



## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Forestry
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC 10- 30
<b>Regulation title</b>	State Forest Regulations
<b>Action title</b>	State Forest Special Use Permit Fees – Hunting, Trapping, Fishing, Riding Bikes and Riding Horses [§§10.1-1152] – Amending Regulation to Insure Permanence of DOF Authority to Charge Special Use Permit Fees
<b>Date this document prepared</b>	March 11, 2014

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*.

### 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

- 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. This action finalizes the fee establishment authority into the regulatory process.

**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 or board taking the action, and (3) the title of the regulation.*

The proposed amendment was published in the Virginia Register on January 13, 2013. The language in the proposed amendment identically matched the language in the Emergency/NOIRA stage completed on 9/17/2013.

**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.*

§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 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.*

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 purpose of the Final stage is to make permanent the changes initiated under Emergency/NOIRA and subsequently the proposed stage.

**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 amendments outlined in the Final stage are identical to the Emergency/NOIRA and Proposed stages. All stages were predicated upon the requirements of legislation approved in 2012, Chapter 484 of the Virginia Acts of Assembly authorizing the Department of Forestry to set fees for state forest special use permits through the regulatory process.

**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.*

This regulatory action poses no disadvantages to the public or the Commonwealth. The amendments to the Code of Virginia established the desire of the Legislative and Executive branches to authorize the transfer of fee setting authority from the legislative process to the regulatory process. The Department of Forestry will use the regulatory process to announce the public its intent and desire to change the fee rates for fee –based activities occurring on state forests, and make available the details of such proposal for review and comment. All future actions to amend the state forest fees will be reviewed by the Office of Attorney General, Department of Planning & Budget, Secretary of Agriculture and Forestry, and the Governor’s office before being published in the Virginia Register. During the comment periods, the public will have opportunity to review and comment and the agency will be required to consider the public’s viewpoints into its deliberations before making a final regulatory amendment change. The regulatory process will be in line with the process now used by other state agencies and should meet the public’s expectations of fair consideration of their input.

**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.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
None	Not applicable due to fact that no changes were made since the proposed stage.	Not applicable due to fact that no changes were made since the proposed stage.	Not applicable due to fact that no changes were made since the proposed stage.

**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
No Comments Received	None	Not Applicable due to the fact that DOF received no comments.

Enter any other statement here

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC10-30-40. Permits	.	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	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 Regulation. A state forest <del>hunting</del> <u>special use</u> permit will be required to <del>hunt or</del> <u>trap, fish, ride bikes, or ride horses</u> on any state forest or portion thereof on which <del>hunting and</del> <u>trapping, fishing, riding</u>

		<p>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 *</p> <p>hunting permit will be required to hunt or trap on any state forest or portion thereof on which hunting trapping is permitted.</p>	<p>bikes, or riding horses is permitted.</p> <p><b>Rationale:</b></p> <p>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.</p>
<p>4VAC10-30-120. Charges</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>16 years of age 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>charge special use permit</u> is <del>made</del> <u>required</u> by the department unless he shall <del>pay the charge or price fixed by the department</del> <u>obtain a special use permit and pay an annual fee of \$15. Any person under 16 years of age may hunt, trap, fish, ride bikes, or ride horses on any state forest and is not required to obtain a special use permit or pay an annual fee.</u></p> <p><b>Rationale:</b></p> <p>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.</p>
<p>4VAC10-30-200. Hunting and fishing.</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</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</p>

		<p>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 in those forests or portion thereof designated by the Forest Superintendent as lawful hunting areas. A state forest</p> <p>* hunting permit will be required. All provisions of the Virginia Code concerning hunting must be complied with.</p>	<p>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 <u>hunting special use</u> permit will be required. All provisions of the Virginia Code concerning hunting must be complied with.</p> <p><b>Rationale:</b> 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.</p>
<p>4VAC10-30-210. Fishing.</p>		<p>Fishing is permitted in designated areas in each forest, the only stipulation being that persons fishing must have a state fishing</p> <p>* 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>have a special use permit</u>, and comply with the Virginia Game and Inland Fisheries rules and regulations.</p> <p><b>Rationale:</b> 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.</p>

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