

# Commonwealth of Virginia



## Report to the General Assembly

August 15, 2021

# Commonwealth of Virginia

August 14, 2021

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. Here in 2021, DPOR achieved a reduction of 26.92 percent, while DCJS achieved 14.14 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 also was slowed by pandemic response but is near completion.

As part of this program, the Secretary of Finance is required to report by August 15, 2021, to the Speaker of the House and the Chairman of the Senate Rules Committee on (i) the progress toward the 25 percent regulatory reduction goal, (ii) recommendations for expanding the program to other agencies, and (iii) any additional information the Secretary determines may be helpful. In addition, if the program has achieved less than a 25 percent total reduction across both agencies, the Secretary of Finance is also required to report by October 1 on the feasibility and effectiveness of implementing a 2-for-1 regulatory budget. This report is submitted in satisfaction of both requirements, and also updates the data presented in the annual reports submitted in 2019 and 2020.

## **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.

While both agencies reported that the COVID-19 pandemic affected their ability to meet the second and third-year targets, due to the suspension of regulatory review committee and board meetings, both agencies successfully reduced requirements. Over the three-year review period, the pilot agencies have achieved the following cumulative reductions:

- 2019 - Both pilot agencies exceeded the first-year reduction objective of 7.5 percent.
- 2020 - DPOR achieved the cumulative goal of 15 percent with a reduction of 15.12 percent, primarily through streamlining; DCJS reported a reduction of 12.87 percent, which it also achieved by streamlining
- 2021 – DPOR achieved 26.91 percent, primarily through streamlining, surpassing the 25 percent cumulative goal, while DCJS achieved 14.14 percent.

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.) In addition to DPOR and DCJS, DPB identified 39 additional executive agencies that were required to submit a regulatory catalog. Another 32 agencies were identified that are exempt from the pilot program because they are either executive branch agencies with a statutory exemption from the APA (21), or because they are not executive branch agencies (11).

## **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 August 15, 2021, 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 that are not required by another 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 has been addressed in two annual reports by the Secretary of Finance.<sup>1</sup>

While both agencies reported that the COVID-19 pandemic affected their ability to meet the second and third-year targets, due to the suspension of regulatory review committee and board meetings, both agencies successfully reduced requirements. Over the three-year review period, the pilot agencies have achieved the following cumulative reductions:

- 2019 - Both pilot agencies exceeded the first-year reduction objective of 7.5 percent.
- 2020 - DPOR achieved the cumulative goal of 15 percent with a reduction of 15.12 percent, primarily through streamlining; DCJS reported a reduction of 12.87 percent, which it also achieved by streamlining
- 2021 – DPOR achieved 26.91 percent, primarily through streamlining, surpassing the 25 percent cumulative goal while DCJS achieved 14.14 percent.

### **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 (such as public comment periods and economic analysis). 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**

The Department of Professional and Occupational Regulation (DPOR) reflects the most common form of regulatory activity in Virginia, in which regulations are primarily promulgated by regulatory boards with staff support provided by the agency. Both the agency 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 87,280 (Contractors).<sup>2</sup> Because of this range, four boards account for 90 percent of DPOR's total number of regulants.

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<sup>1</sup> See <https://rga.lis.virginia.gov/Published/2019/RD403> and <https://rga.lis.virginia.gov/Published/2020/RD394>

<sup>2</sup> The Natural Gas Automobile Mechanics and Technicians Advisory Board was formed in 2014 and abolished through Chapter 1168 of the 2020 Acts of Assembly. Subsequently, this regulation was repealed effective August

**Table 1  
Regulants by DPOR Board/Occupation**

<b>Board/Occupation</b>	<b>8/1/2019 Number Regulants*</b>	<b>6/1/2021 Number Regulants</b>	<b>6/1/2021 Number Professions</b>	<b>Change in Regulants since 2019</b>	<b>Percent Change since 2019</b>
Athlete Agents^^	0	23	2	23	N/A
Polygraph Examiners^^	317	324	2	7	2.2%
Real Estate Appraiser Board	4,335	4,254	12	-81	-1.9%
Common Interest Community	7,410	7,618	8	208	2.8%
Barbers and Cosmetology	73,879	74,958	54	1,079	1.5%
Real Estate Board	74,089	75,433	15	1,344	1.8%
APELSCIDLA ^	44,271	45,085	8	814	1.8%
Contractors	86,526	87,280	13	754	0.9%
Professional Soil Scientists, Wetland Professionals, and Geologists	1,207	1,216	5	9	0.8%
Natural Gas Automobile Mechanics and Technicians^^	0	0	1	0	N/A
WWWOSSP^	5,864	5,813	22	-51	-0.9%
Hearing Aid Specialists and Opticians	2,662	2,577	3	-85	-3.2%
Waste Management Facility Operators	667	634	1	-33	-5%
Branch Pilots	44	41	1	-3	-6.8%
Asbestos, Lead, and Home Inspectors	6,261	5,714	19	-547	-8.7%
Auctioneers Board	1,401	1,259	2	-142	-10.1%
Fair Housing Board	2,200	1,909	2	-291	-13.2%
Cemetery Board	1,124	979	3	-145	-12.9%
Boxing, Martial Arts, and Professional Wrestling^^	925	6	11	-919	-99.4%
<b>TOTAL</b>	<b>313,182</b>	<b>315,123</b>	<b>184</b>	<b>1,941</b>	<b>0.6%</b>
^ APELSCIDLA is the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. WWWOSSP is the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals					
^^ Occupation is administered by the Director of DPOR, not a regulatory board. (The authorizing regulation was repealed on August 14, 2020.) In addition, the Board for Professional and Occupational Regulation is a separate regulatory entity from DPOR that does not currently have any regulations.					
* Although July 2019 was used in prior reports, August 2019 data are used in this report because DPOR started collecting data on additional regulant populations in August 2019.					
<i>Source: DPB analysis of regulant population (August 1, 2019, August 1, 2020 and June 1, 2021) and catalog data submitted by DPOR.</i>					

14, 2020. This advisory board never met, and DPOR never received applications for certification so there were no regulants over its six-year history.

