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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

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## DEPARTMENT OF CONSERVATION AND RECREATION

**REGISTRAR'S NOTICE:** The Department of Conservation and Recreation is claiming an exemption 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. The Department of Conservation and Recreation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 4 VAC 5-30. Virginia State Parks Regulations (amending 4 VAC 5-30-200).

**Statutory Authority:** § 10.1-104 of the Code of Virginia.

**Effective Date:** February 12, 2003.

### Background:

*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. The agency will receive, consider and respond to petitions by any interested person at any time with respect to consideration or revision.*

### Summary:

*The Department of Conservation and Recreation is amending the Virginia State Parks Regulations 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 of the Code of Virginia. 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.*

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### **4 VAC 5-30-200. Firearms.**

No person except employees, police officers, or officers of the department shall carry or possess firearms of any description, or airguns, within the park. This regulation shall not apply in areas designated for hunting by the Department of Conservation and Recreation. *This regulation also shall not apply to the carrying of concealed handguns within state parks by holders of a valid concealed handgun permit issued pursuant to § 18.2-308 of the Code of Virginia.*

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