

# Commonwealth of Virginia



## Report to the General Assembly

October 1, 2020

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The Honorable Eileen Filler-Corn  
Speaker of the House  
House of Delegates  
Pocahontas Building  
900 East Main Street  
Richmond, Virginia 23219

The Honorable Mamie E. Locke  
Chair, Senate Rules Committee  
Senate of Virginia  
Pocahontas Building  
900 East Main Street  
Richmond, Virginia 23219

Dear Speaker Filler-Corn and Senator Locke:

Chapters 444 and 445 of the 2018 *Acts of Assembly* directed the Department of Planning and Budget (DPB), under the direction of the Secretary of Finance, to “administer a three-year regulatory reduction pilot program beginning July 1, 2018, and ending July 1, 2021.”

To address the requirements in the Act, DPB developed a pilot program with a primary objective of reducing the discretionary regulatory requirements in the two pilot agencies, the Department of Occupational Regulation (DPOR), and the Department of Criminal Justice Services (DCJS). Although both pilot agencies exceeded the first-year reduction objective of 7.5 percent, both agencies reported that the COVID-19 pandemic affected their ability to meet the second-year objective of 15 percent by July 1, 2020. By that date, DPOR was able to reach the objective, reporting a reduction of 15.12 percent, while DCJS reported a cumulative reduction of 12.87 percent. In addition to this reduction effort, the Acts required all other executive branch agencies subject to the Administrative Process Act to submit baseline regulatory “catalogs” listing the number of regulatory requirements. This exercise was also slowed by pandemic response but is well underway.

As part of this program, the Secretary of Finance is required to report annually to the Speaker of the House and the Chairman of the Senate Rules Committee no later than October 1 of each year “on the progress of the regulatory reduction pilot program established pursuant to this act.” This report is submitted in satisfaction of the Act.

## Executive Summary

Chapters 444 and 445 of the 2018 *Acts of Assembly* create a regulatory reduction pilot program to be administered by the Department of Planning and Budget (DPB), under the direction of the Secretary of Finance. The pilot program focuses on two pilot agencies, the Department of Criminal Justice Services (DCJS), and the Department of Professional and Occupational Regulation (DPOR). Each pilot agency was directed to submit a “regulatory catalog” listing each regulatory requirement, and then to reduce these requirements by 25 percent over a three-year period ending July 1, 2021.

Although both pilot agencies exceeded the first-year reduction objective of 7.5 percent, only DPOR achieved the cumulative goal of 15 percent by July 1, 2020. Both agencies reported that the COVID-19 pandemic affected their ability to meet the second-year target, due to the suspension of regulatory review committee and board meetings. DCJS reported a reduction of 12.87 percent, which it achieved primarily by streamlining the application process. The regulatory boards supported by DPOR reported an overall reduction of 15.12 percent, which they primarily achieved by streamlining existing requirements. DPOR reflects the most common form of regulatory activity in Virginia, in which regulations are promulgated by regulatory boards and the agencies primarily provide staff support.

The remaining executive branch agencies subject to the Virginia *Administrative Process Act* (APA) were required to submit a regulatory catalog by July 1, 2020. In Virginia, regulations are developed in accordance with the APA. In some cases, however, a regulation may be promulgated without adhering to the APA because a statutory exemption applies. Overall, about half of all regulations promulgated in the last 15 years have been exempt from the APA and executive branch review. DPB identified 40 additional executive agencies that were required to submit a regulatory catalog, plus another 31 agencies that are exempt from the pilot program because they have a statutory exemption from the APA.

## Introduction

Chapters 444 and 445 of the 2018 Acts of Assembly created a regulatory reduction pilot program that, among other requirements, directs the Secretary of Finance to report to the Speaker of the House and the Chairman of the Senate Rules Committee by October 1, 2020, on the progress of the pilot program.

This three-year pilot program, which is administered by the Department of Planning and Budget (DPB), directs the two pilot agencies – the Department of Professional and Occupational Regulation (DPOR), and the Department of Criminal Justice Services (DCJS) – to create “baseline regulatory catalogs” which contain an initial count of regulatory requirements for each agency. These catalogs were submitted to DPB on October 1, 2018, and are posted on DPB’s Regulatory Town Hall website. As discussed below, other executive branch agencies were directed to submit regulatory catalogs to DPB by July 1, 2020.