As shown in Table 1, the DPOR regulant population increased by less than one percent during the three-year reporting period. The majority of this increase (about 94 percent) was due to four boards/occupations: Real Estate Board; Barbers and Cosmetology; Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects; and Contractors.

In contrast, four boards experienced more than a 10 percent decline in their number of regulants: Boxing, Martial Arts, and Professional Wrestling; Fair Housing; Auctioneers; and Cemetery. The greatest decline occurred with the Boxing, Martial Arts, and Professional Wrestling program with a reduction of 99 percent. According to DPOR, the pandemic halted administration of the Boxing, Martial Arts, and Professional Wrestling Program for almost the entirety of 2020 and first half of 2021 largely because of the need for participants to maintain six to ten feet of physical distance, which prohibited licensing of events, promoters, and fighters. In addition, the Fair Housing Board (13 percent decline) and the Auctioneers Board (10 percent decline) also lost regulants, which was likely due to the pandemic. DPOR reported that the decrease in the number of regulants for the Cemetery Board could be attributed to a decision made by one of the cemetery owner-operators to restructure its operations.

DPOR confirmed that other decreases in regulant populations (six additional boards/occupations) are likely due to the pandemic, explaining that the number of regulants may reflect individuals who chose to take advantage of the temporary waiver issued by DPOR during the state of emergency that extended the validity of licenses, and gave regulants additional time to pay renewal fees without penalty or meet continuing education requirements.

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

When the regulatory reduction pilot program began on July 1, 2018, DPOR supported 19 boards. (The Board of Professional and Occupational Regulation was inadvertently omitted from this list in prior reports. Although BPOR has the authority to promulgate regulations, it does not have regulations.) Of these, 16 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 have been advisory and the director of DPOR was required by statute to promulgate regulations in those areas, which are: Boxing, Martial Arts, and Professional Wrestling; Natural Gas Automobile Mechanics and Technicians; and Polygraph Examiners. These three areas have accounted for 12 percent of DPOR's baseline 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. In addition, Chapter 481 of the 2020 *Acts of Assembly* added athlete agents to the list of occupations directly regulated by DPOR so they are listed separately in the table below. The authority to promulgate regulations for athlete agents rests solely with DPOR, although athlete agents are not under a board of any type and do not have regulations per se. According to DPOR, regulations are not necessary because the requirements for this occupation are clearly prescribed in statute.

**Table 2  
Requirements by DPOR Board/Occupation**

<b>Board/Occupation</b>	<b>Baseline Mandatory Requirements</b>	<b>Baseline Discretionary Requirements</b>	<b>Cumulative Requirements Reduced</b>	<b>Cumulative Requirements Reduced</b>
Department of Professional and Occupational Regulation^^	14	2	0	0.00%
Contractors	37	129	21	16.3%
Real Estate Board	111	79	13	16.5%
Barbers and Cosmetology	23	436	143	32.8%
APELSIDLA^	31	104	75	72.1%
Common Interest Community Board	85	327	107	32.7%
WWWOOSSP^	14	120	8	6.7%
Asbestos, Lead, and Home Inspectors	173	123	82	66.7%
Real Estate Appraiser Board	79	45	3	6.7%
Hearing Aid Specialists and Opticians	20	81	12	14.8%
Fair Housing Board	14	16	2	12.5%
Auctioneers Board	18	53	3	5.7%
Professional Soil Scientists, Wetland Professionals, and Geologists	34	51	10	19.6%
Cemetery Board	33	43	9	20.9%
Waste Management Facility Operators	14	29	3	10.3%
Polygraph Examiners^^	0	54	4	7.4%
Branch Pilots	16	47	1	2.1%
Athlete Agents^^	0	0	N/A	N/A
Boxing, Martial Arts, and Professional Wrestling ^^	30	209	2	0.96%
Natural Gas Automobile Mechanics and Technicians^^	0	36	36	100.00%
<b>TOTAL</b>	<b>746</b>	<b>1,984</b>	<b>534</b>	<b>26.9%</b>
^ APELSIDLA is the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. WWWOOSSP is the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals				
^^ Occupation is administered by the Director of DPOR, not a regulatory board. Shared requirements of these occupations are reflected under DPOR in this table. (The regulation for Natural Gas Automobile Mechanics and Technicians was repealed on August 14, 2020.) In addition, the Board for Professional and Occupational Regulation is a separate regulatory entity from DPOR that does not currently have any regulations.				
<i>Source: DPB analysis of catalog data reported by DPOR (October 2018 and June 2021).</i>				

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

When the regulatory reduction pilot program began on October 1, 2018, DPOR had 50 regulatory chapters with 2,730 requirements. Of this amount, DPOR reported that 1,984 were discretionary. Over the three-year review period, DPOR has achieved the following cumulative reductions:

- 2019: DPOR exceeded the 7.5 percent goal by achieving a 9.78 percent reduction through lowering barriers to entry and improving regulatory clarity.
- 2020: DPOR met the 15 percent cumulative goal by streamlining and eliminating requirements.
- 2021: DPOR exceeded the 25 percent cumulative goal, achieving 26.9 percent (534 total reduced requirements, with 85 percent of these reduced by streamlining and 15 percent eliminated).

Presently, DPOR and its regulatory boards have 49 regulatory chapters in the VAC, with 2,691 regulatory requirements. DPOR reports that 1,951 of these requirements are discretionary. While the net reduction for the review period is only seven requirements, this result does not take into consideration the reduction of the regulatory burden by the use of streamlining practices. These efforts, which account for approximately 85 percent of DPOR's reduction efforts, were primarily achieved through 36 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:

- Incorporating legislative updates to ensure compliance with legislation;
- Expanding opportunities for eligibility for licensure by clarifying qualifications and providing additional pathways to licensure;
- Improving business processes by allowing use of digital forms;
- 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 and filing requirements; and
- Eliminating certain badge requirements for apprentices of barbers, cosmetologists, and estheticians.

