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Chapter 5: Administrative Law

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A GUIDE TO LEGAL RESEARCH IN VIRGINIA

Seventh Edition

Editors:

John D. Eure

Johnson, Ayers & Matthews, P.L.C. / Roanoke

Gail F. Zwirner

University of Richmond Law School Library / Richmond

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Publications

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CHAPTER 5

ADMINISTRATIVE LAW

5.1 INTRODUCTION

Administrative law in Virginia is made up largely of the rules and regulations of the various agencies and commissions, as well as the decisions and interpretations of the law applying to those bodies. Opinions of the Attorney General of Virginia and executive orders and proclamations of the Governor are also considered to be administrative law materials. While some of the sources continue to be published in print, most executive branch orders, decisions, and regulations are available through the appropriate agency's website. Website addresses will be provided throughout this chapter, and a list of Virginia state agencies, boards, commissions, and councils with links to sources is available via the Internet at www.agencydirectory.virginia.gov.

5.2 ORGANIZATION OF THE EXECUTIVE BRANCH

5.201 Governor. The chief executive power of the commonwealth is vested in the Governor.¹ It is the Governor's duty to ensure that the laws of the commonwealth are faithfully executed.² Under article V, section 10 of the Virginia Constitution, the Governor has the power to appoint and remove each officer serving as head of an administrative department or division of the executive branch of government. The Governor also serves as the chief budget and planning officer of the commonwealth as well as the chief personnel officer.³ The Governor's office website, www.governor.virginia.gov, includes links to speeches,

¹ Va. Const. art. V, § 1.

² Va. Const. art. V, § 7.

³ Va. Code § 2.2-103.

proclamations, and executive orders of the current administration. The Virginia Department of Planning and Budget maintains a list of all governors' executive orders currently in effect at www.lva.virginia.gov/public/eo.

Three documents issued by the Governor hold the same place in the annual release of the Reports to the General Assembly, available at <http://lis.virginia.gov>. House Document 1 (HD1) is the Governor's budget bill. Senate Document 1 (SD1) is the State of the Commonwealth speech. The annual List of Pardons, Commutations, Reprieves, and Other Forms of Clemency is assigned Senate Document 2 (SD2).

5.202 Secretarial System. In 1972, the secretarial system was created by statute.⁴ The Governor is authorized to appoint eleven secretaries: Administration, Agriculture and Forestry, Commerce and Trade, Education, Finance, Health and Human Resources, Natural Resources, Public Safety, Technology, Transportation, and Veterans Affairs and Homeland Security. The Governor has broad latitude to define the role of these secretaries and to delegate power to them. The position of Chief of Staff was created by a 1983 executive order to provide a liaison between the Governor and the secretaries.

Each secretary oversees the agencies in his or her functional area. The secretaries are charged with providing general policy direction, compiling program budgets, resolving conflicts between agencies, holding agency heads accountable, examining their organizations, and directing the development of goals, objectives, policies, and plans.⁵

5.203 Boards and Commissions. Boards and commissions are associated with almost every administrative agency. A 1983 study entitled *An Assessment of the Roles of Boards and Commissions in the Commonwealth of Virginia* (Joint

⁴ See Va. Code § 2.2-200.

⁵ *Id.*

Legislative Audit and Review Commission, 1984) revealed that the executive branch included numerous boards, committees, commissions, councils, and collegial boards. Because these boards and commissions often stood, from an organizational perspective, between their respective agencies and the Governor's secretaries, they were brought under the jurisdiction of the secretaries by executive order. Consequently, their role is somewhat unclear. In general, they provide supervision or advice to their agencies and serve quasi-judicial or quasi-legislative functions. The boards and commissions may influence their agencies by establishing, or by advising their agencies on, policies or regulations and by evaluating agency performance.

5.204 Agencies. The various agencies implement the Governor's policies and carry out the functions assigned to them by the Virginia Code, executive orders, and regulations.