The pilot program also directs DPOR and DCJS to reduce their discretionary regulatory requirements by 25 percent. (Discretionary requirements are those which are not required by law.) This reduction may be done by amending, eliminating, or streamlining (i.e., lowering regulatory burden by improving administrative efficiency). The pilot agencies were required to achieve an initial reduction of 7.5 percent by July 1, 2019. This was followed by another 7.5 percent reduction by July 1, 2020, and an additional 10 percent by July 1, 2021. Progress toward these objectives is to be addressed in annual reports by the Secretary of Finance.

Both pilot agencies surpassed the initial goal of 7.5 percent. DCJS reduced their regulatory requirements by 10.1 percent, and DPOR attained a reduction of 9.78 percent. The Initial Progress Report is posted on DPB's Regulatory Town Hall website and published on the Virginia General Assembly's website.<sup>1</sup>

As indicated in this second of three annual reports, progress on the Commonwealth's regulatory reform effort is proceeding on schedule and has continued to reduce the regulatory burden on Virginians. However, the pilot agencies, along with several other participating agencies, reported difficulty achieving the reduction and reporting targets due to the impact of the COVID-19 pandemic upon agency operations and regulatory board meetings. Despite this impact, DCJS achieved a cumulative regulatory reduction of 12.87 percent (an additional 2.73 percent since July 1, 2019), while DPOR achieved a reduction of 15.12 percent (an additional 5.34 percent since July 1, 2019). The progress made by the two pilot agencies is discussed below, along with the participation in this effort by other executive branch agencies over the past year.

#### Agencies and Boards Promulgate Regulations in Accordance with the Virginia Administrative Process Act

Unlike statutory law, which is enacted by the General Assembly, regulations are laws promulgated by agencies and regulatory boards. Almost all agencies and regulatory boards are in the executive branch, but regulations also are promulgated by legislative, judicial, and independent agencies. Presently, 73 agencies have regulations, of which 62 are executive branch agencies.

Regulations are developed in accordance with the Virginia Administrative Process Act (APA) and then published in the Virginia Administrative Code (VAC). In many cases, however, a regulation may be promulgated without adhering to all of the APA's rule-making requirements. This can occur if regulations pertaining to an agency or board, a topic or subject matter, or an activity or function have been statutorily exempted from the APA. These "exempt" regulations may then be adopted without going through the typical promulgation and review process outlined in the APA and the Executive Order on rulemaking. As noted below, only those executive branch agencies whose regulations are subject to the APA (those without an exemption) are in-scope to the requirements of Chapters 444 and 445. More information on the history and mechanics of Virginia's regulatory process, and the pilot agencies, is presented in the first annual report.

#### Department of Professional and Occupational Regulation

DPOR is located in the Secretariat of Commerce and Trade. Both the agency itself and its 18 associated boards regulate over 300,000 professionals. As shown in Table 1 below, the number of regulants governed by each board ranges from zero (Natural Gas Automobile Mechanics and Technicians) to 86,092 (Contractors). Because of this range, four boards account for 89 percent of DPOR's total number of regulants.

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<sup>1</sup> See <https://rga.lis.virginia.gov/Published/2019/RD403>.

**Table 1  
Regulants and Requirements by DPOR Board\***

<b>Board/Occupation</b>	<b>Regulants</b>	<b>Mandatory Requirements</b>	<b>Discretionary Requirements</b>	<b>Number Reducing</b>
Contractors	86,092	37	129	8
Barbers and Cosmetology	74,496	23	436	95
Real Estate Board	73,249	111	79	6
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects	44,276	31	104	71
Common Interest Community Board	7,470	85	327	44
Asbestos, Lead, and Home Inspectors	5,944	173	123	12
Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals	5,393	14	120	2
Real Estate Appraiser Board	4,217	79	45	4
Hearing Aid Specialists and Opticians	2,706	20	81	5
Fair Housing Board	1,926	14	16	1
Professional Soil Scientists, Wetland Professionals, and Geologists	1,576	34	51	5
Auctioneers Board	1,369	18	53	1
Cemetery Board	1247	33	43	5
Boxing, Martial Arts, and Professional Wrestling	688	30	209	1
Waste Management Facility Operators	651	14	29	1
Polygraph Examiners	322	0	54	2
Branch Pilots	41	16	47	1
Natural Gas Automobile Mechanics and Technicians	0	0	36	36
Department of Professional and Occupational Regulation*	N/A	14	2	0
<b>TOTAL</b>	<b>311,663</b>	<b>746</b>	<b>1,984</b>	<b>300</b>