In addition, BPOR issued a report in December 2020, titled *Evaluation of the Need for Continued Regulation of Certain Professions and Occupations as Recommended by the Joint Legislative Audit and Review Commission*,<sup>3</sup> which was designed to:

- Determine the appropriate level of regulation, if any, for currently licensed soil scientists, waste management facility operators, and landscape architects, and
- Evaluate potential impacts of deregulation on currently certified common interest community manager employees, interior designers, backflow prevention device workers, and wetland delineators.

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<sup>3</sup> See <https://rga.lis.virginia.gov/Published/2020/RD690/PDF>



As a result of this review, BPOR recommended deregulation of soil scientists, waste management facility operators, and Common Interest Community Manager employees since these programs have national certifications that could be used in lieu of state licensure. However, no legislation has been introduced to allow the agency to pursue this deregulation. BPOR also determined that state certification or licensure reflected the least restrictive degree of regulation necessary to sufficiently protect the public for the following: landscape architects, interior designers, backflow prevention device workers, and wetland delineators.

### **Department of Criminal Justice Services**

The Department of Criminal Justice Services (DCJS) and the Criminal Justice Services Board (CJSB) 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 data supplied by DCJS, the number of regulants declined in the three-year reporting period, from 107,143 in 2018 to 97,983 in 2021, with an overall reduction of 9,160 regulants or 8.5 percent (see Table 3). DCJS explained that this may be due primarily to a database issue which resulted in double counting in 2018 of jail officers/courtroom security, in which people who held both certifications were included in both categories. This issue has since been resolved, and the 2021 number of regulants should correctly reflect the regulant population.

**Table 3  
DCJS Number of Regulants for 2018 and 2021**

<b>Regulant Type</b>	<b>2018 Number Regulants</b>	<b>2021 Number Regulants</b>	<b>Change</b>	<b>Percent Change</b>
Law-enforcement officers	22,559	21,834	-725	-3.2%
Jail officers	8,966	6,499	-2,467	-27.5%
Courtroom security/civil process	6308	399	-5,909	-93.7%
Department of Corrections	7,635	7,923	288	3.8%
Dispatchers	3,538	3,355	-183	-5.2%
Licensed Private Security Services Businesses	2,050	1,979	-71	-3.5%
Certified Compliance Agents for Businesses	2,277	2,339	62	2.7%
Certified Training Schools	140	132	-8	-5.7%
Certified Instructors	607	566	-41	-6.8%
Private Security Services Registered Personnel	47,362	47,935	573	1.2%
Special Conservators of the Peace	443	376	-67	-15.1%
Bail Bondsmen	383	277	-106	-27.7%
Bail Enforcement Agents	171	170	-1	-0.6%
Tow Truck Drivers	4,704	4,199	-505	-10.7%
<b>TOTAL</b>	<b>107,143</b>	<b>97,983</b>	<b>-9,160</b>	<b>-8.5%</b>

In the private security area, DCJS reports that the number of Special Conservators of the Peace has been declining fairly consistently in recent years, which may be due to a decrease in performance of the requisite background checks by law-enforcement agencies. As for the reduction in bail bondsmen, DCJS suspects that this may be due to recent legislation which increased the likelihood of suspension.<sup>4</sup> However, DCJS could not explain the reduction in tow truck drivers.

*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 and Third Reduction Targets*

At the start of the three-year review period, DCJS had 23 Chapters in the VAC, which contained a total of 3,507 requirements. Of this amount, DCJS reported that 2,977 were discretionary. DPOR achieved the following cumulative reductions over the reporting period:

- 2019 - DCJS exceeded the July 2019 target of 7.5 percent by streamlining the application process and eliminating a total of 302 requirements, which equates to 10.14 percent.
- 2020 - The agency fell short of the 15 percent reduction target for 2020, reporting an overall reduction of 383 requirements or 12.87 percent.
- 2021 - DCJS was unable to reach the 25 percent target, reporting 14.14 percent in cumulative reductions.

Presently, DCJS has 25 regulatory chapters (net increase of two chapters since the start of the review period). These chapters contain 3,505 regulatory requirements (a net decrease of two requirements) of which 2,974 are reported as discretionary (net decrease of three requirements).

DCJS achieved a reduction of 14.14 percent (421 requirements) in 13 regulatory chapters, with half of the total reduction (210) relating to private security (50 percent). The majority of this reduction was accomplished by streamlining the application process outside of the regulatory process, which reduced the regulatory burden across 291 regulatory requirements. An additional 130 requirements were eliminated in their entirety through the regulatory process, and 119 of these pertained to training standards. The 130 eliminated requirements are the result of four regulatory actions. According to DCJS,

- 81 discretionary requirements were eliminated through a non-exempt action (effective July 1, 2019) to separate agency and academic responsibilities in regulations involving training standards and training academies.
- Ten discretionary requirements were eliminated through a non-exempt action (effective October 19, 2018) that involved monitoring requests by firearms dealers for criminal history record checks; and

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<sup>4</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2078S>

- One discretionary requirement was eliminated through an exempt action (effective November 11, 2018) that involved use of the term “police” by special conservators of the peace.
- 38 discretionary requirements are currently in process to be eliminated by repealing *Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections*.

In addition to these four regulatory actions, DCJS has also received approval from the CJSB to begin the regulatory review process for six regulatory programs in an effort 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 six 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 continues to be delayed.

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

Including the two pilot agencies, 62 executive branch agencies promulgate regulations. Regulations also are promulgated by 11 legislative, judicial, or 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 21,157 VAC sections. On net, this equates to 104 fewer regulatory sections since commencement of the pilot program, primarily because the Department of Fire Programs (DFP) repealed four regulations that had a total of 318 sections (See Table 4 for a comprehensive list of changes in the number of regulatory sections from 2019 to 2021).