5.3 ADMINISTRATIVE PROCESS ACT

In 1975, the Virginia Administrative Process Act (VAPA) was enacted. The VAPA is designed to "supplement present and future basic laws conferring authority on agencies either to make regulations or decide cases as well as to standardize court review thereof."⁶ The General Assembly recodified VAPA, effective October 1, 2001. House Document No. 51 of the 2001 Session of the General Assembly, entitled Final Report of the Virginia Code Commission on the Recodification of Titles 2.1 and 9 of the Code of Virginia, indicated a need to "(i) organize the laws in a more logical manner, (ii) delete obsolete and duplicative provisions, and (iii) improve the structure and clarity of Titles 2.1 and 9." This report is an important piece of legislative history because it is the only document that sets forth the detailed changes to the statutory language. The report is available at <http://lis.virginia.gov>; click on "Reports to the General Assembly." The legislation, when ultimately enacted as 2001 Va. Acts ch. 844, contained only the final language without editorial elaboration.

⁶ Va. Code § 2.2-4000.

VAPA, which is codified as sections 2.2-4000 to 2.2-4031 of the Virginia Code, provides the framework within which nonexempt state agencies exercise their delegated regulatory and adjudicatory powers.

The University of Richmond Law Review, in its “Annual Survey of Virginia Law,” examines Virginia administrative law and notes any changes in VAPA. It also covers selected court cases dealing with state administrative procedure. Other sources for analyses of administrative law are the journals and newsletters of the Virginia State Bar and Virginia Bar Association Administrative Law Sections.

5.4 PUBLISHED RULES AND REGULATIONS

5.401 Registrar of Regulations. The Virginia Register Act requires every agency having express or implied authority to issue regulations to file with the Registrar of Regulations the full text of the current regulations as well as the dates of adoption, revision, publication, or amendment.⁷ The agency must also provide the registrar with all repeals of and amendments or additions to previously filed regulations. Each agency must also maintain a complete file of the full texts of all of its regulations and must make this file available to the public for inspection and copying. Until a regulation, amendment, or repeal is filed with the registrar, it cannot become effective. Regulations must be filed in accordance with guidelines contained in section 2.2-4103 of the Virginia Code.

In 2007, a Virginia Regulatory Town Hall was created as “a comprehensive source of information about regulatory changes under consideration in Virginia.” Participants may find regulations and track changes as well as submit online comments about regulatory changes at <http://townhall.virginia.gov>.⁸

⁷ Va. Code § 2.2-4103.

⁸ Va. Code § 2.2-4007.01.

5.402 *Virginia Register of Regulations.* A publication entitled *Virginia Register of Regulations (Virginia Register)*, produced by the Virginia Code Commission, is issued every two weeks.⁹ Indexes are published quarterly, and the final index of the year is cumulative. The *Virginia Register* is sold by subscription and is distributed without charge to a public library in every jurisdiction in Virginia. Upon request, it is distributed to members of the General Assembly.

The *Virginia Register* contains proposed and final regulations; emergency regulations; Governor's executive orders; state lottery regulations and director's orders; State Corporation Commission orders and regulations; tax bulletins; and notices of all public meetings and public hearings of state agencies, legislative committees, and subcommittees. Each regulation is preceded by a summary prepared by the agency. The procedures an agency must follow to adopt, amend, or repeal a regulation are summarized on the first page of each issue of the *Virginia Register*, along with procedures governing emergency regulations.

The *Virginia Register* website can be found at <http://register.dls.virginia.gov/issfiles.htm>. In 2002, the Code Commission created a searchable database for the *Virginia Register* that includes, in Microsoft® Word format, proposed, final, and emergency regulations that date back to May 21, 2001. Complete copies of *Registers* in PDF format dating back to June 22, 1998 are available. Both LexisNexis and Westlaw offer databases for the *Virginia Register*, and Fastcase links to the website.