\* Shared requirements of the boards of Boxing, Martial Arts, and Professional Wrestling; Natural Gas Automobile Mechanics and Technicians; and Polygraph Examiners that are not reflected elsewhere in this table.

Source: DPB analysis of regulant population (August 1, 2020) and catalog data submitted by DPOR.

### *Regulatory Authority Rests Primarily with DPOR's Boards, Not the Agency*

When the regulatory reduction pilot program began on July 1, 2018, DPOR supported 18 boards. Of these, 15 have independent regulatory authority and are responsible for developing regulatory requirements, issuing licenses and other credentials, making enforcement decisions, and promulgating changes to regulations or fees. In contrast, three boards are advisory and the director of DPOR has been required by statute to promulgate regulations in those areas: Boxing, Martial Arts, and Professional Wrestling; Natural Gas Automobile Mechanics and Technicians; and Polygraph Examiners. These three areas account for 12 percent of DPOR's regulatory requirements.

These three advisory boards were recently reduced to two by Chapter 1168 of the 2020 *Acts of Assembly*, which repealed the statute requiring regulation of natural gas automobile mechanics and technicians. As a result, DPOR repealed the Natural Gas Automobile Mechanics and Technicians regulation (effective August 14, 2020), reducing the number of advisory boards from three to two.

### *DPOR's Boards Met the Second Reduction Target Primarily by Streamlining Regulatory Requirements*

Presently, DPOR and its regulatory boards have 50 Chapters in the VAC, which contain a total of 2,730 requirements. Of this amount, DPOR reports that 1,984 are discretionary. As noted in the first annual report, DPOR achieved an overall reduction of 9.78 percent by July 1, 2019 primarily by lowering barriers to entry and improving regulatory clarity.

DPOR reports that its boards met the July 1, 2020 target of 15 percent by streamlining and eliminating 300 requirements, which equates to an overall reduction of 15.12 percent. For almost all of the requirements, the regulatory burden was reduced by streamlining existing requirements (74 percent), primarily through 22 regulatory actions. Other streamlining occurred through process improvements by lowering the burden imposed by reporting and compliance obligations. More specifically, these requirements were eliminated or streamlined by:

- Streamlining the business registration process;
- Repealing and consolidating requirements;
- Repealing a regulatory chapter;
- Striking unnecessary language requiring adherence to standards of conduct;
- Repealing certain reporting requirements; and
- Eliminating certain badge requirements for apprentices of barbers, cosmetologists, and estheticians.

DPOR reports that other reduction efforts are being evaluated, including simplifying training curricula, expanding pathways to licensure, allowing more time to pass exams, and extending the amount of time a permit is valid. DPOR also reports the potential for other streamlining initiatives is being reviewed, most notably the modernization of DPOR's three major information technology systems. DPOR is also planning to complete its evaluation of the need for continued regulation of the following occupations:

- Virginia licensed professional soil scientists;
- Waste management facility operators;
- Landscape architects;
- Common interest community manager principal/supervisory employees;

- Certified interior designers;
- Backflow prevention device workers; and
- Virginia certified professional wetland delineators.

### Department of Criminal Justice Services

DCJS and the Criminal Justice Services Board (CJSB) are part of the Secretariat of Public Safety and Homeland Security, and are charged with planning and implementing programs to improve the effectiveness of the criminal justice system. In addition, DCJS administers and distributes federal and state grant funding, and provides information and technical assistance to all segments of the criminal justice system. According to the agency's 2018-2020 Strategic Plan, DCJS trains, certifies, or regulates over 120,000 law enforcement professionals, training academies, private security businesses, bail bondsmen, and other trades and commercial enterprises.

