



Final 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 Amendment
Date this document prepared	May 9, 2011

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

During the public comment stage, the Department of Forestry conducted two different public input opportunities. The first proposed stage sought the public's input on lifting the prohibition against lawful concealed firearms with a valid permit while retaining the prohibition against open - carried firearms. Due to overwhelming level of requests to remove the prohibition against both lawful concealed and open – carried firearms, the agency submitted a second but revised amendment for public input.

Current State Forest regulations prohibit individuals from carrying any firearms onto State Forest properties unless exempted because of lawful hunting seasons. The final regulatory 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.

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 Department of Forestry will amend regulation 4 VAC 10- 30 – 170, State Forest Regulations, to remove the prohibition against the carrying of firearms onto State Forest properties. The regulation will become final following the conclusion of a thirty day publication period in the Virginia Register, providing that lawful actions don't delay the process.

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 numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 10.1-1101 of the Code of Virginia provides the Department of Forestry, with the approval of the State Forester, the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia.

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 it 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 right to bear arms is protected by the second amendment to the Constitution. Citizens have requested the Department of Forestry remove the prohibition against carrying firearms within State Forests because they believe this action is necessary to protect their health, safety, and welfare against violent people and wild animals.

The Virginia Citizens Defense League petitioned the Department of Forestry (DOF) for a ruling to amend 4VAC10-30-170 and eliminate the prohibition against both open carried and concealed firearms. DOF completed its response to the petition and began the process of amending its regulation with the intent of removing the prohibition against lawful concealed firearms and continuing the prohibition on open carried firearms. DOF completed the Notice of Intended Regulatory Action (NOIRA) and first public comment stages. DOF received 1,926 comments during the NOIRA stage, and 2,409 comments supporting the amendment during the first proposed stage. 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 proposed a second public comment stage and a new proposed regulation to allow the lawful carrying of open and concealed firearms on state forests.

During the second proposed stage for public comment, the Department of Forestry received 1094 comments total. 1087 comments showed strong support the amendment to allow both the carrying of lawful open – carried and concealed firearms in State Forests. Five comments

indicated strong non - support of the amendment. Two comments only addressed questions about the impact of the amendment.

The final regulatory amendment will reflect the agency's desire to remove the prohibition and allow the lawful carrying of open – carried and concealed firearms on State Forests. Two formal public comment stages indicate strong support for the final amendment. In addition, the Office of the Governor is in support of the final regulatory amendment.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 there are no disadvantages to the public or the Commonwealth, please indicate.

Citizens are allowed by the Code of Virginia to carry lawful open carried firearms, as well as concealed firearms with a valid permit, in Virginia. The Department of Forestry is not authorized under the Code of Virginia to regulate firearms on State Forests. The state forest regulation amendment will be in harmony with Virginia law and ensure that law abiding citizens will not violate a regulation that carries a Class 4 misdemeanor penalty.

The Virginia Citizens Defense League requested DOF to amend 4VAC10-30-170 to lift the prohibition against carrying lawfully open carried and concealed firearms on the state forests. During the first public comment phase from 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 completed a second public comment period of 30 days to reflect a regulatory amendment that will allow the lawful carrying of both open and concealed firearms. This amendment allows persons to carry lawful open carried and concealed firearms onto state forests at any time.

The Virginia Department of Planning and Budget conducted an Economic Impact Analysis and concluded in their report that no known disadvantages to the public could be discerned through their analysis. The following quote is from the DPB's Economic Impact Analysis Report dated December 15, 2010. *"This change will allow individuals to have the protection of a weapon in state forests which will likely provide a benefit for them as well as any other unarmed citizens that might receive ancillary protection from crime or animal attack. It is very unlikely that any*

individual would suffer costs from increased crimes on account of this change because concealed carry holders appear to commit far fewer crimes than individuals that don't hold concealed carry permits. There appear to be no studies that attempt to measure any negative impact of open carry on unarmed individuals but anecdotal evidence suggests that such impact would be minimal to nonexistent."