5.403 *Limitations of the Virginia Register.* The *Virginia Register* is not a comprehensive source of information about regulatory activity for a variety of reasons. A substantial number of agencies and actions are exempt from compliance with VAPA and the Virginia Register Act.¹⁰ The Registrar of

⁹ Va. Code § 2.2-4031.

¹⁰ See Va. Code § 2.2-4002.

Regulations may print a summary instead of the full text of a submitted regulatory action if it is too lengthy.¹¹ A regulation can be withdrawn by the issuing agency at any time before the regulation's effective date,¹² but there is no requirement that the withdrawal action be published. Finally, agency activity is subject to review and delay by the Governor or by an appropriate committee of the General Assembly.¹³ Likewise, judicial review may prompt suspension of a regulation's effective date.¹⁴

5.404 Virginia Register Research Aids. The bi-weekly issues of the *Virginia Register* contain several research aids, including a preface that summarizes the role of the *Register* and a table of contents that is organized by type of regulation or type of activity. A schedule of publication deadlines is included, as well as a calendar of events that lists agency activities. Published regulations are given a classification number for reference purposes. The "Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed" is a valuable tool that lists regulation sections, by Virginia Administrative Code title, that have been amended, added, or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in the Code. The table is no longer included in the print version of the *Virginia Register*, but it is accessible online at <http://register.dls.virginia.gov/issfiles.htm>.

One major omission from the biweekly edition is a subject index, although the detailed table of contents performs this function to a limited extent. The Division of Legislative Services, of which the Registrar of Regulations is an employee, does publish a quarterly index. This index, organized by subject and agency, lists the pages where proposed and final regulations are located. Proposed, final, and emergency regulations are also listed

¹¹ Va. Code § 2.2-4031.

¹² Va. Code § 2.2-4016.

¹³ Va. Code § 2.2-4014.

¹⁴ Va. Code § 2.2-4028.

according to agency classification, with an explanation of the classification scheme. In addition, there is an index of open meetings and public hearings. The final index of the year is cumulative, but no multi-year cumulative index is issued to *Virginia Register* subscribers. Therefore, subscribers who wish to conduct thorough research should retain all annual indexes.

5.405 Citation Form for the *Virginia Register*.

The *Virginia Register* should be cited by volume, page number, date, and the expected codification location. For example, the entry for the “Exclusions from Definition of ‘Investment Advisor’ and ‘Federal Covered Advisor’ Regulation” would be cited as: 17 Va. Reg. Regs. 2308, 2331 (Apr. 23, 2001) (to be codified at 21 Va. Admin. Code § 5-80-210 (2001)).

5.406 *Virginia Administrative Code*. In 1992 the Virginia Code Commission was given the authority to publish an administrative code.¹⁵ In 1993, the Commission was given the authority to renumber, rename, and rearrange *Virginia Administrative Code* titles, sections, or other divisions within proposed or adopted regulations.¹⁶

In 1996 the first edition of the *Virginia Administrative Code* was published under contract with Lawyers Cooperative Publishing Company, now West (Thomson Reuters). The Code is organized in titles by subject. There are currently twenty-four titles, which do not necessarily parallel the statutory title numbers. The texts of the Virginia Administrative Process Act and the Virginia Register Act are set forth in appendixes to the Code. A general alphabetic index, which is updated irregularly, lists regulations by agency and subject. Each title has its own index, which is updated upon supplementation. A table is provided to convert regulation numbers to Code numbers and vice versa.

¹⁵ Va. Code § 30-146.

¹⁶ Va. Code § 30-150.

The Division of Legislative Automated Systems maintains the Code online at its Legislative Information System website, <http://lis.virginia.gov>. Both LexisNexis and Westlaw include the *Virginia Administrative Code* as a database resource, and Fastcase includes the *Virginia Administrative Code* in its regulations database.