#### *Regulatory Authority Is Assigned to DCJS, but the Agency Acts under the Direction of the Board on Regulatory Matters*

The CJSB has 29 members, of which 25 voting members represent various criminal justice stakeholder groups, including state agencies and local governments, and four non-voting members are legislators. Although the authority to adopt regulations rests with DCJS (§ 9.1-102), the agency reports that for regulatory matters it operates under the direction of the CJSB, which is established as a policy board. As a result, DCJS submits all proposed regulatory actions to the CJSB for approval.

#### *DCJS Did Not Achieve the Second Reduction Target*

DCJS has 23 Chapters in the VAC, which contain a total of 3,507 requirements. Of this amount, DCJS reports that 2,977 are discretionary. DCJS exceeded the July 2019 target by streamlining the application process and eliminating a total of 302 requirements, which equates to 10.14 percent.

However, the agency fell short of the 15 percent reduction target for 2020, reporting an overall reduction of 12.87 percent (383 requirements). This was accomplished by streamlining 291 and eliminating 92 requirements in 11 chapters, with more than half relating to private security (55 percent). For 291 requirements, the regulatory burden was reduced by streamlining the application process (76 percent). Three regulatory actions also were pursued, eliminating 92 requirements. According to DCJS,

- 81 discretionary requirements were eliminated through a non-exempt action to separate agency and academic responsibilities in regulations involving training standards and training academies.
- Ten discretionary requirements were eliminated through a non-exempt action that involved monitoring requests by firearms dealers for criminal history record checks; and
- One discretionary requirement was eliminated through an exempt action that involved use of the term "police" by special conservators of the peace.

In addition to the 383 requirements in process for reduction, the agency is planning to eliminate 38 discretionary requirements by repealing the *Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections*. DCJS is also beginning the regulatory review process for six regulatory programs to streamline or reduce regulatory requirements:

- Regulations Relating to Private Security Services Businesses (6VAC20-172);
- Regulations Relating to Private Security Services Training Schools (6VAC20-173);
- Regulations Relating to Private Security Services Registered Personnel (6VAC20-174);
- Regulations Relating to Special Conservators of the Peace (6VAC20-230);
- Regulations Relating to Property and Surety Bail Bondsmen (6VAC20-250); and
- Regulations Relating to Bail Enforcement Agents (6VAC20-260).

These chapters contain approximately 70 percent of the regulatory requirements contained in DCJS's baseline regulatory catalog. However, due to challenges caused by the COVID-19 pandemic, the agency reports that the regulatory process has been delayed.

Number of Regulations, and Use of APA Exemptions, Varies Widely by Agency

In addition to the two pilot agencies, 60 executive branch agencies also promulgate regulations. Regulations also are promulgated by legislative, judicial, and independent agencies. Each chapter in the VAC is generally considered to be an individual regulation, and each chapter contains one or more sections. Because information on the total number of requirements is only available for executive branch agencies subject to the APA, the most detailed information available for analysis across the entire executive branch is the number of sections.

In total, executive branch agencies have promulgated 20,941 VAC sections. On net, this equates to 317 fewer regulatory sections than last year, primarily because the Department of Fire Programs (DFP) repealed four regulations (See Table 2 for a comprehensive list of changes in the number of regulatory sections from 2019 to 2020).

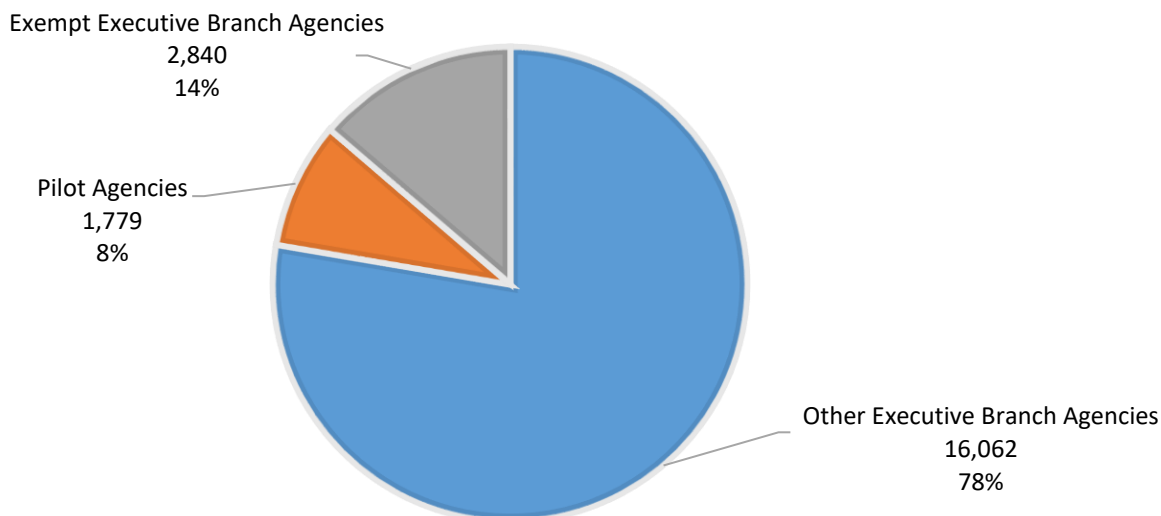
**Table 2**  
**Executive Branch Agencies with a Change in the Number of Regulatory Sections from 2019 to 2020**

