.”

In accordance with this directive, the Department is advancing this exempt regulatory action to repeal 4VAC5-30-200 (Firearms) of the Virginia State Parks Regulations.

**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 January 14, 2011, Governor McDonnell issued a letter to the Director of the Department of Conservation and Recreation “directing the Department of Conservation and Recreation to cease enforcement of § 4VAC5-30-200” and instructing the Department to “notify all state park officials immediately of this change”. Accordingly, enforcement of 4VAC5-30-200 of the Virginia State Parks Regulations prohibiting the open-carry of firearms in state parks and natural area preserves ceased immediately.

The Governor’s letter further stated that “I am directing that § 4VAC5-30-200 be repealed through an exempt Administrative Process Act regulatory action to bring it into conformity with this opinion [Opinion 08-043 (September 26, 2008) of then Attorney General McDonnell to then Senator Ken T. Cuccinelli, II regarding authority for the Department of Conservation and Recreation to regulate the open carrying of firearms in state parks] and law”. On April 2, 2012, in accordance with Governor McDonnell’s letter, the Director of the Department adopted this final amendment to the Virginia State Parks Regulations (4VAC5-30) and authorized the Agency's Regulatory Coordinator to submit through an exempt final action the repeal of this section (4VAC5-30-200) and any other required documents to the Virginia Regulatory Town Hall and the Registrar of Virginia for publishing.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

Enforcement of 4VAC5-30-200 of the Virginia State Parks Regulations prohibiting the open-carry of firearms in state parks and natural area preserves ceased immediately in accordance with direction received from Governor McDonnell on January 14, 2011. Since that time, the Department has not experienced any incidents directly related to cessation of enforcement of this

regulatory section. As such, the health, welfare, and safety of the visitors to the Department's properties as well as their recreational enjoyment of the lands and facilities has not been diminished as a result of the cessation of enforcement of this regulation and accordingly no impacts are anticipated associated with the formal repeal of this section. Additionally, some visitors may feel safer as a result of their ability to open carry firearms on the Department's properties.