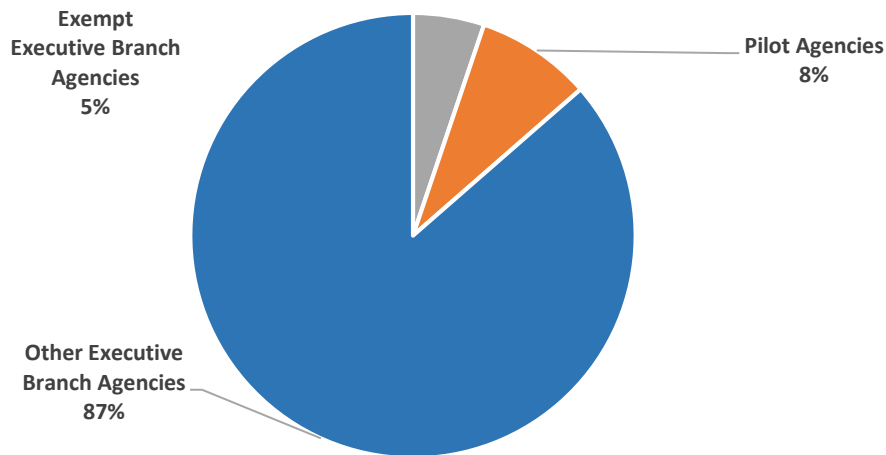
**Table 4**  
**Executive Branch Agencies with a Change in the Number of Regulatory Sections from 2019 to 2021**

<b>Agencies with Fewer Sections</b>	<b>Change</b>
Department of Fire Programs	<b>-318</b>
Department of Health	<b>-31</b>
Department of Professional and Occupational Regulation	<b>-21</b>
Department of Social Services	<b>-19</b>
Department of Transportation	<b>-15</b>
Department of Wildlife Resources	<b>-6</b>

<b>Agencies with Additional Sections</b>	<b>Change</b>
Board of Accountancy	<b>1</b>
Virginia Alcoholic Beverage Control Authority	<b>1</b>
Virginia Commonwealth University	<b>2</b>
Department of Mines, Minerals and Energy	<b>2</b>
Department of Elections	<b>3</b>
Department of Medical Assistance Services	<b>3</b>
Department of Juvenile Justice	<b>4</b>
State Council of Higher Education for Virginia	<b>5</b>
Department of Behavioral Health and Developmental Services	<b>6</b>
Department of Labor and Industry	<b>10</b>
Department of State Police	<b>11</b>
Department of Criminal Justice Services	<b>12</b>
Department of Agriculture and Consumer Services	<b>15</b>
Department of Education	<b>18</b>
Virginia Racing Commission	<b>20</b>
Department of Environmental Quality	<b>52</b>
Marine Resources Commission	<b>64</b>
Department of Health Professions	<b>77</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 1,361 regulatory sections). This equates to five 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.

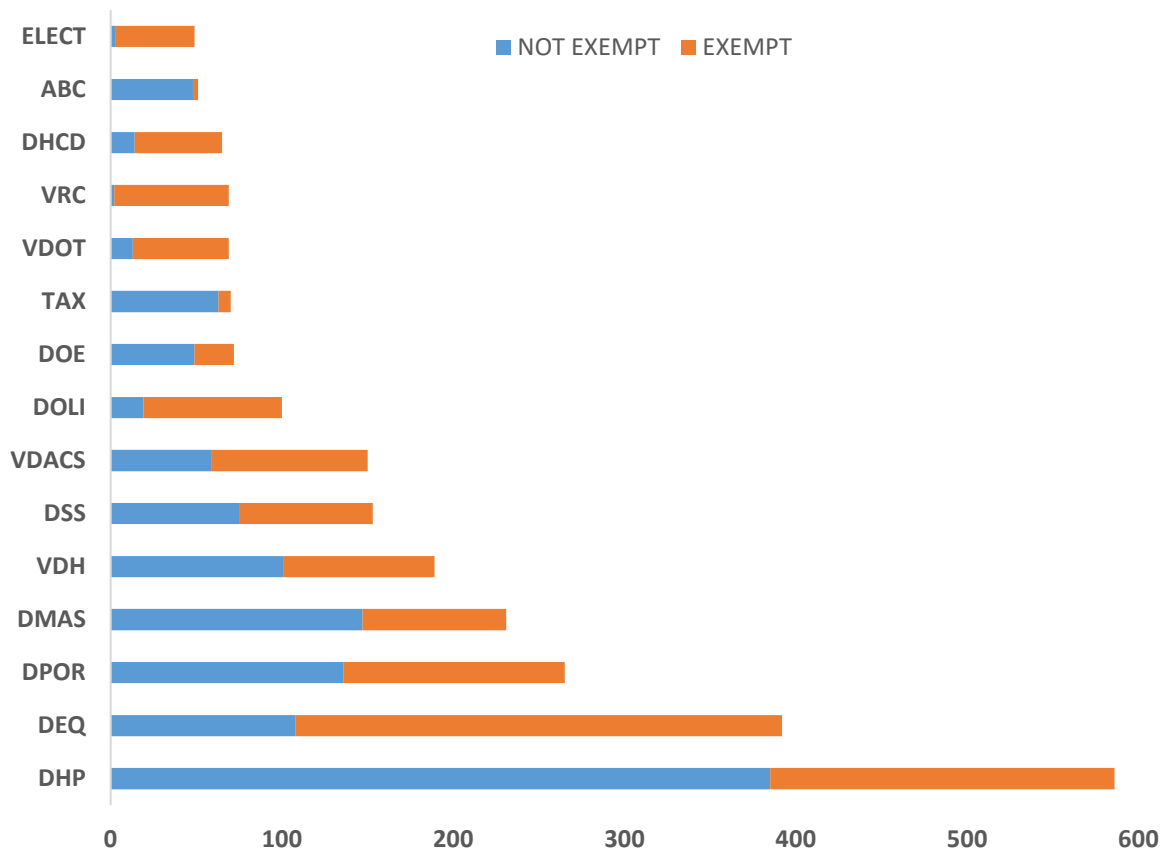
Executive branch agencies that are exempt from the regulatory reform pilot program have a total of 1,095 sections, which equates to five percent of the total number of VAC sections promulgated by executive branch agencies. Although the regulatory requirements in these sections are not being addressed 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 87 percent of VAC sections are attributed to 39 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, 2007. Over this period, the Department of Health Professions (DHP) and its 13 health regulatory boards promulgated 586 actions, of which 213 (34 percent) were exempt from the APA and thus not subject to the executive branch review process.