5.5 AGENCY ORDERS AND DECISIONS

5.501 Generally. The Commonwealth of Virginia currently does not publish an administrative law digest. Nonetheless, some agency decisions, orders, and opinions are published in bound volumes that include subject-matter indexes. Others are more difficult to locate, and the researcher may need to contact the appropriate agency for assistance or refer to the agency website.

5.502 State Corporation Commission. The State Corporation Commission (SCC) grants corporate charters, administers laws relating to corporate charters, regulates the banking and insurance industries, and regulates the services and rates of public service corporations.

The SCC prescribes its own rules of practice and procedure.¹⁷ These rules are to be entered on the records of the Commission and furnished to city and county clerks and to any citizen applying for them. An annotated text of the current rules is also published in the supplement to Volume 15 of *Michie's Jurisprudence of Virginia and West Virginia* under the topic "Public Service and State Corporation Commissions" and in *Virginia Rules Annotated*, published annually by LexisNexis.

Under section 12.1-4 of the Virginia Code, the SCC must report annually to the Governor. The *Annual Report of the State Corporation Commission* was published in print from 1903 to

¹⁷ Va. Code § 12.1-25.

2009. It is accessible at the SCC website for the years beginning in 2002 at www.scc.virginia.gov/comm/an_rept.aspx. Customary contents include SCC rules of practice and procedure, matters disposed of by formal orders, annual statistical reports by division within the SCC, and a name index for access to cases reported in each annual report. In the annual report, cases are printed in numerical order by division. For example, in 1992, under the division "Bureau of Financial Institutions," the first case is "BFI 920001 Hijjawi, Basil M." and the second case is "BFI 920002 Consumers Mortgage Corporation." Since 1995, Motor Carrier Division cases have been handled by the state police and the Department of Motor Vehicles. Cases are indexed by party name but not by subject, and location of pertinent decisions is difficult.

The SCC's website at www.scc.virginia.gov/case/index.aspx provides links to case information through "Docket Search," including access to information by case number, case name, case type, or participant name. Docket Search displays the SCC's calendar of cases, documents associated with cases, case participants, and other information since April 2002. It also links to the SCC's calendar of cases that lists upcoming cases by name, subject, and case number. The calendar provides a case summary, the date of the hearing, and a statement of whether it will be heard before the full Commission or one of the hearing examiners.

If a decision has been reported in the SCC's annual report, it should be cited by case name, case number, volume of the annual report, and the page number on which the case begins (for example, *Application of John Doe, Inc.*, Case INS 10001, 1986 S.C.C. Ann. Rep. 15). If the decision has not been published in the *Annual Report of the State Corporation Commission*, it should be cited by case name, case number, and the date of the action. Selected Commission orders, hearing examiner reports, and rulings are also available online at the website listed above.

An appeal of right from an SCC decision lies directly to the Supreme Court of Virginia.¹⁸ The special rules for perfecting such an appeal are found in the Rules of the Supreme Court of Virginia, which are reprinted in Volume 11 of the *Code of Virginia of 1950, Annotated* and in *Virginia Rules Annotated* (LexisNexis).

Both LexisNexis and Westlaw provide databases of State Corporation Commission decisions and Virginia public utilities reports. Current SCC corporate and limited partnership records are available in both services.

Wolters Kluwer Financial Services publishes a three-volume set entitled *Virginia Administrative Letters*, a comprehensive collection of the administrative letters, memoranda, orders, and regulations of the SCC's Bureau of Insurance. The letters are also available in full at the SCC website, www.scc.virginia.gov/boi/laws.aspx.

Alan Brody Rashkind and R. Craig Gallagher's *Virginia Insurance Case Finder* is a digest of all published decisions of the Virginia Supreme Court since 1925 touching on insurance issues and the insurance portions of all published decisions construing Virginia law decided by the United States Court of Appeals for the Fourth Circuit since 1965.¹⁹

5.503 Workers' Compensation Commission. The Workers' Compensation Commission, formerly named the Industrial Commission, administers the Virginia Workers' Compensation Act.²⁰ Rules of the Workers' Compensation Commission are found in the pamphlet to 21 Michie's Juris. Va. & W. Va. *Workers' Compensation*, and in *Virginia Rules Annotated*, published annually by LexisNexis.

