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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.

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://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, offers email notifications, and provides a forum for the public to comment on regulations.