



Virginia Department of Planning and Budget **Economic Impact Analysis**

6 VAC 20-300 Rules Relating to the Waiver Process for Law Enforcement Agencies to Use Certain Military Property

Department of Criminal Justice Services

Town Hall Action/Stage: 5725/10243

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

As a result of a 2020 legislative mandate,² the Criminal Justice Services Board (Board) seeks to create a permanent regulation to replace an emergency regulation that allows law enforcement agencies to obtain a waiver to use certain military property the agency acquired prior to March 1, 2021. The proposed changes would require affected law enforcement agencies to submit an application form to the Department of Criminal Justice Services (DCJS); specify that qualifying equipment may be used while the application for the waiver is pending, and that the agency may appear before the Board in support of its application; and require DCJS to publish any waivers granted by the Board on DCJS' website.

Background

Chapter 37 of the 2020 *Acts of Assembly (Special Session I)* created two new sections of the Code of Virginia (Code), and amended two existing sections, to address the acquisition of

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=ch37>.

military property. Virginia Code § 2.2-5515 prohibits “any agency of the Commonwealth, or director or chief executive of any agency or department employing law-enforcement officers” from acquiring or purchasing certain types of military equipment (listed below).³ This section also specifies that any agency or department employing law-enforcement officers that had previously acquired any of the prohibited items could only continue the use of such items by obtaining a waiver from the Board. Virginia Code § 15.2-1721.1 added identical restrictions for any “locality, sheriff, chief of police, or director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers ... or any public or private institution of higher education that has established a campus police department....” Chapter 37 also amended Virginia Code § 52-11.3 to apply similar restrictions for the Superintendent of State Police. Lastly, this legislation further amended Virginia Code § 9.1-102 (62) to state that DCJS, under the direction of the Board, shall “[e]stablish and administer a waiver process, in accordance with §§ 2.2-5515 and 15.2-1721.1, for law-enforcement agencies to use certain military property,” and that any waivers granted by the Board shall be published on the Department’s website.

As a result of these statutory changes, the list of equipment that cannot be acquired or purchased is now in three Code provisions: § 2.2-5515, § 15.2-1721.1, § 52-11.3. Collectively, this list applies to all law enforcement agencies in the Commonwealth, as follows:

- (i) Weaponized unmanned aerial vehicles;
- (ii) Aircraft that are configured for combat or are combat-coded and have no established commercial flight application;
- (iii) Grenades or similar explosives or grenade launchers from a surplus program operated by the federal government;
- (iv) Armored multi-wheeled vehicles that are mine-resistant, ambush-protected, and configured for combat, also known as MRAPs, from a surplus program operated by the federal government;
- (v) Bayonets;
- (vi) Firearms of .50 caliber or higher;
- (vii) Ammunition of .50 caliber or higher; and,
- (viii) Weaponized tracked armored vehicles.

³ See <https://law.lis.virginia.gov/vacode/title2.2/chapter55.4/section2.2-5515/>.

All three sections also specify that,

“Nothing in this section shall restrict the acquisition or purchase of an armored high mobility multi-purpose wheeled vehicle, also known as HMMWVs, or preclude the seizure of any prohibited item in connection with a criminal investigation or proceeding or subject to a civil forfeiture. Any property obtained by seizure shall be disposed of at the conclusion of any investigation or as otherwise provided by law.”

Accordingly, the Board proposes to add a new regulation (6 VAC 20-300) to implement the legislative mandate. Section 10 *Establishment of a Waiver Process* specifies that any law-enforcement agency or department subject to the provisions of Virginia Code § 2.2-5515, § 15.2-1721.1, and § 52-11.3 that are in possession of equipment prohibited by these sections prior to March 1, 2021 must request a waiver to continue the use of such equipment. The proposed language also specifies that a waiver request be made on an application form provided by DCJS (which is included in the regulation), that applicants may appear before the board in support of the request, and that they may utilize such equipment while the application for waiver is pending. Section 10 also directs DCJS to publish any waivers granted by the Board on their website. Section 20 *Failure to comply with rules relating to waiver process* specifies that law enforcement agencies that do not request or receive a waiver may not utilize any equipment prohibited by Virginia Code § 2.2-5515, § 15.2-1721.1, and § 52-11.3.