¹⁸ Va. Code § 12.1-40.

¹⁹ LexisNexis 3d ed. 2010 & 2011 Supp.

²⁰ Va. Code § 65.2-100 *et seq.*

The Workers' Compensation Commission published hardbound volumes of *Opinions of the Workers' Compensation Commission* (O.W.C.) until the year 2001. These decisions are cited in the following format: *Smith v. Reynolds Metals, Inc.*, 71 O.W.C. 45 (1992). Decisions before publication of Volume 71 of the Opinions are cited to the *Opinions of the Industrial Commission* (O.I.C.). The volumes are indexed by claimant and by defendant. This compilation also contains an index of opinion digests arranged by subject matter. Commission rules and statutory provisions construed can be located by looking in the subject matter index under "Rules of the Commission Construed" and "Sections [of the Workers' Compensation Act] Construed." Cumulative indexes to the opinions were published in the bound volumes at irregular intervals.

Summaries of new opinions are published in *Virginia Lawyers Weekly* and are accessible on that publication's website, www.valawyersweekly.com. Since 1995, decisions have been available within a few days of their release in a searchable database at the Commission's website, www.vwc.state.va.us. This site also includes links to relevant statutes, regulations, and forms and publications, including a Claim for Benefits.

Opinions of the Workers' Compensation Commission are also available on Geronimo's CaseFinder (1985 to present). Both LexisNexis and Westlaw offer databases of Workers' Compensation Commission opinions. The Commission offers a subscription service for opinions as well.

The Workers' Compensation Commission also publishes the *Virginia Workers' Compensation Act Annotated*. This book, prepared by the Commission and published by LexisNexis, contains the text of the Virginia Workers' Compensation Act with annotations to decisions by the Commission, the Virginia Supreme Court and Court of Appeals, and federal trial and appellate courts. This volume and the *Virginia Workers' Compensation Case Finder*, described below, are the only sources of annotations to Commission decisions. This publication also

contains the rules of the Commission and a detailed index to the Act and the rules.

Peter M. Sweeny's *Virginia Workers' Compensation Case Finder*²¹ is a digest of cases from the Virginia Supreme Court, the Court of Appeals, the former Industrial Commission, and the current Workers' Compensation Commission. Arrangement is by subject or topic. The digest contains a subject and section number index and a table of cases.

5.504 Virginia Employment Commission. The Virginia Employment Commission (VEC) "adjudicates claims for unemployment compensation and collects the payroll tax imposed on employers for purposes of such compensation."²² The VEC links from its website, www.vec.virginia.gov/vecportal/services.cfm, to the *Precedent Decision Manual (PDM)*, designed to explain precedential decisions to interested parties and to serve as a research tool for claimants, employers, attorneys, and accountants. The eight major divisions of the *PDM*, each of which contains numerous fact-specific subdivisions, are: (i) Able and Available; (ii) Labor Dispute; (iii) Miscellaneous; (iv) Misconduct; (v) Procedure; (vi) Suitable Work; (vii) Total and Partial Unemployment; and (viii) Voluntary Leaving. The *PDM* was last updated in 1997. To supplement the manual, the VEC issues guidance documents to identify a number of case decisions that are frequently cited in its opinions.

The VEC's Administrative Law Division, Office of Commission Appeals provides a summary of Virginia Court of Appeals unpublished opinions in unemployment insurance cases. The summaries begin in 1995 and are organized by topic as follows: (i) voluntary quit cases; (ii) misconduct cases; (iii) refusal of suitable work; and (iv) timeliness of appeal.

²¹ Juris Publ'g, Inc. 4th ed. 2012.

²² 16 VAC 5.

