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Final Regulation Agency Background Document

Agency name	Department of General Services
Virginia Administrative Code (VAC) citation(s)	1 VAC-30-105
Regulation title(s)	Regulation Banning Concealed Firearms in Offices Owned or Occupied by Executive Branch Agencies
Action title	Issuance of Regulation Prohibiting Concealed Firearms
Date this document prepared	December 5, 2016

Brief summary

This Regulation implements Executive Order 50 (McAuliffe 2015), which bans firearms in offices occupied by executive branch agencies with certain exceptions set forth herein. This regulation prohibits concealed firearms in buildings under the ownership, lease, or control of an executive branch agency, and includes a requirement for posting signs to this effect. The EO directed DGS to propose regulations within 30 days of the EO. The emergency regulations will expire on June 2, 2107, therefore DGS is moving forward with the regulatory process to promulgate permanent regulations.

Acronyms and Definitions

DGS – Department of General Services
EO – Executive Order

“Authorized security personnel” means a natural person who is employed to (i) perform the functions of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he or she is assigned to protect; (ii) safeguard and protect persons and property; or (iii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he or she is assigned to protect.

“Concealed firearm” means a firearm hidden from common observation, including a firearm hidden when it is observable but is of such deceptive appearance as to disguise the firearm’s true nature.

“Firearm” means any handgun, pistol, revolver, or other weapon designated or intended to propel a missile of any kind by action of an explosion of any combustible material.

“Law-enforcement officer” shall have the same definition as in Virginia Code § 18.2-307.1. This shall also include retired law-enforcement officers certified pursuant to Virginia Code § 18.2-308.016.

“Executive branch agency” means any administrative unit of state government in the executive branch, including any department, institution, commission, board, council, authority, or other body, however designated.

“State office” means any building or portion of a building, owned, leased, or controlled by or for an executive branch agency. This includes that portion of any building open to others and then used exclusively for functions or activities sponsored by an executive branch agency tenant(s) while such functions are taking place. It shall not include parking facilities, lodges or cabins owned by the Commonwealth and used solely by the public for recreational activities, any buildings which serve as living quarters for Commonwealth employees, or any buildings at a rest area on an interstate highway.

Statement of final agency action

DGS director approved the final regulation on August 11, 2016. The regulation, filed by Department of General Services, is entitled: Regulations Banning Concealed Firearms in Offices Owned or Occupied by Executive Branch Agencies.

Legal basis

Virginia Code §§ 2.2-1100(B) and 2.2.-1102(A)(1) establish the Department of General Services and allow DGS to prescribe regulations. DGS has been directed by EO50 to issue these regulations.

Purpose

As stated in the EO, it is the Governor’s desire to protect citizens and state employees from gun violence. The purpose of this regulation is to ban concealed firearms from offices owned, lease, or controlled by executive branch agencies. While state employees already are prohibited from carrying firearms through State personnel directives, this regulation will extend that prohibition to members of the public and other non-employee individuals who may enter the premises.

Substance

Possession or carrying of any concealed firearm by any person is prohibited in and on state offices. Entry upon a state office in violation of this prohibition is expressly forbidden. This prohibition does not apply to law-enforcement officers, authorized security personnel, or military personnel, when such individuals are authorized to carry a firearm in accordance with their duties, and when they are carrying the firearm within

that authority. It also does not apply to state employees where the employee’s position requires carrying a concealed firearm.

Issues

Every day over 60,000 Virginians report to work in state government buildings across the Commonwealth to provide services to their fellow Virginians. Citizens rely on open access to these facilities to address their personal and professional needs. Government facilities are essential to allowing citizens access to their government representatives. Allowing concealed carry in these facilities exposes our state employees and fellow citizens to unnecessary risk.

Requirements more restrictive than federal

There are no applicable federal requirements.

Localities particularly affected

None

Family impact

None

Changes made since the proposed stage

None

Public comment

DGS received 4,675 public comments via the TownHall website; 97 comments emailed directly to the agency and 19 comments at the public hearing. The summary is as follows:

Commenter	Comment	Agency response
2,950 expressed general opposition	These commenters responded with “I oppose” (this regulation) and generally do not want the regulation adopted.	DGS promulgated the regulation to support the Executive Order #50 (2015) and to ensure a safe work place for employees and visitors. The general reasons for this regulation are laid out in the agency background document and in Executive Order # 50. It should be noted that many commenters provided duplicate comments in opposition. Each comment is included in the total number without eliminating duplicates.