<b>Agencies with Fewer Sections</b>	<b>Change</b>	<b>Agencies with More Sections</b>	<b>Change</b>
Department of Fire Programs	<b>-318</b>	Department of Elections	<b>1</b>
Virginia Department of Health	<b>-85</b>	Department of Juvenile Justice	<b>1</b>
Dept. of Medical Assistance Services	<b>-30</b>	Va. Alcoholic Beverage Control Authority	<b>1</b>
DPOR	<b>-20</b>	Virginia Commonwealth University	<b>2</b>
Department of Social Services	<b>-17</b>	Department of Wildlife Resources	<b>4</b>
Department of Transportation	<b>-4</b>	State Council of Higher Education for Va.	<b>5</b>
Department of Agriculture and Consumer Services	<b>-3</b>	Department of Behavioral Health and Developmental Services	<b>6</b>
Department of State Police	<b>-2</b>	Department of Education	<b>6</b>
		Department of Environmental Quality	<b>7</b>
		Department of Criminal Justice Services	<b>12</b>
		Marine Resources Commission	<b>50</b>
		Department of Health Professions	<b>67</b>



As shown in Figure 1 (below), the two pilot agencies have a total of 1,779 sections in the VAC (DCJS has 417 regulatory sections, and DPOR has 1,362 regulatory sections). This equates to eight percent of the total number of VAC sections promulgated by executive branch agencies.

**Figure 1: Number of VAC Sections by Type**



Source: DPB analysis of *Virginia Administrative Code* and Regulatory Town Hall data.

Executive branch agencies that are exempt from the regulatory reform pilot program have a total of 2,840 sections, which equates to 14 percent of the total number of VAC sections promulgated by executive branch agencies. Although the regulatory requirements in these sections are not being addressed by the current regulatory reform efforts, the number of requirements in these sections are unlikely to represent a significant proportion of the total. Lastly, as shown in Figure 1, the remaining 78 percent of VAC sections are attributed to 40 executive branch agencies, which were required to submit regulatory catalogs by July 1, 2020.