Both pilot agencies had a similar percentage of exempt actions over the initial fifteen-year period, FY 2005 through FY 2019. Over the more recent review period, FY 2007 through FY2021, this exempt percentage increased: DCJS’ percentage of exempt actions rose from 33 to 36 percent, and DPOR’s percentage rose from 39 to 48 percent.

In contrast, the overall percentage of exempt regulatory actions exceeds that of the pilot agencies. In the period from FY 2007 through 2021, about 51 percent of the 2,936 regulatory actions promulgated by all executive branch agencies were exempt. It should be noted, however, that exempt actions are likely under-reported because they may be adopted without submitting them to the Virginia Regulatory Town Hall.

**Figure 2: Fifteen agencies with the highest number of regulatory actions since fiscal year 2007**



Source: DPB analysis of *Virginia Administrative Code* and Regulatory Town Hall data.<sup>5</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, 34 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 39 executive branch agencies that were required to submit a regulatory catalog (Table 5).

<sup>5</sup> DCJS is not listed in Figure 2 because they were the 17<sup>th</sup> agency with the highest number of regulatory actions since 2007. Other agencies in Figure 2 are the Departments of Elections (ELECT), 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 5</b>	
<b>Thirty-Nine 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 Wildlife Resources <sup>2</sup>
Department of Fire Programs	Motor Vehicle Dealer Board
Department of Forensic Science	Office of the State Inspector General
Department of Forestry	State Council of Higher Education for Virginia
Department of General Services	Va. Birth-Related Neurological Injury Comp. Program
Department of Health	Virginia Employment Commission
Department of Health Professions	Virginia Racing Commission
Department of Historic Resources	
<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) and the Department of Veteran Services (DVS) were determined exempt, bringing the total number of agencies submitting a catalog to 39.</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, generally, 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 that are exempt from the pilot program, the Department of Rail and Public Transportation, and the Virginia Department of Emergency Management, have regulations in the VAC in the form of Public Participation Guidelines, which guide how an agency develops or amends regulations. However, both agencies reported that they lack the statutory authority to promulgate regulations and provided documentation of their exemption from the regulatory reform program on that basis.

In total, 21 executive branch agencies are exempt from the APA and thus are not in scope to Chapters 444 and 445 (Table 6). All but three of these agencies appear to be exempt as an “educational institution” per § 2.2-4002 (A)(6) of the *Code of Virginia*. These 19 agencies account for 13 percent of the 22,548 sections in the VAC.

<b>Table 6</b>	
<b>Twenty-One Executive Branch Agencies Not Subject to the Regulatory Catalog Requirement</b>	
Department of Rail and Public Transportation	The Library of Virginia
Department of Small Business & Supplier Diversity	University of Mary Washington
Department of Veteran Services	University of Virginia
George Mason University	Virginia Commonwealth University
James Madison University	Virginia Community College System
Longwood University	Virginia Military Institute
Marine Resources Commission	Virginia Museum of Fine Arts
Norfolk State University	Virginia Polytechnic Institute & State University
Old Dominion University	Virginia State University
Radford University	Virginia Dept. of Emergency Management
The College of William and Mary in Virginia	

Finally, 11 non-executive agencies were not required to submit catalogs because they are legislative, judicial, or independent agencies (Table 7). These 11 agencies account for eight percent of the 22,808 sections in the VAC.

<b>Table 7</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

*Majority of Agencies Submitted Regulatory Catalogs But Others Reported Challenges*

Agencies reported lack of staff and other priorities hindered completion of the baseline count. Based on DPB's review of agency submissions, 28 of the 39 agencies submitted a complete catalog by July 1, 2020. As of the date of this report, 38 of the 39 agencies have submitted a catalog; only the Virginia Employment Commission has not yet submitted a catalog, reporting a lack of staff owing to the impact of COVID-19. Agency catalogs are available to the public on the Virginia Regulatory Town Hall website.



## **Additional Information**

The regulatory reduction pilot program directs the Secretary of Finance to provide “any additional information the Secretary determines may be helpful to support the General Assembly’s regulatory reduction and reform efforts.” DPB’s review of agency regulatory catalog submissions identified five regulatory areas in which greater attention may be required, both by individual agencies and by policymakers. These areas include a lack of consistency among agencies in how they approach regulatory matters as well as opportunities for additional consistency in regulatory processes. Agency compliance with the requirements of the pilot program also was hindered by the COVID-19 pandemic, which limited or delayed the ability of many agencies to complete their regulatory catalogs. In combination, these factors underscore the need to account for and address differences between agencies in terms of the sophistication of their regulatory capabilities.

### *Inconsistent Definition and Counting of Regulatory Requirements*

Although DPB provided guidance to agencies in order to promote a consistent methodology for determining a regulatory requirement, as the promulgating entity each agency was responsible for determining how to define and count its regulatory requirements. Although some variation may be expected, the degree of variation may need to be addressed in order for future regulatory reform efforts to be fruitful. For example, some agencies counted requirements at the section level while others counted at the subsection level. This discrepancy leads to lack of comparability between agencies. In addition, this indicates that across-the-board efforts with a set reduction percentage goal would lead to differing outcomes because agencies chose differing starting points.

### *Accuracy of Information on Specific Authority for Regulations*

Both the pilot program, and the ongoing regulatory process, depend upon accurate knowledge of the legal authority for a given regulation. In some cases, agencies reported a lack of certainty regarding whether the original basis for an individual regulatory requirement was based in a particular statutory directive or instead derived from the general authority of the agency or board. (This appears to result from a lack of documentation at the time the requirement was adopted, combined with loss of institutional knowledge following staff turnover, and outdated references.) If the authority is not clearly known, then the agency cannot determine if the regulation’s requirements are mandated by a specific law (and thus exempt from reduction) or a discretionary exercise of the promulgating entity’s general authority (and thus potentially subject to future reduction efforts).

