

Guide to Using the Baseline Regulatory Catalogs

Chapters 444 and 445 of the 2018 Acts of Assembly require the two pilot agencies, the Department of Professional and Occupational Regulation (DPOR) and the Department of Criminal Justice Services (DCJS), to develop a baseline regulatory catalog by October 1, 2018. On that date, the two pilot agencies provided their respective catalog to the Department of Planning and Budget (DPB) using a spreadsheet template prepared by DPB. These catalogs present a “first draft” of the required count, which has been self-reported by the pilot agencies.

As required by the enabling legislation, the catalogs include data on, “the (i) total number and type of regulations and regulatory requirements currently promulgated or administered by the two agencies and (ii) any specific federal or state mandates or statutory authority that requires the regulations and associated requirements.”

As contemplated by the legislation, the catalogs are summary data that will be used to calculate the degree to which the pilot agencies achieve the required percentage reductions and streamlining. The catalogs will serve as a companion reference to the Virginia Administrative Code (VAC), which will remain the single, authoritative repository for all regulations and regulatory requirements.

Over the next three years, each agency will work with its regulatory board(s) to determine which regulatory requirements could potentially be eliminated or streamlined. During this time the baseline regulatory catalog will form the basis for measuring these changes. By July 1, 2019, the legislation requires the pilot agencies to:

1. Report to DPB (a) all requirements, “initially identified for elimination, amendment, or streamlining,” and (b) any statutory changes required before a regulation can be eliminated or modified; and
2. Initiate reforms, through a rulemaking or non-regulatory action, that produce a reduction equivalent to 7.5 percent of the regulations and regulatory requirements contained in its baseline. A high-level outline of major steps is included at the end of this guide.

If a pilot agency is unable to reach this goal, it is directed to report the reasons to the Secretary of Finance. Similar milestones are required by July 1 in each of the following two years, with increasing percentages that total 25 percent by the conclusion of the pilot. A high-level outline of this process is included at the end of this guide.

How to Determine the Total Number and Type of Regulatory Requirements

The regulatory catalogs contain self-reported data on the total number and type of regulations and regulatory requirements currently promulgated or administered by the two pilot agencies. These data, which were reported by each agency, are at the “section” level for every Chapter of the VAC that has been promulgated by the agency. As shown in the table below, the initial catalog data indicate that DCJS has a total of 3,507 regulatory requirements, compared to 2,730 at DPOR.

	DCJS	DPOR
TOTAL Requirements as of October 30, 2018	3,507	2,730
Mandatory Requirements Exempt from Pilot (Not Discretionary)		
Non-Discretionary Requirements (Agency)	116	241
Non-Discretionary Requirements (Regulant)	414	505
Subtotal	530	746
Baseline Requirements Included in Pilot (Discretionary)		
Discretionary Agency Requirements (Agency)	490	60
Discretionary Requirements (Regulant)	2,487	1,924
Subtotal	2,977	1,984

The total number of regulatory requirements can be determined from the respective catalogs by:

1. Adding up the values in column O, titled “TOTAL Requirements as of October 1, 2018” or,
2. Clicking on the small “1” in the upper left-hand corner and scrolling over to column O.

The total number of regulatory requirements by regulatory chapter can be determined from the respective catalogs by clicking on the small “2” in the upper left-hand corner and scrolling over to column O. To go back to the detail view, click on the small “3” in the upper left-hand corner.

For purposes of the pilot, DPB defined the term “type” to mean whether the requirement was (A) discretionary or mandated by law, and (B) whether the requirement governs a class of regulants or the pilot agency (This term was not defined in the enabling legislation.).

- A. For both agencies, the initial count indicates that most requirements are discretionary: 85 percent for DCJS (or 2,977) and 73 percent for DPOR (or 1,984). Because these requirements are not specifically required by state or federal law, these counts of discretionary requirements form each agency’s respective baseline for the reduction effort. The total number of discretionary regulatory requirements can be determined from the respective catalogs by:
 1. Adding up the values in column N, titled “TOTAL Baseline” or,
 2. Clicking on the small “1” in the upper left-hand corner and scrolling over to column N.

- B. Likewise, for both agencies most requirements are imposed on regulants: 83 percent for DCJS (or 2,901), and 89 percent for DPOR (or 2,429). The other requirements, such as public participation guidelines, are imposed by the regulatory boards on their respective agencies. The total number of regulatory requirements imposed on regulants can be determined from the respective catalogs by:
 1. Adding up the values in columns J and M, titled “Regulant Total” or,
 2. Clicking on the small “1” in the upper left-hand corner and scrolling over to columns J and M and adding the grand totals provided in each column.

How to Determine the Mandates and Authorities Associated with Regulatory Requirements

The regulatory catalogs also contain data that indicate the specific federal or state mandates that direct adoption of a regulatory requirement. In addition, the catalogs indicate the statutory authorities that allow the regulatory board or agency to promulgate the regulation and its requirements. A regulatory section can have several mandates and several authorities; in this case, they are separated by commas in the corresponding data field. As above, these data are reported at the “section” level for every Chapter of the VAC promulgated by the pilot agency.

For example, the catalog data submitted by DPOR indicates that 18.130.20.30 (see column A for the VAC identifier), which translates to 18 VAC 130-20-30, is associated with seven regulatory requirements. Although DPOR reports that this regulatory section is not mandated by the state (see column E), DPOR reports it is mandated by federal law 12 USC 1331 (1989) (see column G) and that the same federal law also authorizes this VAC section (see column H). DPOR further reports that this section is also authorized by 54.1-201(A)(5) and 54.1-2013 of the Code of Virginia (see column F).

- A. The mandates associated with each VAC section can be determined from the respective catalogs by:
 - 1. Reviewing the responses provided in column E for state mandates.
 - 2. Reviewing the responses provided in column G for federal mandates.

- B. The authorities associated with each VAC section can be determined from the respective catalogs by:
 - 1. Reviewing the responses provided in column F for state authorities.
 - 2. Reviewing the responses provided in column H for federal authorities.

Process to Addressing Objectives of Regulatory Pilot

