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Final Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC20-290
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	August 6, 2026

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, directed the Department of Criminal Justice Services (DCJS) to establish and administer a waiver process for law-enforcement agencies to use certain military property and equipment. This authority was added to § 9.1-102 of the Code of Virginia effective March 1, 2021. DCJS promulgated an emergency regulation, which became effective September 13, 2023. This regulatory action serves to establish the permanent regulation governing the waiver process.

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's policy board
DCJS – Department of Criminal Justice Services
Department – Department of Criminal Justice Services

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On December 9, 2021, the Criminal Justice Services Board adopted final amendments to the Rules Relating to the Waiver Process for Law Enforcement Agencies to Use Certain Military Property.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

No changes since previously reported information.

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. Pursuant to § 9.1-102 of the Code of Virginia, the Department, under the direction of the Criminal Justice Services Board, has the power and duty to adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of Chapter 1 of Title 9.1. The Department has the authority under Subdivision 61 of § 9.1-102 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 CJSB must be published by the Department on the Department's website. This authority was codified by Chapter 37 of the 2020 Acts of Assembly, Special Session I.

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.

The regulation is necessary to implement the statutory requirement that DCJS establish and administer a statewide waiver process for law-enforcement agencies to continue utilizing certain military property and equipment. The regulation protects public safety and welfare by providing Board review of waiver requests and public notice of granted waivers, while allowing qualifying law-enforcement agencies to continue using covered equipment in accordance with the law.

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 as 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 20-290. The regulation establishes a waiver process for law-enforcement agencies that possessed statutorily prohibited equipment prior to March 1, 2021, and establishes a prohibition on use for any equipment listed in §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia for agencies that have not been granted a waiver or are in the process of obtaining a waiver.

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.

The primary advantage of the regulation to the public is transparency in the usage of certain military surplus items by law-enforcement agencies in the Commonwealth. Local and state law-enforcement agencies also benefit from having a clearly defined waiver process for the continued usage or possession of military equipment. There are no known disadvantages to the public, the agency, or the Commonwealth by implementing this regulation, as it has already been codified in § 9.1-102(61).

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

No changes to previously reported information. There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no changes to the information reported at the proposed stage. 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 use such equipment.

Localities Particularly Affected

There are no changes to the information reported at the proposed stage. Localities particularly affected are local police departments and sheriff's offices that are in possession of specified military equipment and wish to continue to use such equipment.

Other Entities Particularly Affected

There are no changes to the information reported at the proposed stage. No other known entities are particularly affected.

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 were received following publication of the previous stage.

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

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
N/A	N/A	N/A	N/A	N/A

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
6 VAC 20-290-10	N/A	Definitions	Change: Establishes definitions for “Board,” “Department,” and “Law-enforcement agency.” Intent: To provide clear definitions of pertinent terms in the chapter. Rationale: Defines the terms and entity names used in the regulation. Likely Impact: Improved ability to interpret and apply the regulations.
6 VAC 20-290-20	N/A	This section will establish the statutorily required process law-enforcement agencies must follow to continue using certain equipment otherwise prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia. It also provides for board review of waiver requests and the publication of such waivers on DCJS’s website.	Change: Establishes a process for the requesting, board review, and DCJS publication of military equipment use waivers by law-enforcement agencies. Intent: To promulgate regulations related to the military equipment waiver process in the clearest, least burdensome manner possible. Rationale: To implement the requirement of SB5030 that DCJS promulgate regulations related to the military equipment waiver process. Likely Impact: Compliance with the statutory requirement for a waiver process and the benefit of a clearly defined method for obtaining a waiver in the regulation.
6 VAC 20-290-30	N/A	The section will establish in regulation a prohibition on law-enforcement agencies using equipment prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia unless	Change: Incorporates into regulation a prohibition on the use of certain military surplus and other prohibited equipment by law enforcement agencies.

		they have requested or received a waiver from the CJSB.	Intent: To establish, by regulation, a prohibition on the use of equipment listed in §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia by law-enforcement agencies unless a waiver has been obtained from the Board. Rationale: To clarify the consequence of not adhering to the statutorily required waiver process and ensure that prohibited equipment is used only in accordance with the Code of Virginia. Likely Impact: Clarifies that agencies that do not request a waiver, or whose waiver requests are denied, must discontinue use of the equipment prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia. Incorporating such a prohibition in the text of the regulation promotes compliance with the law and potentially reduces the use of prohibited equipment.
FORMS	N/A	Link to Military Surplus and Other Regulated Police Equipment Waiver, DCJS Form (rev. 4/2021)	N/A