Lastly, the 2020 legislation directed DCJS to promulgate regulations within 280 days of the effective date of the Act. Thus, DCJS adopted the emergency regulation noted above, which became effective on September 15, 2023.⁴ The proposed language summarized above is identical to the emergency language currently in effect. Further, the Board developed a waiver request form and sent it out to all law-enforcement agencies statewide in January 2021.⁵ At its May 2021 meeting, the Board voted on and approved 18 waivers from 17 law enforcement agencies.⁶ As required by the legislation, DCJS has published all the waiver applications on their website.⁷ Of the 18 waiver applications, 15 appear to have been for MRAPs and three for 0.50-caliber rifles.

⁴ See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9507>.

⁵ See the minutes of the Board’s March 25, 2021 meeting: https://townhall.virginia.gov/l/GetFile.cfm?File=meeting\51\32001\Minutes_DCJS_32001_v2.pdf.

⁶ See the minutes of the Board’s May 20, 2021 meeting: https://townhall.virginia.gov/l/GetFile.cfm?File=Meeting\51\32002\Minutes_DCJS_32002_v1.pdf.

⁷ See <https://www.dcjs.virginia.gov/content/2021-cjsb-document-review>.

DCJS reports that they have not received any new applications since the May 2021 meeting and that they do not anticipate receiving any more applications.

Estimated Benefits and Costs

The waiver process codified by the proposed regulation would benefit law enforcement agencies in the Commonwealth that have any military equipment prohibited by Virginia Code § 2.2-5515, § 15.2-1721.1, and § 52-11.3 by allowing them to continue using such equipment. More specifically, the regulation would validate the waivers that have already been issued to 17 law enforcement agencies. DCJS reports that they do not anticipate receiving any more waiver applications and that the waivers that have been issued cover all prohibited equipment in the possession of law-enforcement agencies in the Commonwealth. Thus, any administrative costs arising from submitting a waiver application to the Board, and possibly from appearing at a Board meeting to speak in support of the application, have already been incurred.

Businesses and Other Entities Affected

The proposed regulation only affects any law-enforcement agencies in Virginia that have any military equipment prohibited by Virginia Code § 2.2-5515, § 15.2-1721.1, and § 52-11.3. Specifically, waivers have been obtained by the Sheriff's Offices for Bedford, Caroline, Culpeper, Franklin, Frederick, Greene, Mecklenburg, Page, Russell, Spotsylvania, Washington, and Westmoreland counties, and by Police Departments for Hampton, Harrisonburg, Virginia Beach, and Winchester. The Metropolitan Washington Airports Authority also obtained a waiver.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁸ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁹ The proposed regulation would not create any costs that are not a direct result of the

⁸ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

⁹ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

legislative mandate. Further, any administrative costs to law-enforcement agencies arising from the legislative mandate have already been incurred. Thus, an adverse impact is not indicated.

Small Businesses¹⁰ Affected:¹¹

The proposed amendments would not adversely affect small businesses.

Localities¹² Affected¹³

Localities whose sheriff's offices or police departments have prohibited military equipment would be particularly affected by this regulation, and by the legislation requiring it. As mentioned previously, waivers have been obtained by the Sheriff's Offices for Bedford, Caroline, Culpeper, Franklin, Frederick, Greene, Mecklenburg, Page, Russell, Spotsylvania, Washington, and Westmoreland counties, and by Police Departments for Hampton, Harrisonburg, Virginia Beach, and Winchester. The proposed regulation does not affect costs for local governments.

Projected Impact on Employment

The proposed regulation does not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed regulation does not affect the value of private property or real estate development costs.

¹⁰ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹¹ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹² "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹³ Virginia Code § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.