



Virginia
Regulatory
Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Department of Forestry |
| Virginia Administrative Code (VAC) citation | 4VAC10-30 |
| Regulation title | State Forest Regulations |
| Action title | State Forest Special Use Permit Fees – Hunting, Trapping, Fishing, Riding Bikes and Riding Horses [§§10.1-1152] |
| Date this document prepared | April 3, 2012 |

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

- 1) The 2012 Virginia General Assembly passed and the Governor approved an act to amend and reenact §§10.1-1152 [Virginia Acts of Assembly Chapter 484] relating to state forest special use permits, mandating that the Department of Forestry promulgate emergency regulations to implement the provision of the act that established a fee for the special use permit to hunt, trap, fish, ride bikes and horses in a state forest. Pursuant to the act, the regulations are to become

effective within 280 days of the enactment of the act. This regulation is not exempt under the provisions of subdivision A. 4 of §2.2-4006.

- 2) The changes to the existing regulation implements the provisions of the act to amend and reenact §10.1-1152, Virginia Acts of Assembly Chapter 484, requiring minor changes of clarification to 4VAC10-30 sections 40, 120, 200 and 210. These changes clarify that any person who hunts, fishes, traps, rides bikes or rides horses is required to purchase an annual special use permit for a fee of \$15.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority. [Please cite the authority you are using to promulgate an emergency regulation.]???

§10.1-1101 (General Powers of the Department), section 4 authorizes the Department of Forestry to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter. Chapter 484 of the Virginia Acts of Assembly was approved by the Governor and will become effective July 1, 2012, amended and reenacted §10.1-1152.

In addition, Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4 of § 2.2-4006.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Establishes an annual fee of \$15 for special use permits to hunt, trap, fish, ride bikes and ride horses on state forest lands in Department of Forestry regulations pursuant to its authority per §10.1-1152 of the Code of Virginia. Chapter 484 of the Virginia Acts of Assembly authorizes the Department to set fees for state forest special use permits by regulation. The emergency regulation is necessary to implement the provisions of the act that authorize the establishment of a fee for the special use permit to become effective within 280 days of the enactment of the act.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The emergency regulation implements the provisions of the act to establish a fee for the special use permit. The fee is currently charged to persons who hunt, trap, fish, ride bikes and horses under the authority of §10.1-1152 of the Code of Virginia. Authorized fees are collected and used to improve and maintain state forest lands.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulation(s), use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, and likely impact of proposed requirements |
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| 4VAC10-30-40 | | <p>A permit to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof. Any violation by its holder or his agents or employees of any term or condition thereof shall constitute grounds for its revocation by the department, or by its authorized representative. In case of revocation of any permit, all moneys paid for or on account thereof shall, at the option of the department, be forfeited to and be retained by it; and the holder of such permit, together with his agents and employees who violated such terms and conditions, shall be jointly and severally liable to the department for all damages and loss suffered by it in excess of money so</p> | <p>A permit to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof. Any violation by its holder or his agents or employees of any term or condition thereof shall constitute grounds for its revocation by the department, or by its authorized representative. In case of revocation of any permit, all moneys paid for or on account thereof shall, at the option of the department, be forfeited to and be retained by it; and the holder of such permit, together with his agents and employees who violated such terms and conditions, shall be jointly and severally liable to the department for all damages and loss suffered by it in excess of money so forfeited and retained; but neither such forfeiture and retention by the department of the whole or any part of such moneys nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person or persons from liability to punishment for any violation of any provision of any Virginia State Forests</p> |

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| | | <p>forfeited and retained; but neither such forfeiture and retention by the department of the whole or any part of such moneys nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person or persons from liability to punishment for any violation of any provision of any Virginia State Forests Regulation. A state forest hunting permit will be required to hunt or trap on any state forest or portion thereof on which hunting and trapping is permitted.</p> | <p>Regulation. A state forest hunting <u>special use permit</u> will be required to hunt, or trap, fish, ride bikes or ride horses on any state forest or portion thereof on which hunting, and trapping, fishing, riding bikes or riding horses is permitted.</p> |
| <p>4VAC10-30-120</p> | | <p>No person shall make, use or gain admittance to, or attempt to use or gain admittance to the facilities in any forest for the use of which a charge is made by the department unless he shall pay the charge or price fixed by the department.</p> | <p>No person <u>age sixteen or older</u> shall make, use or gain admittance to, or attempt to use or gain admittance to the facilities in any forest for the use of which a <u>special use permit charge</u> is made required by the department unless he shall pay the charge or price fixed by the department obtain a special use permit and pay an annual fee of \$15.</p> |
| <p>4VAC10-30-200</p> | | <p>No person within the confines of any forest, shall hunt, trap, shoot, injure, kill or molest in any way any bird or animal, nor shall any person have in his possession any bird or animal, dead or alive, within the forest except any bird or animal designated as a game bird or animal by the Virginia Board of Game and Inland Fisheries, and the trapping of, hunting of, shooting at,</p> | <p>No person within the confines of any forest, shall hunt, trap, shoot, injure, kill or molest in any way any bird or animal, nor shall any person have in his possession any bird or animal, dead or alive, within the forest except any bird or animal designated as a game bird or animal by the Virginia Board of Game and Inland Fisheries, and the trapping of, hunting of, shooting at, or possession of any such bird or animal is prohibited except during the lawful hunting season set for the forest or portion thereof by the Virginia Board of Game and Inland Fisheries and only</p> |

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| | | <p>or possession of any such bird or animal is prohibited except during the lawful hunting season set for the forest or portion thereof by the Virginia Board of Game and Inland Fisheries and only in those forests or portion thereof designated by the Forest Superintendent as lawful hunting areas. A state forest hunting permit will be required. All provisions of the Virginia Code concerning hunting must be complied with.</p> | <p>in those forests or portion thereof designated by the Forest Superintendent as lawful hunting areas. A state forest hunting <u>special use permit</u> will be required. All provisions of the Virginia Code concerning hunting must be complied with.</p> |
| 4VAC10-30-210 | | <p>Fishing is permitted in designated areas in each forest, the only stipulation being that persons fishing must have a state fishing license and comply with the Virginia Game and Inland Fisheries rules and regulations.</p> | <p>Fishing is permitted in designated areas in each forest, the only stipulation being that persons fishing must have a state fishing license, <u>a special use permit</u> and comply with the Virginia Game and Inland Fisheries rules and regulations.</p> |

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

N/A- mandated by Virginia Acts of Assembly Chapter 484.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a panel has been used in the development of the emergency regulation and whether it will also be used in the development of the proposed regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Ron Jenkins, 900 Natural Resources Drive, Suite 800, Charlottesville, Virginia 22901, 434-220-9022(O), 434-977-7749(fax), ron.jenkins@dof.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Assess the potential 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.

N/A - No changes from current practices.