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
4 VAC 10-30-170	The second proposed would remove the prohibition against carrying lawful concealed handguns by persons with valid concealed weapons' permit and lawful open carry handguns.	There are no changes to the Final regulation from the second proposed stage amendment language. The Final regulation would permit persons to carry lawful concealed and open carry handguns in State Forests if permitted by the Code of Virginia.	Majority of comments supported the carrying of lawful open and concealed handguns. It has been determined that the Code of Virginia does not grant authority to regulate the carrying of firearms in State Forests. The final regulation is in harmony with the Code of Virginia.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
<u>"First Propose Stage"</u> 1134 Comments	Support amendment to allow concealed weapon with valid permit as written in proposed regulation. Some commenters wrote direct to the proposed amendment language of concealed handguns. Most commenters wrote in very broad, general terms that showed support for the amendment and did not mention open – carried handguns, but could also have easily been construed to mean support of concealed and open carry.	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.

<p><u>“First Propose Stage”</u> 1275 Comments</p>	<p>Support amendment to allow concealed weapon with valid permit and amend to allow open carried guns too.</p>	<p>Same as above.</p>
<p><u>“First Propose Stage”</u> 6 Comments</p>	<p>Did not support the amendment.</p>	<p>Same as above.</p>
<p><u>“First Propose Stage”</u> 10 Comments</p>	<p>Response never actually stated support or non support of amendment. Language was too vague to draw a conclusion.</p>	<p>No Response.</p>
<p><u>“Second Proposed”</u> 1087 comments</p>	<p>Supported the amendment to remove the regulatory prohibition against the carrying of firearms in State Forests and supported both the carrying of lawful open carried and concealed firearms with a valid permit in State Forests.</p>	<p>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. DOF fully supports the citizens’ right to carry lawful open – carried and concealed firearms in its State Forests.</p>
<p><u>“Second Proposed”</u> 5 Comments</p>	<p>Did not support the amendment.</p>	<p>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. DOF fully supports the citizens’ right to carry lawful open – carried and concealed firearms in its State Forests.</p>
<p><u>“Second Proposed”</u> 2 Comments</p>	<p>Did not indicate preferences for or against the amendment.</p>	<p>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. DOF fully supports the citizens’ right to carry lawful open – carried and concealed firearms in its State Forests.</p>

The **first** proposed stage showed that most supporting commenters were interested in individual rights, second amendment, government authority, and previous Virginia Attorney General opinions in addition to their written support of the amendment to allow concealed handguns. Even though 1134 comments did not mention open carry, many of these comments indicated the State Forester was not authorized to regulate the carrying of firearms on State Forests.

During the first proposed stage, six commenters did not support the amendment. The most common reasons given for this position were the impact on family use of these spaces and the potential for discharge of weapons.

The **second** proposed stage amended the language submitted in the first stage to indicate the strong support to allow the carrying of lawful open – carried and concealed firearms in State Forests. The second proposed stage is consistent with the Code of Virginia and has the support of the Governor of Virginia.

During the second proposed stage, DOF received a total 1094 comments. 1087 comments supported the amendment to allow the carrying of open – carried and concealed firearms in State Forests. Most comments pointed out the Constitutional right granted under the Second Amendment, safety for themselves and families. Many supporters stated that law abiding citizens should be able to protect themselves from dangers and risks associated with forest lands.

Five commenters did not support the amendment and questioned the need for allowing firearms in State Forests. Some questioned the impact on tourism.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4 VAC 10- 30 - 170	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>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. <u>This regulation shall not apply to the lawful carrying of firearms and firearms ammunition.</u></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 – we believe the impact of this change will be positive and that no adverse impacts will be manifest in the future.</p>

Enter any other statement here

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 Department of Planning & Budget addressed these issues in its Economic Impact Analysis dated December 15, 2010. The following results were reported and the Department of Forestry concurs with the findings of the DPB Economic Impact Analysis. The amendment to the State Forest regulations will remove the prohibition against the lawful carrying of open and concealed firearms in State Forests. By adopting the final regulation, the agency's regulations will be in full compliance with the Code of Virginia.

Businesses and Entities Affected

This proposed regulatory change will affect all individuals who visit, or travel in, state forests.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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.

Based on the Department of Planning and Budget Economic Impact Analysis reported dated December 15, 2010 and the comments in support of the amendment, it appears the amendment will not negatively impact families as described above. Many commenters who support the amendment believe that other visitors to State Forests may receive ancillary benefits of protection by law abiding citizens who do lawfully carry open – carried and concealed firearms.