



Proposed Regulation Agency Background Document

Agency name	Department of Forestry
Virginia Administrative Code (VAC) citation	4 VAC 10 -30-170
Regulation title	State Forest Regulations
Action title	State Forest Regulations' Firearms <u>Reproposed</u>
Date this document prepared	September 14, 2010

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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Department of Forestry is submitting its second proposed regulation amendment to allow the lawful carry of open and concealed firearms on Virginia's State Forests. The difference between the initial proposed regulation amendment and this reproposed amendment is the lifting of the prohibition against the lawful open carry firearms. The intent of this amendment is to insure this State Forest regulation is in synchronization with laws.

Current State Forest regulations prohibit individuals from carrying any firearms onto State Forest properties unless exempted because of lawful hunting seasons. The proposed amendment would allow persons to carry lawful open and concealed firearms onto State Forest properties under the ownership and management of the Department of Forestry.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

10.1-1101 (General Powers and Duties of the Department) provides the authority to the Department of Forestry, with the approval of the State Forester, to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under the Chapter.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The Virginia Citizens' Defense League petitioned the Department of Forestry for a ruling to amend 4VAC10-30-170 and eliminate the prohibition against both open carried handguns and concealed handguns. DOF completed its response to the petition and began the process of amending its regulation. DOF completed the NOIRA and first Public Comment stages. DOF received 1926 comments during the NOIRA stage and 2409 comments supporting the amendment. Based on the volume of comments from the first Public Comment stage (February 15, 2010 through April 16, 2010) supporting the lawful carrying of both open and concealed firearms on State Forests and a review of Virginia statutes, DOF is proposing a second public comment stage and a new proposed regulation to allow the lawful carrying of open and concealed firearms on State Forests.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The agency will change its regulation which currently prohibits the carrying of firearms onto State Forests, except for lawful hunting, to allow persons to carry lawful open – carried and concealed firearms onto State Forests.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) The Virginia Citizens Defense League requested the Department of Forestry amend 4VAC10-30-170 to lift the prohibition against carrying lawfully open – carried and concealed firearms on the State Forests.
- 2) During the first public comment phase February 15, 2010 through April 16, 2010, DOF received a large number of comments in support of both lawful carrying of open and concealed firearms on State Forests. DOF will initiate actions for a second public comment period to reflect a regulatory amendment that will allow the lawful carrying of both open and concealed firearms.
- 3) Upon approval of this regulatory amendment, persons may carry open – carried and concealed firearms onto State Forests at any time, so long as they are in compliance with the law.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are 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.

This regulatory amendment does not exceed 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.

The nineteen State Forests are currently located in the counties of Appomattox, Bedford, Buckingham, Carroll, Craig, Cumberland, Essex, Fauquier, Grayson, King & Queen, King William, Lancaster, Nelson, New Kent, Prince Edward, Prince William, Russell, Shenandoah, and Washington.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Department of Forestry(DOF) is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, DOF is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Ronald S. Jenkins, 900 Natural Resources Drive, Suite 800, Charlottesville, Virginia 22903, 434 -220 – 9022, fax 434 977 – 7749, 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 the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	Unknown. Enforcement normally performed by Department of Game & Inland Fisheries, Department of Conservation & Recreation, State Police, or Local Sheriff Department. Continuous.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	Unknown
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Department of Game & Inland Fisheries, Department of Conservation & Recreation, State Police, and/or local Sheriff departments would be responsible for enforcement.
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.	Four law enforcement agencies could potentially be involved in enforcement of the law.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Unknown
Beneficial impact the regulation is designed to produce.	Will make the State Forester regulations on firearms similar to firearms’ regulations on State Parks.
See EAI Report by DPB on 11/03/2009	

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.

None

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.

Not applicable.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Received 1926 comments during the NOIRA stage	1926 supported amending the regulations to allow the carrying of concealed handguns with a legal concealed handgun permit. Of the 1926 total comments, 126 also supported open carrying of handguns. Of the 1926 comments, 584 requested the agency hold a public hearing.	During the Notice of Intended Regulatory Action (NOIRA) stage, the Department of Forestry (DOF) received 1926 comments supporting the amendment of State Forest regulations to allow the carrying of concealed handguns on State Forests by persons possessing a valid concealed weapon permit. The DOF will proceed to the Proposed Regulation Public Comment stage with the intent to amend the State Forest regulations to allow the carrying of concealed handguns on State Forests by persons possessing a valid concealed weapon permit. DOF will also provide a public hearing opportunity during the Notice of Proposed Regulation Public Comment stage. DOF appreciates receiving comments from all who commented on the proposed regulatory amendment during the NOIRA stage. For information regarding this matter, please feel free to contact Ron Jenkins, Assistant State Forester, at 434 - 220 - 9022, or by email at ron.jenkins@dof.virginia.gov.

1134 Comments in First Public Comment Period	Support amendment to allow concealed weapon with valid permit as written in proposed regulation. Some people commented specifically on the proposed amendment language of concealed handguns. Many commenters wrote in very broad, general terms that showed support for the amendment.	DOF believes its State Forest regulations should promote safety, welfare and utility of all who use the State Forests and be in conformance with current laws and its legally binding statutory authority.
1275 Comments in First Public Comment Period	Support amendment to allow concealed weapon with valid permit and amend to allow open carried guns too.	Same as above
6 Comments in First Public Comment Period	Did not support the amendment.	Same as above.
10 Comments in First Public Comment Period	Response never actually stated support or non support of amendment. Language was too vague to draw a conclusion.	No Response.

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.

Unknown

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
4 VAC 10 -30-170		No person shall bring into or have in any forest any explosive or explosive substance, except commercial sporting firearms ammunition; explosives, explosive substances and firearms of all types are prohibited in any portion of a forest assigned to the Department of Forestry, for administration as a recreational area.	<p>4VAC10-30-170. Explosives, fires <u>firearms</u>, etc.</p> <p>. 4VAC10-30-170. Explosives, fires <u>firearms</u>, etc.</p> <p>No person shall bring into or have in any forest any explosive or explosive substance, [except commercial sporting <u>other than lawfully possessed</u>] firearms ammunition [; explosives, <u>Explosives and</u>] explosive substances [and, other than lawfully possessed] firearms [of all types ammunition,] are prohibited in any portion of a forest assigned to the Department of Forestry, for administration as a recreational area. [This regulation shall not apply to the carrying of concealed handguns within state forests by holders of a valid concealed handgun permit issued pursuant to § 18.2-308 of the Code of Virginia.]</p> <p>Rationale – Adding this statement to the existing regulation will insure State Forest regulations involving firearms are in full compliance with state laws.</p> <p>Consequences - Unknown</p>

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Statutory Authority

§ 10.1-1101 of the Code of Virginia.

Historical Notes

Former 4VAC5-40-170 derived from VR215-01-03; eff. October 14, 1970; renumbered as 4VAC10-30-170, Virginia Register Volume 22, Issue 21, eff. July 26, 2006.