

## Rulemaking Process

### General Information

An agency must follow the law passed by the General Assembly that sets out the process for creating, amending, or repealing a regulation.

Three basic steps take place to create, amend, or repeal a regulation.

Typically, regulatory actions take about 18-24 months from start to finish.

### Basic Steps

**\*\*Step 1 - Notice of Intended Regulatory Action (NOIRA)**

\*\*The notice informs the public that a regulatory change is being considered, along with a description of the changes being considered. Once the NOIRA is published in The Virginia Register of Regulations, there is at least a 30-day period during which the agency receives comments from the public. The agency reviews these comments as it develops the proposed regulation.

**\*\*Step 2 - Proposed regulation**

\*\*The new, amended, or repealed regulation; a statement explaining the basis, purpose, substance and issues of the regulatory action; an Economic Impact Analysis (EIA) prepared by the Department of Planning and Budget (DPB); the agency response to the DPB EIA; and an agency contact person are published in the Virginia Register. A 60-day public comment period begins upon publication of the proposed regulatory action in the Virginia Register. The agency may make changes to the proposed regulation based on comments received during the public comment period.

**\*\*Step 3 - Final regulation**

\*\*The new, amended, or repealed regulation is published in the Virginia Register. Any change to the text of the regulation since the proposed regulation was published is highlighted by brackets that surround the changed language. A 30-day waiting period takes place before the regulation becomes effective.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session. The Governor's objection or suspension of the regulation, or both, will be published in the Virginia Register. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period will be published in the Virginia Register.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulatory action may be withdrawn by the promulgating agency at any time before it becomes effective.

### Nonstandard Regulatory Process

#### **Emergency Rulemaking**

Sometimes the General Assembly passes a law requiring an emergency regulation, while at other times the promulgating agency may determine that a regulation is necessitated by an emergency situation. The three-step process for standard regulatory actions does not apply to emergency regulations.

An emergency regulation can take effect on the day it is filed for publication in the Virginia Register of Regulations. An emergency regulation may be effective for no more than 18 months, unless an additional six-month extension is authorized by the Governor.

#### Emergency Regulations

Since an emergency regulation will expire, the agency usually begins the normal three-step regulatory process at the same time that the emergency is filed for publication in the Virginia Register of Regulations.

## **Exempt Regulations**

Sometimes the General Assembly passes a law allowing the agency to skip the standard three-step regulatory process described above. Most exempt regulations are published in final form only; however, some exempt actions include notice and publication of proposed text.

The fast-track rulemaking process is for regulations that are expected to be noncontroversial. If the Governor determines that a regulation is noncontroversial, the agency may publish the fast-track rulemaking in the Virginia Register of Regulations. A public comment period of at least 30 days follows publication of the fast-track rulemaking.

A fast-track regulation can become effective as early as 45 days from publication in the Virginia Register of Regulations.

If objections to use of the fast-track process for the regulatory action are raised by any of the following during the comment period, the fast-track process ends and the regulatory action continues under the normal regulatory process (starting with Step 2):

Any member of the applicable standing committee of the House of Delegates or Senate of Virginia,

Any member of the Joint Commission on Administrative Rules (JCAR), or

Ten or more members of the public.

If there are no objections as described above, the regulation becomes effective 15 days after the close of the public comment period, unless the regulation is withdrawn or a later effective date is specified by the agency.

## **Virginia Register**

## **Virginia Administrative Process Act**