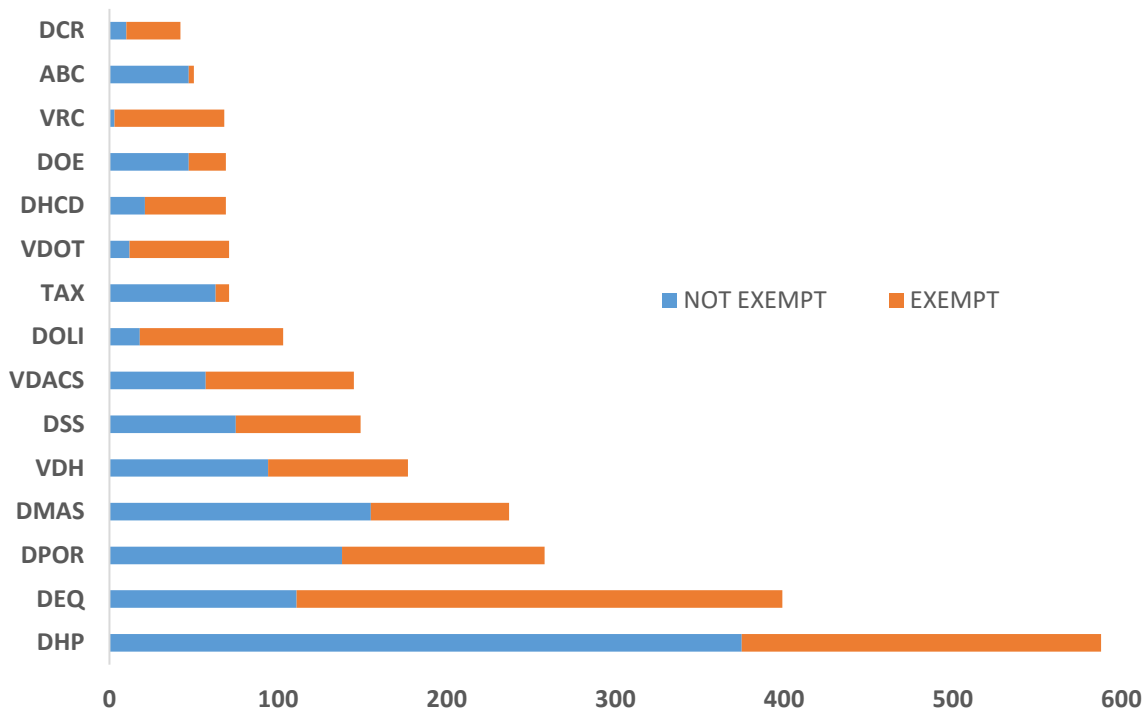
Every regulation is promulgated via a regulatory “action.” The bar chart in Figure 2 (below) illustrates the 15 agencies with the highest number of regulatory actions in the 15-year period beginning on July 1, 2006. Over this period, the Department of Health Professions (DHP) and its 13 health regulatory boards promulgated 588 actions, of which 213 (36 percent) were exempt from the APA and thus not subject to the executive branch review process.

As noted in the initial regulatory reform report, both pilot agencies had a similar percentage of exempt actions over the fifteen-year period FY 2005 through FY 2019. Over the more recent review period, FY 2006 through FY2020, this exempt percentage increased: DCJS’ percentage of exempt actions rose from 33 to 36 percent, and DPOR’s percentage rose from 39 to 47 percent.

However, this is still lower than the overall percentage. In the period FY 2006 through 2020, about 51 percent of the 2,908 regulatory actions promulgated by all executive branch agencies were exempt. It

should be noted, however, that exempt actions may be under-reported because they may be adopted without submitting them to the Regulatory Town Hall.

**Figure 2: Fifteen agencies with the highest number of regulatory actions since fiscal year 2006**



Source: DPB analysis of *Virginia Administrative Code* and Regulatory Town Hall data.<sup>2</sup>

### *Regulatory Catalogs Subject to the July 1, 2020 Reporting Requirement*

Chapters 444 and 445 require “all executive branch agencies subject to the Administrative Process Act” to develop a baseline regulatory catalog. For context, 73 agencies (in all branches) have regulations in the VAC. Of these, 33 are exempt from this requirement. The two pilot agencies, DPOR and DCJS, had already complied with the requirement to submit a baseline regulatory catalog, which each agency submitted on October 1, 2018.

With assistance from the Office of the Attorney General, DPB identified 40 executive branch agencies which were required to submit a regulatory catalog (Table 3).

<sup>2</sup> DCJS is not listed in Figure 2 because they were the 16<sup>th</sup> agency with the highest number of regulatory actions since 2006. Other agencies in Figure 2 are the Departments of Environmental Quality (DEQ), Medical Assistance Services (DMAS), Health (VDH), Social Services (DSS), Agriculture and Consumer Services (VDACS), Labor and Industry (DOLI), Taxation (TAX), Transportation (VDOT), Housing and Community Development (DHCD), Education (DOE), Virginia Racing Commission (VRC), Conservation and Recreation (DCR), and the Virginia Alcoholic Beverage Control Authority (ABC).

