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Proposed Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) Chapter citation(s)	_6 VAC 20_ - 300_
VAC Chapter title(s)	Rules Relating to the Waiver Process for Law Enforcement Agencies to Use Certain Military Property
Action title	New Regulation for the Establishment of a Waiver Process for Law Enforcement Agencies to Use Certain Military Property
Date this document prepared	January 3, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

SB5030, passed during the 2020 Special Session I of the General Assembly, created several legislative mandates for the Department of Criminal Justice Services. One of those was to establish and administer a waiver process for law enforcement agencies to use certain military property and equipment. This provision was added to Virginia Code § 9.1-102, effective March 1, 2021, and as such, DCJS promulgated an Emergency regulation, which was finalized and effective as of September 13, 2023. This NOIRA serves to file a permanent regulation in Virginia Administrative Code.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Board – Criminal Justice Services Board
CJSB - Criminal Justice Services Board, DCJS' policy board
DCJS - Department of Criminal Justice Services
Department - Department of Criminal Justice Services

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This action originated as an emergency situation in accordance with § 2.2-4011, in that the Governor's Office had already approved SB5030 during the 2020 Special Session I of the General Assembly and was added to the Code of Virginia in § 9.1-102(62). At the time of filing, the Department of Criminal Justice Services had already accepted, and the Board subsequently approved, waivers for such property and equipment, although there was, at the time, no existing regulation for such. DCJS sought and obtained formal Board approval to move forward with an Emergency regulatory action to establish a new regulation for such standards on May 20, 2021. The actual text of the regulation was approved by the CJSB on December 9, 2021, and the emergency regulation became effective on September 13, 2023. This Notice of Intended Regulatory Action serves to file the permanent regulation under 6 VAC 300 in Administrative Code.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency for this regulation is the Department of Criminal Justice Services, which has the authority under § 9.1-102 to do so. Pursuant to § 9.1-102, the Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof. As of March 1, 2021, the Department has the authority to establish 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. Any waivers granted by the Criminal Justice Services Board shall be published by the Department on the Department's website.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

DCJS has determined that this regulation is essential in protecting the safety and welfare of citizens in the Commonwealth, and has already been codified, effective March 1, 2021. The purpose of the establishment of this permanent new regulation is to adopt and administer a statewide waiver process for the review of waivers submitted by law enforcement agencies, in order for them to potentially continue to utilize certain military property and equipment.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

There are no substantive changes to existing sections of any chapter of any regulation because this is a new permanent regulation promulgated by DCJS. The Department has been mandated through the passage of SB5030 during the 2020 Special Session I of the General Assembly to adopt such standards into regulation, and the Board has approved the actual text to be located within the body of the new 6 VAC 20-300. The regulatory text has not changed or been amended since the filing of the emergency action.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This regulation's primary advantage is to safety and well-being of the citizens of the Commonwealth of Virginia, as well as to the law enforcement community, both local and state. This regulation calls for the adherence to the waiver procedure if specified military surplus items and equipment are to be possessed and/or continually utilized by law enforcement agencies across the Commonwealth. There are no known disadvantages to the Commonwealth by implementing such a regulation, as it has already been codified in 9.1-102(62).

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The only state agencies particularly affected would be state law enforcement agencies, such as Virginia State Police, if they are in possession of specified surplus military equipment and wish to continue to utilize such equipment.

Localities Particularly Affected

Localities particularly affected are local police departments and sheriff's offices that are in possession of specified military equipment and wish to continue to utilize such equipment.

Other Entities Particularly Affected

No other known entities are particularly affected.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change.
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change,

	but law enforcement agencies will be able to continue to utilize the specified equipment.
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Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change, but law enforcement agencies will be able to continue to utilize the specified equipment that they previously bought or acquired.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Only law enforcement agencies that were in possession of such military property and equipment at the time this was codified are affected. Not every law enforcement agency in the Commonwealth has such equipment, but the ones that do would be affected.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	No additional entities are affected by this regulation.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no projected costs for affected individuals, businesses, or other entities.
Benefits the regulatory change is designed to produce.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change, but law enforcement agencies will be able to continue to utilize the specified equipment that they previously bought or acquired.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no existing viable alternatives to the establishment of this regulation, nor does the Department believe it will prove burdensome or intrusive to any small businesses or other agencies in the Commonwealth. DCJS was mandated through the passage of SB5030 in the 2020 Special Session I of the General Assembly to establish this waiver process, and there is no alternative to doing so. The Emergency regulatory action was finalized and became effective on September 13, 2023 and will be effective until March 14, 2025.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses, because they are not affected by this regulation. This is further detailed in Table 1.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or

comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This action is not being used to announce a periodic review or a small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comments have been received on this regulation, to date.

Commenter	Comment	Agency response
N/A	N/A	N/A

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Department of Criminal Justice Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Kristi Shalton, 1100 Bank Street, Richmond, VA 23219, Kristi.shalton@dcjs.virginia.gov, (804) 786-7801. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or

agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
6 VAC 20-300-10	N/A	<p>A. Any law-enforcement agency or department subject to the provisions of § 2.2-5515, 15.2-1721.1, or 52-11.3 of the Code of Virginia in possession of equipment prohibited by § 2.2-5515, 15.2-1721.1, or 52-11.3 of the Code of Virginia prior to March 1, 2021, must request a waiver to continue the use of such prohibited equipment.</p> <p>B. Law-enforcement agencies or departments shall file with the Department of Criminal Justice Services (department) a completed application for such waiver on the form and in the manner provided by the department.</p> <p>C. The Criminal Justice Services Board shall consider each waiver request. Law-enforcement agencies or departments may appear before the board in support of the request. Law-enforcement agencies or departments may utilize qualifying equipment while the application for waiver is pending.</p> <p>D. Any waivers granted by the board shall be published by the department on the department's website.</p>	N/A

6 VAC 20-300- 20	N/A	Law-enforcement agencies or departments that do not request or receive a waiver may not utilize any equipment prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia.	N/A
FORMS	N/A	Link to Military Surplus and Other Regulated Police Equipment Waiver, DCJS Form (rev. 4/2021)	N/A

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage

No changes to the Emergency Regulation are being proposed.