The VEC's website also includes two publications employers and claimants will find useful:

1. *Virginia Employer's Handbook: a Guide to Employers' Rights and Responsibilities under the Virginia Employment Compensation Act*; and
2. *Claimant and Job Seeker Handbook*.

Commerce Clearing House's *Unemployment Insurance Reporter*, a looseleaf service, also contains decisions of the VEC, decisions of appeals examiners, legal memoranda, and rules and regulations.

5.505 Alcoholic Beverage Control Board. The Alcoholic Beverage Control (ABC) Board decides who may sell alcoholic beverages in the commonwealth. The ABC Board also is charged with carrying out the Alcoholic Beverage Control Act, set forth in section 4.1-100 *et seq.* of the Virginia Code. Decisions and orders of the ABC Board are not published, although the decisions and orders are public records and may be examined by the public during normal business hours at the central offices of the ABC Board.²³

The Hearings and Appeals Division is located in Richmond. Three actions generate the need for an ABC hearing: (i) a disciplinary hearing conducted (a) about violations by a licensee, (b) to seek approval of a licensee's designated manager, or (c) to approve an area for exercise of the licensee privilege; (ii) a contested application hearing to grant an ABC license or permit; or (iii) a Beer and Wine Franchise Act hearing involving wholesale licensees.

The ABC Board's website, www.abc.state.va.us, provides general licensing information and links to the newsletter *Licensee* (2006 to present). The website also includes a report of summaries

²³ 2901 Hermitage Road, Richmond, Virginia 23220.

of all final orders issued by the ABC Board for the current fiscal year. The summary shows the penalties levied or actions taken by the ABC Board pursuant to administrative hearings held with ABC licensees regarding violations of ABC laws, rules, or regulations or when the issuance of an ABC license or privilege is contested by an interested party. The listing contains only final outcomes of ABC administrative hearings available to the public in accordance with the Virginia Freedom of Information Act and does not contain case information for matters on appeal to the ABC Board or other appeals courts. Also available at the website are dockets of scheduled ABC administrative hearings with summaries of the pending charges or license objections to be heard.

5.506 Department of Taxation. The Department of Taxation administers the tax laws of the commonwealth, collects taxes, assists local governments with state and local taxes, and advises the executive branch.²⁴ The Tax Commissioner has the power to issue regulations concerning the interpretation and enforcement of state tax laws.²⁵ The Tax Commissioner must follow applicable provisions of the Virginia Administrative Process Act (VAPA) with respect to the issuance of regulations, except that notice of a proposed regulation must appear 60 days (rather than 30 days under VAPA) before the date prescribed for submittal of public comments.²⁶ VAPA does not, however, govern individual tax rulings.

The Virginia Code requires that the following matters be published: regulations, orders of the Tax Commissioner, orders and opinions of the circuit court, tax bulletins, guidelines, and any other rulings or interpretations that the Tax Commissioner thinks may be relevant, annual tax rates of localities, assessment sales ratio studies of real property in localities, and the required forms

²⁴ Va. Code § 58.1-202.

²⁵ Va. Code § 58.1-203.

²⁶ Va. Code § 58.1-203(B).

and instructions for filing tax returns.²⁷ The Department of Taxation is considered to have published the above items (with the exception of tax forms) if it compiles them at least every three months, makes them available for inspection and copying, and distributes them to such national and state publications and tax services as the Tax Commissioner deems necessary. The presumptions and evidentiary weight accorded to rulings and regulations of the Commissioner or Department are set forth in section 58.1-205 of the Virginia Code.

Until 1997, rulings of the Tax Commissioner concerning sales, income, and other taxes, Virginia tax bulletins, and circuit court cases involving tax issues were found in the *Virginia Tax Reporter*. The reporter was published semiannually by the Taxation Section of the Virginia State Bar until May 1997. Court decisions, rulings and letters from the Department of Taxation, and opinions of the Attorney General may also be found in the *State Tax Reports* for Virginia, published by Commerce Clearing House (CCH). *State Tax Reports* also contains Virginia tax bulletins, which summarize recent cases and rulings. Virginia tax bulletins are also published in the *Virginia Register of Regulations*.