### *Clarity of Exemptions Asserted by Agencies*

As discussed above, agencies and/or regulations can be exempt from the APA and hence the standard regulatory process. On average, about half of all regulatory changes adopted annually are exempt from review. For purposes of the pilot program, executive branch agencies and/or some of their regulations were exempted from the pilot if they were also exempt from the APA; however, this is a self-selected and reported activity. For the pilot program, two agencies provided documentation from the Office of the Attorney General that they were exempt. But on an ongoing basis, it is not clear whether the exemptions asserted by agencies are valid. In some cases, this may result from the lack of specificity of certain exemptions, which may allow for a different interpretation than was anticipated when the exemption was originally drafted. To the extent that exemptions are not properly asserted, some regulations may be adopted without the level of review that policymakers may have intended.

### *Proper Treatment of Documents Incorporated by Reference Is Unclear*

A Document Incorporated by Reference (DIBR) is a document published by a third party that contains requirements that regulants must follow, and agencies must therefore enforce and count. According to the Registrar of Regulations, a document is a DIBR if the text of the regulation contains incorporating language such as “document X is incorporated by reference” or “in accordance with standards of document X.” In addition, a regulation with DIBRs should have a DIBR section where each such document is listed. However, DPB found a degree of variation in the way agencies treated the DIBRs in their regulations. For example, it appears that some agencies intended for the DIBR to serve as an optional reference that regulants could consult, but not an additional set of requirements. Other agencies no longer had copies of older DIBRs yet they were still listed in the regulation. These differences in practices can hinder an accurate understanding of regulatory requirements, either by the public or by agencies.

### *Compliance with Periodic Review Requirements Varies*

The pilot program also requires DPB to track and report on the extent to which agencies comply with existing requirements to periodically review all regulations every four years. The current requirements are found in statute (both the APA and the basic law of some agencies) and in the executive order on rulemaking:

- § 2.2-4013 and § 2.2-4017 require the Governor to mandate a procedure for conducting periodic reviews of regulation through Executive Order.
- § 2.2-4007.1 requires regulations to be reviewed every four years.
- Executive Order 14 (2018, as amended) establishes policies and procedures for conducting periodic reviews as required by § 2.2-4013 and § 2.2-4017.

As a percentage of regulations for which they are responsible, as of the date of this report agencies have had very differing rates of compliance, in terms of either completing or initiating a periodic review within the last four years.

- Full compliance (100% of its regulatory chapters): 12 agencies
- More than half (50-99% of its regulatory chapters): 11 agencies
- Less than half (1-49% of its regulatory chapters): 11 agencies
- No compliance (0%): 11 agencies

### **Recommendations for Expanding the Program to Other Agencies**

The regulatory reduction pilot program has proven to be beneficial, and consideration should be given to its continuance, but to be fruitful certain factors must first be addressed. Although the pilot program identified a clear need to regularly review regulations and the regulatory process, differences in the outcomes experienced by agencies indicate that the specific approach taken by the pilot program would not work across all agencies.

To a degree these differences result from the nature of the agencies themselves, in terms of the subject matter areas they regulate and the resources available to each agency and board. The COVID-19

pandemic revealed some of these differences, as indicated in part by the varying ability of agencies to submit a completed catalog while staff were focused on pandemic response. But some differences result from variations in how the regulatory process itself is approached by agencies, such as the assertion of APA exemptions, which may require attention by policymakers.

Regarding the approach taken by the pilot project, a “one-size-fits-all” approach inherently treats every agency and regulation in the same way, although there are very wide and meaningful differences among them. This is illustrated by the two pilot agencies themselves. Although DPOR was able to achieve the 25 percent target through a combination of eliminating and streamlining requirements, DCJS was not. A closer look reveals two very different agencies with different missions. DPOR has 18 regulatory boards with very diverse constituencies: barbers, home inspectors, professional wrestlers, polygraph examiners, and pilots who navigate waterways. In contrast, DCJS has one board with a predominantly public safety focus. To a degree, a large and diverse agency such as DPOR may be able to find opportunities for streamlining that are not available to other agencies. DCJS, on the other hand, may conclude that decisions about the number of public safety regulations should not be made by a numeric formula, but instead be driven by responding to the changing needs of the regulated community and the citizens they serve.

More fundamentally, a regulatory reform program may need to consider what should properly be addressed by regulations instead of another form of policymaking. As discussed more thoroughly in the first annual report, regulations are administrative law made by agencies. Over many decades, policymakers have, “come to understand that some delegation of legislative and judicial functions to administrative agencies is unavoidable” (Senate Document 7, 1951). In some cases, however, topics addressed by regulations, such as the proper use of firearms, could potentially be addressed by statutory law. In other cases, non-binding agency policies or guidance documents may be preferable to regulations. Therefore, additional consideration could be given to which topics should be properly addressed by regulations. For example, § 54.1-100 of the *Code of Virginia* sets forth the instances in which regulations are appropriate. Although this language only applies to agencies governed by Title 54.1, a similar approach might be useful for other agencies or topics.

In light of the foregoing, policymakers may wish to consider addressing certain key areas of regulatory development and procedure as a precursor to any future regulatory reduction program. These areas, which were largely discussed above, include:

- Renewed attention to ensuring complete documentation of any specific legislative mandates that direct agencies to promulgate regulatory requirements. Such documentation would help to ensure that policymakers, regulants, and citizens clearly understand which requirements are mandatory (pursuant to a specific legislative mandate) and which are discretionary (adopted by an agency or board under its general rulemaking authority.)
- Reconsideration of the meaning, intent, and applicability of exemptions from the APA. Exemptions in the APA can apply to either the entire Act or to portions thereof. Agencies also may be granted exemptions in their basic law or in the enactment clauses of legislation. Many of these exemptions are unchanged from the APA’s original enactment in 1975, and some may be carried over from earlier legislation. Over time, the need for, and applicability of, the more general exemptions may have changed. For example, the meaning of “grants of state or federal funds or property” may have changed in the last 46 years.

