



Virginia  
Regulatory  
Town Hall

## Exempt Action Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Conservation and Recreation
<b>VAC Chapter Number:</b>	4 VAC 5-30
<b>Regulation Title:</b>	Firearms
<b>Action Title:</b>	Amend 4 VAC 5-30-200
<b>Date:</b>	December 23, 2002

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file the final regulation with the Registrar in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

**Note agency actions exempt pursuant to § 9-6.14:4.1(B)** do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

### Summary

*Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Department of Conservation and Recreation is amending its State Parks regulation on Firearms (4 VAC 5-30-200) to allow for the carry of concealed weapons within State Parks by holders of a valid Concealed Handgun Permit issued pursuant to § 18.2-308. Prior to this action, the carry or possession of firearms was limited to employees, police officers, or officers of the Department. The regulation also did not apply in areas designated for hunting by the

Department. This action is prompted by an opinion from the Attorney General and a directive from the Governor.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On September 9, 2002, in an opinion issued to the Honorable Richard H. Black, Attorney General Jerry W. Kilgore determined that, “[i]n light of the General Assembly’s explicit statements regarding the limits of carrying concealed handguns, the Department could not infer authority from its general enabling legislation to change those limits by prohibiting the carrying of concealed handguns by holders with valid permits within state parks”. The Attorney General noted that “[i]t is solely within the discretion of the General Assembly to add parks to the list of places where the carrying of concealed handguns is prohibited, or to grant explicit statutory authorization to the Department for that purpose”, however, the Department is currently “without authority to prohibit, within state parks, the carrying of concealed handguns by holders of valid permits”.

On September 23, 2002, Governor Mark R. Warner directed “the Department of Conservation and Recreation to cease enforcement of 4 VAC 5-30-200 with respect to concealed handguns by valid permit holders”. He further directed “the Department to amend the regulation through the Administrative Process Act to bring it in conformity with Attorney General Kilgore’s opinion”.

The Department has contended that pursuant to the opinion and the directive, the Department has no discretion in making this regulatory amendment and that this regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006(A)(4)(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. A letter from the Department’s Counsel in the Attorney General’s Office on December 19, 2002 noted that while this is a change in the understanding of Virginia statutory law rather than an actual change in Virginia’s statutes, the lack of agency discretion is the same. Counsel states in his letter that he believes “it would be legally defensible for the agency to amend its regulation pursuant to the Administrative Process Act exemption found in § 2.2-4006(A)(4)(a) in order to conform its regulation to its statutory authority as directed by the Governor”.

The Secretary of Natural Resources on December 23, 2002 approved the Department to proceed with submitting this regulation to the Virginia Register for publishing as an exempt final action.

Accordingly, the Director of the Department of Conservation and Recreation certifies this final action to the regulation entitled “Firearms” (4 VAC 5-30-200) on this day, December 23, 2002. Although exempt, pursuant to § 2.2-4006.B the agency will receive, consider and respond to petitions by any interested person at any time with respect to consideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the

provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.*

This regulatory action will have no determinable impact at this time. Guns have been banned from parks since at least 1967 and probably since the park system was established in 1936. Park users have found that the Virginia State Park System has always served as a safe and secure location where families could come to enjoy camaraderie and to take advantage of the therapeutic value parks have on the mind, body, and spirit. Some park users have contended that the allowance of concealed weapons in State Parks will jeopardize their confidence that they can enjoy the peace and tranquility provided by the park's surroundings without having to worry about the potential for gun violence. Some have noted that state parks were set up so people and families could enjoy themselves, not having to worry if someone will take a gun to a state park to do harm or not. They contend that the current regulation gives them confidence through the fact that the number of violent incidents in the state parks and natural areas over the years has been negligible. Park users suggest that changes to this regulation will result in personal safety concerns for a large percentage of the populace and will result in reductions in the number of park visitors and the number of volunteers at the parks. Some have even stated that more guns in state parks will mean more gun deaths and injuries.

Others contend that at a time when public safety is on everyone's mind, that it is improper to deny an individual a means of self-defense. They suggest that campers and hikers should be able to carry concealed weapons in case they need to defend themselves from attackers. Some cite that when law-abiding citizens are armed, the criminals are much more cautious. They state that nothing should trump the right of law-abiding citizens to self-defense via the exercise of their Second Amendment rights. These citizens contend that the Virginia State Park gun ban is bad public policy that endangers honest, law-abiding visitors to the parks and that it is an unconstitutional infringement of the right of Virginia citizens to keep and bear arms. In addition to citing protection from human criminal attack, they also note the possibility of attack by animals such as bears, rabid dogs, raccoons or coyotes.