The Department's website at www.tax.virginia.gov includes links to tax forms. From the "Tax Policy Library" menu, a researcher will find links to statutory and regulatory compilations, rulings of the Tax Commissioner (1981 to present), tax bulletins (1979 to present), legislative summaries (1973 to present), and Attorney General opinions (1963 to present). Both LexisNexis and Westlaw offer databases of tax rulings and bulletins.

5.507 Department of Environmental Quality. The Department of Environmental Quality (DEQ) was created in 1993 to consolidate the staff functions of the Department of Air Pollution Control, the State Water Pollution Control Board, the

²⁷ Va. Code §§ 58.1-204, -207, -210, -214.

Council on the Environment, and the Department of Waste Management. Its mission is to protect and enhance Virginia's environment and promote the health and well-being of the citizens of the commonwealth.²⁸

The Air Pollution Control Board, the State Water Control Board, and the Waste Management Board, composed of Virginia citizens appointed by the Governor, are responsible for adopting many of Virginia's environmental regulations. The DEQ administers the regulations as approved by the boards. The boards also become involved in permitting by conducting public hearings and approving certain types of permits. Where environmental laws or permit conditions are violated, the boards may impose administrative sanctions and initiate legal action.²⁹

The boards' decisions are not published. Virginia's air, water, and waste statutes and regulations are available on the DEQ's website, www.deq.state.va.us/LawsRegulations.aspx. Regulations and guidance documents are posted on the Virginia Regulatory Town Hall website, <http://townhall.virginia.gov>, as they become available. *The Virginia Environmental Law Handbook*,³⁰ by James E. Ryan, Jr. and Andrew G. Mauck of Troutman Sanders LLP, brings together all the environmental laws and regulations that affect businesses in Virginia and examines changes to such programs as the Virginia Pollution Discharge Elimination System, the Chesapeake Bay initiatives, and the Virginia Water Protection Permit program.

5.508 Department of Health Professions. The Department of Health Professions' role is to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public. It oversees fourteen health professional regulatory boards: Audiology and Speech-

²⁸ Va. Code § 10.1-1183.

²⁹ Va. Code § 10.1-1184.

³⁰ Gov't Insts. 4th ed. 2008.

Language Pathology, Counseling, Dentistry, Funeral Directors and Embalmers, Health Professions, Long-Term Care Administrators, Medicine, Nursing, Optometry, Pharmacy, Physical Therapy, Psychology, Social Work, and Veterinary Medicine. These boards adopt regulations, set licensing and competency standards, resolve complaints, discipline practitioners, and conduct studies on major health-related topics in Virginia. The Department promotes policy coordination among these boards and oversees agency operation. It advises the General Assembly on health professional regulatory policy.

The decisions of the Department of Health Professions entered during the past 90 days are published on its website, www.dhp.virginia.gov. Regulations of the various boards administered by the department are available in the *Virginia Administrative Code* and on the website as well.

5.509 State Lottery Department (Board). The State Lottery Law was approved in 1987 to “produce revenue consonant with the probity of the Commonwealth and the general welfare of its people, to be used for the public purpose.”³¹

The State Lottery Board has the power to adopt regulations governing the establishment and operation of a lottery. These regulations provide for all matters necessary or desirable for the efficient, honest, and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares. The regulations are adopted in accordance with the Virginia Administrative Process Act.³²

The Director’s orders are published in the *Virginia Register of Regulations*. Orders, regulations, and forms issued by the Department are available for public inspection at its offices at 900 East Main Street, Richmond, Virginia 23219.

³¹ Va. Code § 58.1-4001.

³² Va. Code § 58.1-4007.