<b>Table 3</b>	
<b>Forty Executive Branch Agencies Required to Submit Regulatory Catalogs by July 1, 2020 <sup>1</sup></b>	
Alcoholic Beverage Control Authority	Department of Housing & Community Development
Board of Accountancy	Department of Human Resource Management
Department for Aging and Rehabilitative Services	Department of Juvenile Justice
Department for the Blind and Vision Impaired	Department of Labor and Industry
Department for the Deaf and Hard-Of-Hearing	Department of Medical Assistance Services
Department of Aviation	Department of Mines, Minerals and Energy
Department of Agriculture & Consumer Services	Department of Motor Vehicles
Dept. of Behavioral Health & Develop. Services	Department of Social Services
Department of Conservation and Recreation	Department of Taxation
Department of Corrections	Department of the Treasury
Department of Education	Department of State Police
Department of Elections	Department of Transportation
Department of Environmental Quality	Department of Veterans Services
Department of Fire Programs	Department of Wildlife Resources <sup>2</sup>
Department of Forensic Science	Motor Vehicle Dealer Board
Department of Forestry	Office of the State Inspector General
Department of General Services	State Council of Higher Education for Virginia
Department of Health	Va. Birth-Related Neurological Injury Comp. Program
Department of Health Professions	Virginia Employment Commission
Department of Historic Resources	Virginia Racing Commission
<p><sup>1</sup> DPB originally expected 41 agencies to submit a catalog (see Table Two of the initial progress report). However, since publication of the initial progress report, the Virginia Community College System (VCCS) was determined to be exempt from the APA as an educational institution, bringing the total number of agencies submitting a catalog to 40.</p> <p><sup>2</sup> Chapter 958 of the 2020 Acts of Assembly renamed the Department of Game and Inland Fisheries (DGIF) to the Department of Wildlife Resources (DWR). With the exception of DWR's Public Participation Guidelines (PPG) and the watercraft regulations, DWR's regulations are exempt from the APA.</p>	

Although some of these agencies have an APA exemption that applies to particular topics or actions, they lack an agency-wide exemption and thus the agency is subject to the APA. DPB gave each agency a customized catalog template and provided that if the agency wished to assert an exemption from the pilot program, documentation of the rationale had to be provided. Two agencies, the Department of Rail and Public Transportation, and the Virginia Department of Emergency Management, provided documentation indicating their exemption from the pilot program. Although both agencies have regulations in the VAC in the form of Public Participation Guidelines, which apply when an agency develops or amends regulations, both agencies reported that they lack the statutory authority to promulgate regulations and are exempt from the regulatory reform program on that basis.

In addition, 18 executive branch agencies are exempt from the APA and thus are not in scope to Chapters 444 and 445 (Table 4). All but two of these agencies appear to be exempt as an “educational institution” per § 2.2-4002 (A)(6) of the *Code of Virginia*. These 18 agencies account for 13 percent of the 22,548 sections in the VAC.

<b>Table 4</b>	
<b>Eighteen Executive Branch Agencies Not Subject to the Regulatory Catalog Requirement</b>	
Department of Small Business & Supplier Diversity	The Library Of Virginia
George Mason University	University of Mary Washington
James Madison University	University of Virginia
Longwood University	Virginia Commonwealth University
Marine Resources Commission	Virginia Community College System
Norfolk State University	Virginia Military Institute
Old Dominion University	Virginia Museum of Fine Arts
Radford University	Virginia Polytechnic Institute & State University
The College of William and Mary in Virginia	Virginia State University

Finally, 11 non-executive agencies were not required to submit catalogs because they are legislative, judicial, or independent agencies (Table 5). These 11 agencies account for eight percent of the 22,808 sections in the VAC.

<b>Table 5</b>	
<b>Eleven Non-Executive Branch Agencies Not Required to Submit Regulatory Catalogs</b>	
<b>Agency Name</b>	<b>Type</b>
Attorney General and Department of Law	Independent/Other
Board of Bar Examiners	Judicial
Commission on the Virginia Alcohol Safety Action Program	Legislative
Indigent Defense Commission	Judicial
Judicial Inquiry and Review Commission	Judicial
State Corporation Commission	Independent/Other
Virginia Code Commission	Legislative
Virginia Lottery	Independent/Other
Virginia Housing Development Authority	Independent/Other
Virginia State Bar	Judicial
Virginia Workers' Compensation Commission	Independent/Other