



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

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6 VAC 20-230
Regulation title	Regulations Relating to the Conservator of the Peace
Action title	Conservator of the Peace Regulations (New)
Document preparation date	10-15-03

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 review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 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.

Adoption of the regulations pursuant to Virginia Code § 9.1-150.2 qualify as "emergency regulations" pursuant to Code of Virginia § 2.2-4011(A)(i), given the existence of an imminent threat to public safety.

Currently there is the potential for the misuse of power by thousands of persons who have law enforcement powers as a special conservator of the peace and who are without any training, liability insurance or qualifications. This lack of training creates a significant potential for such misuse of power.

A majority of these individuals have been authorized to carry firearms as a part of their appointments and have received no firearms related training. A number of individuals are allowed to exceed the term limitations by the circuit court or have lifetime appointments. In addition, there is no standard to ensure a criminal history records search is being completed on individuals who are currently appointed.

The Board is required by §9.1-150.2 to “ensure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section” by establishing compulsory minimum training standards. Pursuant to § 19.2-13 (B), as of September 15, 2004, all persons seeking appointment as a special conservator of the peace must possess a valid registration issued by the Department. Applicants for registration may submit applications starting January 1, 2004. The registration process requires that an individual submit their fingerprints in order to conduct a national and Virginia criminal history records search to ensure the public safety and welfare against incompetent or unqualified persons engaging in activities as a special conservator of the peace.

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.

To promulgate the regulations for special conservator of the peace. The regulation establishes a registration process to include a fingerprint based background check, registration fees, compulsory minimum entry-level training standards, and administration of the regulatory system. It authorizes the department to receive complaints concerning the conduct of any person whose activities are monitored by the Board; conduct investigations; issue disciplinary action; revoke, suspend, and refuse to renew a registration. These procedures are established to protect the citizens of the Commonwealth from unqualified, unscrupulous, and incompetent persons engaging in the activities of a special conservator of the peace.

A public hearing will be held during the promulgation process and participation from individuals will be strongly encouraged.

Legal basis

- 1) *Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*
- 2) *Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.*

The legal authority to regulate special conservator of the peace is found in Section 9.1-150.2 of the Virginia Code, effective July 1, 2003, authorizes the Criminal Justice Services Board of the Department to adopt regulations establishing compulsory minimum, entry-level, in-service, and advanced training standards for special conservator of the peace appointed pursuant to §19.2-13. The Office of the Attorney General has certified that the agency has the statutory authority to adopt regulations pursuant to the Code of Virginia § 9.1-150.2 as emergency regulations under § 2.2-4011(A)(i), given the existence of an imminent threat to public safety.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The regulation establishes a registration process, registration fees, compulsory minimum entry-level training standards including firearms training and qualifications, standards of conduct, and administration of the regulatory system. It outlines procedures for receiving complaints concerning the conduct of any person whose activities are monitored by the Board; procedures for conducting investigations; issuing disciplinary action; and revoking, suspending, refusing to renew a registration, and provides an appeal process pursuant to the administrative process act.

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.

There are no alternatives to the proposed regulatory action.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

The regulations indirectly impact the family who may come into contact with a special conservator of the peace by providing a regulatory requirement that protects the public from unscrupulous, incompetent or unqualified persons engaging in the activities of special conservator of the peace.