- Additional efforts to ensure consistency across agencies in the approach to regulatory development may also be beneficial. On an ongoing basis, this may include ensuring all agencies apply the requirements for documents incorporated by reference appropriately. And if a future reduction program is pursued, it also should ensure that agencies adhere to a generally consistent methodology for defining and counting requirements.
- Lastly, many of the areas of concern noted herein could be addressed through a more comprehensive approach to the existing periodic review process, which is performed once every four years for a given regulation. A more comprehensive approach may also include (a) documenting whether the type of statutory authority is either a specific mandate and/or general rulemaking authority; and (b) certifying the number of regulatory requirements in the regulation at the time of the review. As a related matter, policymakers may wish to consider whether agencies that are otherwise exempt from the APA (in whole or in part) should also conduct periodic reviews of their regulations. Presently, a statutory exemption from the APA not only applies to its requirements for the promulgation of regulations, but also to the APA's requirements to subsequently review the regulations.



# COMMONWEALTH of VIRGINIA

## Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

Mary Broz-Vaughan  
Director

**TO: The Honorable Aubrey Layne, Secretary of Finance**  
**FROM: Mary Broz-Vaughan, DPOR Director**  
**DATE: June 22, 2021**  
**RE: Regulatory Reduction Pilot Program – Final Status Report**

Pursuant to Chapter 444 of the 2018 Acts of Assembly, I am pleased to report the Department of Professional and Occupational Regulation (DPOR) achieved the 25% target goal by the end of the three-year pilot program. In total, our boards produced the equivalent of a **26.92% reduction** in regulatory requirements and compliance costs through a combination of rulemaking actions and streamlining initiatives.

Even more exciting is the agency's progress toward automating licensing processes by creating a new cloud-based electronic application platform to replace the current paper-based, legacy information technology system. DPOR is on track to go-live with phase one of the comprehensive modernization project (Real Estate and Barbers & Cosmetology Boards) in spring 2022, and complete the transformation for all boards by June 2023. Providing the option for online submission of the 25,000+ initial applications we receive each year will increase convenience and decrease manual processing time dramatically.

As you consider whether to recommend continuing the regulatory reduction program, please note that while DPOR and its boards did nothing out of the ordinary to reach the goal, the time and effort involved in tracking and reporting was significant. Our boards do not limit regulatory review to the periodic four-year schedule mandated by the Administrative Process Act; rather, the agency initiates regulatory (and non-regulatory) actions on an as-needed basis whenever opportunities for clarification or burden reduction are identified.

In addition to the considerable resource investment, another impediment to sustaining meaningful regulatory reduction efforts or a "2-for-1 regulatory budget" appears when the General Assembly enacts new regulatory programs. Unless the enabling legislation is entirely prescriptive, as was the case with the model law establishing licensing for athlete agents (Chapter 481 of the 2020 Acts of Assembly), DPOR must promulgate discretionary requirements to implement, administer, and enforce the regulatory scheme. For example, the Board for Contractors initiated Action 5470 in response to the mandatory certification requirement for fire sprinkler inspectors established by Chapter 726 of the 2019 Acts of Assembly.

Rather than maintain a regulatory catalog, reduction or reform efforts may be best supported by encouraging greater use of existing resources. For instance, in response to a recommendation from JLARC, the General Assembly enacted Chapter 812 of the 2019 Acts of Assembly, directing the Board for Professional and Occupational Regulation (BPOR) to evaluate proposed legislation that would increase or begin regulation of an occupation. During the 2020 Session of the General Assembly, the Division of Legislative Services referred HB 832 (athlete agents) and SB 346 (boiler operators) to BPOR for analysis under the provisions of § 30-19.03:1.3 of the Code of Virginia.

JLARC also recommended BPOR evaluate the need for continued regulation of certain occupations using the guidelines enumerated in § 54.1-311. BPOR issued Report Document 690 in December 2020, which recommended deregulation of soil scientists and waste management facility operators; however, no legislation was introduced.

Finally, a “sunset” review process for specific regulatory programs, similar to the longstanding and well regarded method in Colorado, might be considered: <https://coprrr.colorado.gov/how-reviews-work/sunset-reviews>.



# COMMONWEALTH of VIRGINIA

## *Department of Criminal Justice Services*

Shannon Dion  
Director

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June 25, 2021

The Honorable Aubrey L. Layne, Jr.  
Secretary of Finance  
Patrick Henry Building  
1111 Broad Street  
Richmond, Virginia 23219

Dear Secretary Layne:

Pursuant to the requirements of Chapters 444 and 445 of the 2018 Acts of Assembly, I am pleased to share with you this adjunct report to the Department's report on the regulatory reduction pilot program.

Pursuant to Chapters 444 and 445 of the 2018 Acts of Assembly, the Department of Criminal Justice Services (Department) was required to develop a baseline regulatory catalog enumerating the number of regulatory requirements contained in the Department's regulations as well as to initiate reforms to reduce the number of regulatory requirements through elimination, amendment, or streamlining. Specifically, Chapters 444 and 445 required the Department to produce a reduction in regulatory requirements equivalent to (i) 7.5 percent of the requirements contained in the baseline regulatory catalog by July 1, 2019, (ii) 15 percent of the requirements by July 1, 2020, and (iii) 25 percent of the requirements by July 1, 2021.

The Department met its first-year goal and reported a reduction in regulatory requirements equivalent to 10.14 percent to the Department of Planning and Budget by July 1, 2019. The Department came close to meeting its second-year goal, reporting a reduction in regulatory requirements equivalent to 12.87 percent to the Department of Planning and Budget by July 1, 2020. Progress toward the third-year goal was slowed and the Department reports a reduction in regulatory requirements equivalent to 14.14 percent to the Department of Planning and Budget by July 1, 2021.<sup>1</sup>

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<sup>1</sup> The additional 1.28 percent reduction results from the proposed repeal of 6VAC20-70 (Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections), which was commenced in 2021 (Action 5721).

Several factors contributed to the Department not being able to fully meet the third-year reduction goal established in Chapters 444 and 445. Obviously, the lingering effects of the COVID-19 pandemic have made it more challenging to proceed with regulatory actions in an expeditious factor. The regulatory review process, which is, by design, a deliberate process that can take up to 24 months to complete, has been slowed further by the Department's need to adapt to the changing work environment necessitated by the pandemic.

