

Chapter 12 *Creating Regulatory Actions*

This chapter contains detailed instructions that are intended for state agency users.

As noted in Chapter 2, there are two broad types of regulatory actions: non-exempt and exempt:

- **Non-Exempt:** A regulatory action is referred to as “non-exempt” if it must follow the procedures in the [Administrative Process Act](#) (APA), which requires notice to the public and an opportunity for public comment. Non-exempt actions must also comply with the Governor’s Executive Order on Rulemaking, which requires executive branch review of changes to regulations. There are three types of non-exempt rulemaking processes: (1) a standard action, (2) a fast-track action, and (3) an emergency action.
- **Exempt:** In contrast, an action is referred to as “exempt” if it does not have to follow APA procedures. This typically occurs when an agency uses an exemption listed in the APA or other law, such as [the exemption](#) for changes that are “necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.”

This chapter provides detailed instructions regarding how to create each type of action. The first two sections address how to create a new action for an existing regulation, as well as how to create a new [Virginia Administrative Code](#) (VAC) chapter on the Town Hall and begin the process of promulgating a new regulation under that chapter, respectively. These instructions assume the action will not be exempt from the APA.

For instructions on how to create an exempt action, see the third section in this chapter and also refer to the instructions on how to create a new action for an existing regulation or a new regulation, depending on the circumstance.

Creating an Action to Amend or Repeal an Existing Regulation

Use these instructions when you are amending or repealing an existing (effective) regulation that is already on the Town Hall and in the VAC.

1. After logging on to the Town Hall as an agency user, click on the Agency functions dropdown menu and then select MY AGENCY BOARDS. Then click on the appropriate board for the action.
2. On the View Chapters page, select the appropriate chapter (i.e., “regulation”) for the action.
3. Next, under the Current Actions section, click the START A NEW ACTION link.
4. On the Edit Action page, enter the following information:
 - a. **Action Title:** Briefly (in 20 words or less) describe what is *new* or is *changing* in this regulatory action. Provide specific, meaningful identifying information to the user (e.g., *Revisions to the Standards for Licensed Child Day Centers* or *Amendments to reflect Chapter 475 (2000 Acts of Assembly)*). **Important:** Avoid being too general (e.g., *General Revisions*).
 - b. **RIS Project:** In this section, either:
 - i. Choose an open project that you have already created on the RIS system, or
 - ii. Click the button to create a new project in RIS.

- c. **Action Summary:** Provide a brief summary (from one to three sentences) of what is *new* or is *changing* in this regulatory action, e.g., “The purpose of the proposed action is to develop amendments which will conform the regulation to state law and federal Clean Air Act requirements for the testing of emissions from motor vehicles located or primarily operated in Northern Virginia.”
- d. **Exempt Status:** Indicate if this action is exempt from the APA.
 - i. The Town Hall will automatically default to the exemption status of the last action for this chapter, but you can change this by selecting the other option from the drop-down menu.
 - ii. If you select yes, you must enter the statutory authority which makes this action exempt from the APA by using the full legal citation, such as § 2.2-4006 A 4 a. See the section below for actions that are exempt from the APA.
- e. **Level of Executive Branch Review:** You will need to decide the level of executive branch review or “workflow.” To assist you, the Town Hall will automatically default to the workflow that was used for the most recent action under this chapter. In addition, the workflow is based upon whether your agency is in the executive branch. The workflows are as follows:
 - i. *Full Executive Branch Review:* For all non-exempt actions. This includes non-executive agencies that require the Governor’s approval of a Fast-Track or an Emergency. If a non-executive agency has a non-exempt standard action, they should contact DPB.
 - ii. *DPB Review Only:* For non-executive branch agencies that require an economic impact analysis (EIA) from DPB.
 - iii. *Governor’s Office Review Only:* For exempt actions from executive agencies.
 - iv. *Exempt from Executive Branch Review:* For non-executive branch agencies that have an APA exemption for the action.
- f. **Periodic Review:** Will this action be used to conduct a new Periodic Review?
 - i. If this action will be used to conduct a new periodic review, answer YES. NOTE: if you answer YES this action can only involve one chapter (i.e., one “regulation”).
 - ii. If it results from a previously-completed periodic review, or a periodic review is not involved, select NO and then complete the Related Periodic Reviews section (noted below).
- g. **Chapters Affected:**
 - i. The Town Hall will automatically enter the chapter (i.e., “regulation”) that you previously selected; this is the “primary” chapter.
 - ii. Next, use the drop-down menu to select either AMEND EXISTING VAC CHAPTER, or REPEAL ENTIRE VAC CHAPTER. (NOTE: do not select PROMULGATE NEW VAC CHAPTER. Instead, see the section below on creating a new action for a new regulation).
- h. **Secondary Chapters (Optional):** If you are using this action to amend additional or “secondary” chapters, use the SELECT button to add them. There are two types of secondary chapters:
 - i. In actions where more than one existing regulation is being amended, the secondary chapter(s) are the ones where the changes are less extensive or less important than the primary chapter, or that the public is less likely to associate with the planned changes. If there is no difference, you can choose which regulation will be your primary chapter.

