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

Terms

- "Regulation" means a law adopted by a state government agency. Regulations have the force of law and are written and administered by state agencies as authorized by the General Assembly.
- "Virginia Register of Regulations" means the biweekly legal resource authorized by § 2.2-4031 of the Code of Virginia that documents changes in Virginia regulations and regulatory activity taking place in Virginia.
- "Virginia Administrative Code" means the compilation of permanent regulations for the Commonwealth of Virginia.

Regulatory Process Highlights

- The General Assembly grants 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 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 effective for 18 months unless extended by the Governor for an additional six months.
- Emergency regulations are effective when approved by the Governor and filed with the Registrar of Regulations. A public comment period is not normally provided when an agency promulgates emergency regulations.

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Legislative Role in Virginia’s Regulatory Process

- The legislature may delegate authority to a state agency to adopt administrative regulations to govern the agency’s programs and services.

- The Virginia Code Commission (VCC) appoints a Registrar of Regulations to oversee the (i) central repository for state agency regulations, (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 in the promulgation or final adoption process, and the commission 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 full 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, and view the Virginia Register online.


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