However, the primary factor has been the dramatic increase in the number of new regulatory actions that the division needs to undertake as required by recent General Assembly legislation.

As a part of the historic policing reforms enacted by the General Assembly during 2020 and 2021, the Department was tasked with developing a significant number of new or amended regulations which will add a substantial number of new regulatory requirements. Thus, the Department's immediate regulatory focus has necessarily been forward-looking in order to give the proper time and attention to the development and promulgation of these new far-reaching and consequential regulatory requirements.

Specifically, as a result of this reform legislation, the Department has commenced regulatory actions for the following:

- Significant revisions to law-enforcement, correctional, and jail officer mandatory training, including training on (i) awareness of cultural diversity and the potential for biased-based policing;<sup>2</sup> (ii) sensitivity to and awareness of racism and the potential for racially biased policing, including the recognition of implicit biases;<sup>3</sup> (iii) de-escalation techniques;<sup>4</sup> (iv) the lawful use of force, including the use of deadly force;<sup>5</sup> (v) working with individuals with disabilities, mental health needs, or substance use disorders;<sup>6</sup> (vi) crisis intervention training;<sup>7</sup> and (vii) the handling and use of tear gas and kinetic impact munitions.<sup>8</sup>
- The establishment of statewide professional standards of conduct for all law-enforcement and jail officers and the appropriate due process procedures for decertification of such officers based on serious misconduct in violation of those standards.<sup>9</sup>
- The use of certain military property by law-enforcement agencies.<sup>10</sup>
- The sealing of criminal history records and the permitted uses of such records.<sup>11</sup>

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<sup>2</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 36, 37, and 48.

<sup>3</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 36, 37, and 48.

<sup>4</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 36, 37, and 48.

<sup>5</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 36, 37, and 48.

<sup>6</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 36, 37, and 48.

<sup>7</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 36.

<sup>8</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 37 and 55.

<sup>9</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 27 and 37.

<sup>10</sup> 2020 Acts of Assembly, Spec. Sess. I, ch. 37 and 55.

<sup>11</sup> 2021 Acts of Assembly, Spec. Sess. I, ch. 524 and 542.



The following regulatory actions are currently underway to promulgate the regulations required by this recent legislative action, two of which (Actions 5723 and 5725) must be completed within 280 pursuant to the terms of the enabling legislation.

- Action 5649 – Comprehensive Review of the Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections
- Action 5665 – Comprehensive Review and Update of the Compulsory Minimum Training Standards for Law-Enforcement Officers
- Action 5722 – Amendments to Compulsory In-Service Training Standards
- Action 5723 – New Regulation to Establish Professional Standards of Conduct and Procedures for Decertification
- Action 5724 – New Regulation for the Compulsory Minimum Training Standards for Detector Canine Handlers Employed by the Department of Corrections and Standards for the Training and Retention of Detector Canines
- Action 5725 – New Regulation for the Waiver Process for Law-Enforcement Agencies to Use Certain Military Property
- Action 5726 – Amendments to Jailor/Court Security/Civil Process Training Standards

Although new regulatory actions have consumed much of the Department's regulatory focus, it is important to note that the Department has continued its efforts to streamline the processes for and regulatory requirements associated with the submission, receipt, and processing of applications for licenses, registration, or certifications by the Department.

As reported in its first-year report, the Department achieved a 10.14% reduction in its regulatory requirements, almost all of which came through the Department's development and implementation of an internet-based, electronic application system to receive and process applications for the regulants licensed, registered, or certified by the Department's Division of Licensure and Regulatory Services (Division). Beginning in 2019, this electronic system replaced the use of paper applications. All applications are now required to be submitted to the Division electronically through this system and, as a result of the Division's transition to the electronic application system, the time it took the Division to process an application, and, consequently, the time it takes a regulant to receive a license, registration, or certification, was reduced dramatically compared to the turnaround time for processing paper applications.

Furthermore, during the time that this electronic application system has been in operation, the Division has continued to improve on its efficiency in processing electronic applications in an expedient manner in order to better serve the needs of our consumers. The turnaround time to process electronic applications has declined significantly since the full implementation of the electronic application system in 2019, reducing the time it takes a regulant to receive a license, registration, or application. Turnaround times across all categories of regulants were reduced by over 20 percent for calendar year 2020 from calendar year 2019. Looking at the period of January through May for the calendar years of 2019, 2020, and 2021, turnaround times across all categories of regulants were reduced by over 17 percent for calendar year 2020 from calendar year 2019 and by almost 42 percent for calendar year 2021 from calendar year 2020.

The Honorable Aubrey L. Layne, Jr.  
June 25, 2021  
Page Four

It is important to note that these reductions in turnaround times were realized by the Division even amidst the pressure of having to switch its entire operations to working remotely due to the COVID-19 pandemic.

Even though the Department has continued to increase its efficiency in processing electronic applications and reduce the time it takes a regulant to receive a license, registration, or certification, as the Department counted the reduction of regulatory requirements resulting from the transition to the electronic application system during the first year of the Program, this further streamlining of the regulatory requirements associated with applying for and obtaining a license, registration, or certification from the Department cannot be included in the Department's third-year reduction totals.<sup>12</sup>

It is evident that one of the primary barriers to achieving the goals of the regulatory pilot is that any particular agency or board is necessarily limited in the amount of time and resources that can be expended on its regulatory activities and precedence must be given to new regulatory initiatives established by the General Assembly. Regardless, the Department remains committed to ensuring that its regulations are not overly burdensome upon its constituents and are consistent with the stated goals of the General Assembly both when promulgating new regulations and reviewing existing regulatory requirements.

Sincerely,



Shannon Dion

Enclosure

c: Ashley Colvin, DPB

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<sup>12</sup> It is interesting to note that if the first-year reduction totals (10.14 percent) were added to the third-year reduction totals (14.14 percent), the Department would have achieved a total reductions of regulatory requirements of almost 25 percent.