- ii. In “repeal and replace actions,” the secondary chapter is the regulation that will be repealed.
 - i. Next, link your action to any other activities that resulted in the filing of this action:
 - i. **Related Periodic Reviews:** If this action results from a previously-completed periodic review, use the SELECT button to add the periodic review. (Note: you should only use this function if you answered NO above to the question, “*Will this action be used to conduct a new Periodic Review?*”)
 - ii. **Related Petitions for Rulemaking:** If this action results from a petition, use the SELECT button to add the petition.
 - iii. **Legislative Mandates:** If this action results from a mandate (a bill or budget item), enter the indicated information to add the mandate(s). The Town Hall will then link the action to the corresponding mandate(s) on LIS.
 - iv. **Contact Information:** Indicate whether you want the person listed to be the contact person for this regulation or whether you wish to create new or edited contact information.
 5. Click the CREATE ACTION button at the bottom. At this point the action has been created, but it has no stages. Use the pull down menu to select the appropriate stage for this action, and refer to the next chapters for detailed instructions.

Creating an Action to Promulgate a New Regulation in the VAC

Use these instructions when you are adding an brand-new regulation that is not on the Town Hall and is not in the VAC.

1. Before taking any steps on the Town Hall, contact the Registrar’s Office to have them assign a chapter number.
2. After logging on to the Town Hall as an agency user, click on the Agency functions dropdown menu and then select My Agency Boards. Then click on the appropriate board..
3. At the top of the chapter list, click on the CREATE NEW CHAPTER link.
4. Next, complete each field on the New Chapter page, then click the SAVE button. [The Periodic Review Note does not apply to new regulations.]
5. Next, under the Current Actions section, click the START A NEW ACTION link. At this point, refer to steps 4 and 5 in the section above. In step 4, under **Chapters Affected**, select the newly-created Chapter and then select PROMULGATE NEW VAC CHAPTER.

Exempt Regulatory Actions

These instructions provide information that applies only to actions that are exempt from the APA. This could include actions that amend or repeal existing regulations, or add new regulations.

When is an exempt regulatory action appropriate?

An action may be exempt from the APA if the agency, topic, or procedure has an exemption in the APA (in either Code [§ 2.2-4002](#) or [§ 2.2-4006](#)) or in another law, such as your agency’s basic law, an enactment act clause, or budget language. If you have any questions about whether an action may be exempt, or which regulatory stages to file, please contact the Office of the Attorney General (OAG).

How to create an exempt action

See the appropriate instructions above for creating a regulatory action, depending on whether it involves an existing regulation or a new regulation. Refer to the steps below (which only apply to exempt actions) while creating the action:

- Ensure you select YES when asked if this regulatory action is exempt from executive branch review. The Town Hall will default to the exempt status for the most recent action in that regulation; if the previous action for that regulation was exempt, the Town Hall will have pre-selected YES.
- Next, enter the statutory authority which makes this action exempt from the APA. This should be a specific statutory citation, a budget item, or other specific legal reference such as § 2.2-4006 A 4 a. Do not enter a generic statement, like “Code of Virginia.”
- For executive branch agencies, the Town Hall will then default to the appropriate level of executive branch review, based upon the requirements in the Executive Order on Rulemaking.

The next chapter contains detailed instructions on how to add stages to standard actions. Chapter 14 contains detailed instructions on how to add stages to Fast-Track, Emergency, and exempt actions. For more information about each type of action, refer to Chapter 2.