5.6 OPINIONS OF THE ATTORNEY GENERAL

5.601 Attorney General's Duty to Advise. The Attorney General of Virginia is the chief executive officer of the Department of Law.³³ Under section 2.2-505 of the Virginia Code, the Attorney General must give advice and render official advisory opinions in writing when requested to do so by any of the following:

1. The Governor;
2. A member of the General Assembly;
3. A judge of a court of record or court not of record;
4. The State Corporation Commission;
5. A commonwealth's attorney;
6. A county, city, or town attorney;
7. A clerk of a court of record;
8. A city or county sheriff;
9. A city or county treasurer or similar officer;
10. A commissioner of revenue or similar officer;
11. A chairperson or secretary of an electoral board; or
12. The head of a state department, division, bureau, institution, or board.

³³ Va. Code § 2.2-500.

Questions presented by anyone other than the Governor or a member of the General Assembly must relate directly to the discharge of the duties of the person requesting the opinion.³⁴

5.602 *Annual Report of the Attorney General of Virginia.* On or before May 1 of each year, the Attorney General must deliver to the Governor a report of the state or condition of all important matters in which he or she represented the commonwealth during the preceding year.³⁵ The report also contains any official opinions that are “of general interest or helpful in promoting uniformity in the construction of the laws of the Commonwealth.”³⁶ Beginning in 2009 with the 2008 Annual Report, the reports are published online as PDF documents. The website includes reports beginning in 2004.³⁷ Digests of opinions are found in the *Virginia Lawyers Weekly*.

The report contains a subject index, a name index, and an index to *Acts of the General Assembly*, sections of the Virginia Code, and provisions of the Virginia Constitution. With the introduction of the website of the Office of the Attorney General at www.oag.state.va.us, cumulative print indexes were discontinued with a final volume covering July 1, 1977 to June 30, 1987.

5.603 *Opinions of the Attorney General in Electronic Format.* Official opinions are also available online. Current opinions, beginning with January 1996, can be found at the Attorney General’s website, www.oag.state.va.us. LexisNexis has opinions from July 1980 to the present and Westlaw’s Virginia database covers from 1976 to the present. Opinions are also available on Fastcase, Bloomberg Law, and on Geronimo’s CaseFinder.

³⁴ Va. Code § 2.2-505.

³⁵ Va. Code § 2.2-516.

³⁶ *Id.*

³⁷ See [www.oag.state.va.us/Opinions and Legal Resources/Annual_Reports/index.html](http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/Annual_Reports/index.html).

5.604 Citation of Opinions of the Attorney General. Opinions of the Attorney General should be cited by referring to the appropriate volume of the annual report and the page on which the opinion begins, for example, 1978-79 Report of the Attorney General 313.

5.7 EXECUTIVE ORDERS

Executive orders and proclamations may be obtained from the Office of the Secretary of the Commonwealth and are published in the *Annual Report of the Secretary of the Commonwealth*. There is no index to the orders in the annual report; they are simply set out in numerical order. The Secretary's report provides a useful directory of individuals who serve in various capacities in state government and an organizational chart of the government.

Executive orders from 1902 to the present are filed at the Library of Virginia. In addition, all executive orders issued after October 1984 have been published in the *Virginia Register of Regulations*. Executive orders from the current administration can be found at the Governor's office website, www.governor.virginia.gov.³⁸

5.8 GUIDANCE DOCUMENTS

The Virginia Administrative Process Act (VAPA) requires annual publication in the *Virginia Register* of guidance document lists from state agencies covered by the VAPA and the Virginia Register Act.³⁹ A guidance document is defined as "any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations,

³⁸ See *supra* ¶ 5.201.

³⁹ Va. Code § 2.2-4104.

excluding agency minutes or documents that pertain only to the internal management of agencies.”⁴⁰ Agencies are required to maintain a complete, current list of all guidance documents and make the full text of these documents available to the public. A list of guidance documents is available online at <http://leg5.state.va.us/webservices/guidedoc.htm>.

⁴⁰ Va. Code § 2.2-4101.