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Virginia's Regulatory Process: A Legislator's Fact Sheet

Terms

Regulation - a law adopted by a state government agency.

Virginia Register of Regulations - Virginia's official publication of state regulations, published every two weeks.

Virginia Administrative Code - compilation of permanent regulations.

Regulatory Process Highlights

- The General Assembly gives an agency authority to promulgate regulations in the agency's area of expertise.
- The Administrative Process Act (APA) (§ 2.2-4000 of the Code of Virginia) sets out the process agencies must follow in promulgating, amending, or repealing regulations.
- The typical regulatory process under the APA has three main steps: a Notice of Intended Regulatory Action, a proposed regulation, and a final regulation. Each step allows for executive branch review and public comment. The typical regulation takes about 18-24 months to go through the regulatory process.
- Some agencies and some regulatory actions are exempt from the APA. Generally exempt actions bypass executive review.
- Fast-track rulemaking may be used when the Governor has concurred with the agency that the rulemaking is noncontroversial.
- Emergency regulations may be promulgated in certain situations and are limited to 12 months' duration unless extended by the Governor for an additional six months. Emergency regulations go through executive review and are effective when approved by the Governor and filed with the Registrar of Regulations. Emergency regulations do not receive public comment.

Legislative Role in Virginia's Regulatory Process

- The legislature may delegate authority to a state agency to adopt administrative regulations to administer the agency's programs and services.
- The **Virginia Code Commission (VCC)** appoints a Registrar of Regulations who oversees the (i) central repository for state agency publications, (ii) publication of the *Virginia Register of Regulations*, and (iii) compilation of regulations into the Virginia Administrative Code. The VCC also monitors the APA through the **Administrative Law Advisory Committee**.
- The **Joint Commission on Administrative Rules (JCAR)** may review existing agency regulations and practices and agency regulations during the promulgation or final adoption process and may make recommendations to the Governor and General Assembly.
- **Applicable legislative standing committees or JCAR** may object to regulations, which will delay the regulatory process.
- **Applicable legislative standing committees or JCAR** may suspend the effective date of any portion or all of a final regulation until the next legislative session with the Governor's concurrence.
- **Applicable legislative standing committees or JCAR** may object to any rulemaking that the Governor has determined to be noncontroversial and is being promulgated through the fast-track rulemaking process, which will require the agency to conduct the rulemaking under the provisions of the APA.
- The **Joint Legislative Audit and Review Commission** conducts a periodic review of the exemptions authorized by the APA to assess whether any exemptions should be discontinued or modified.

Important websites

<http://register.dls.virginia.gov> - Learn more about the regulatory process, see current emergency regulations, sign up to receive notification of when the *Virginia Register of Regulations* is published via an RSS feed, and view the *Virginia Register* online.

<http://regulations.legis.virginia.gov> - Virginia Administrative Code (updated daily).

<http://codecommission.dls.virginia.gov> - Virginia Code Commission.

<http://www.townhall.virginia.gov> - Overseen by the Department of Planning and Budget, this website allows agencies to submit regulations for executive branch review and also provides for public comment on regulations.