843 expressed opposition as they feel their rights are violated.	These commenters expressed opposition to the regulation and expressly mentioned that their 2 nd Amendment rights were being violated.	The Supreme Court has held that the 2 nd Amendment allows restrictions on firearms in sensitive places where people congregate and are most vulnerable, such as government buildings. Accordingly, this regulation does not place an undue burden on any rights under the 2 nd Amendment.
404 expressed opposition based on safety concerns	These commenters objected to the regulation being adopted citing safety concerns for citizens visiting facilities affected by the regulation.	Unless required by their position, state employees are currently prohibited from possessing a firearm on state premises per policy (DHRM Workplace Violence - Policy #1.80). DGS promulgated this regulation to expand on that policy to ensure the safety of those who visit executive branch facilities.
5 expressed opposition based on hardships incurred	These commenters opposed the regulation being adopted by expressing that the regulation creates a hardship for citizens.	DGS responded to some of these concerns and revised the regulation from the emergency stage to offer exemption for areas of concerns such as highway rest areas, state park cabins, and parking facilities. The regulation does not otherwise impose an undue hardship on those entering covered facilities.
89 expressed opposition as there is no authority	These commenters object to the regulation being adopted because they feel the Governor or DGS has exceeded their authority.	These regulations are authorized by the Code of Virginia, §§ 2.2-1100(B), 2.2-1102(A)(1) and 2.2-1129(B), Executive Order # 50 (2015), and the Constitution of Virginia.
408 expressed general support	These commenters expressed general support of the regulation and desire for the regulation to be adopted.	The agency appreciates the comments supportive of the regulation.
45 expressed support as they feel safer	These commenters expressed support of the regulation because they feel the regulation will make citizens safer.	The regulation, as written, will support the safety of visitors to executive branch facilities.
5 expressed support and for all guns being banned	These commenters supported the regulation and believe all guns should be banned.	The regulation as written, is a reasonable restriction that is supportive of safety in executive branch facilities, which is the intent of the regulation.
1 commenter suggested a change	“If government agencies do not wish its citizens to lawfully enter the premises where they conduct business, please provide a mechanism that lawful gun owners and concealed carry individuals can request that representatives travel to locations that allow the business to be conducted while CCW is honoured (sic).”	DGS considered the commenter’s suggestion. The costs of implementing this suggestion substantially outweigh the burden on concealed carry permit-holders. The implementation of this suggestion would require additional costs for satellite offices and additional staff, and there are no budgetary allotments at the current time. The relative burden on individuals not to carry firearms into state offices is minimal and non-monetary.
41 commenters provided no comment	These commenters provided no comment, provided only a phone number, or were trying to sell a product.	DGS has no response to these commenters.

All changes made in this regulatory action

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
1VAC30-105-40		Possession of firearms prohibited. Possession or carrying of any concealed firearm	None

		by any person is prohibited in state offices. Entry upon a state office in violation of this prohibition is expressly forbidden. This prohibition does not apply to law-enforcement officers, authorized security personnel, or military personnel when such individuals are authorized to carry a firearm in accordance with their duties and when they are carrying a firearm within that authority. It also does not apply to state employees where the employee's position requires carrying a concealed firearm.	
1VAC30-105-50		Required lease terms for state offices. All leases entered into where an executive branch agency is the lessor shall contain a prohibition on concealed firearms consistent with this chapter. All leases entered into for the benefit of an executive branch agency shall contain this prohibition to indicate the lessor's acknowledgement. Exceptions may be allowed where approved in writing by the Governor or his designee.	None
1VAC30-105-60		Posting of signs. A. Posting location. Signs shall be posted at all state offices indicating the prohibition against carrying concealed firearms. Where the entire premises are owned or occupied by an executive branch agency, signs shall be displayed at every entrance. Where only a portion of the premises are leased for an executive branch agency, the signs shall be displayed within the leased space. If an executive branch agency is using an office space open to others, temporary signs shall be displayed at or near the entry to the office during the time the office is being used exclusively for Commonwealth sponsored functions or activities while such functions are taking place. B. Size and Design. Signs shall be of a size and design approved by the Department of General Services. Agencies shall be responsible for obtaining signage from DGS and for posting of the signs.	None
1VAC30-105-70		Enforcement. The occupying agency shall be responsible for enforcing this chapter.	None
1VAC30-105-80		Exemptions. A. A state institution of higher education is exempt from this chapter if the institution has implemented its own policies or regulations governing firearms.	None