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**HOUSE BILL NO. 955**

Offered January 8, 2014

Prefiled January 8, 2014

*A BILL to amend and reenact § 2.2-4006 of the Code of Virginia, relating to the Administrative Process Act; exemption for certain regulations.*

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 Patron—Head
 

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 Referred to Committee on General Laws
 

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**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-4006 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4006. Exemptions from requirements of this article.**

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.  
 2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

## 4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation; or

d. Necessary to conform to changes in Virginia statutory law or the appropriation act, provided the agency (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (iii) conducts at least one public hearing as provided in § 2.2-4009 prior to the publishing of the proposed regulations. Any such regulation shall be adopted, amended, or repealed no later than six months after the Virginia statutory law or appropriation act that necessitated the change becomes effective.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least

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59 one public hearing on the proposed general permit.

60 9. The development and issuance by the Board of Education of guidelines on constitutional rights  
61 and restrictions relating to the recitation of the pledge of allegiance to the American flag in public  
62 schools pursuant to § 22.1-202.

63 10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

64 11. Regulations of the Marine Resources Commission.

65 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)  
66 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et  
67 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the  
68 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of  
69 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written  
70 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§  
71 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions  
72 of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of  
73 § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the  
74 Governor and General Assembly.

75 13. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy  
76 pursuant to subsection B of § 54.1-3307.

77 B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it  
78 will receive, consider and respond to petitions by any interested person at any time with respect to  
79 reconsideration or revision. The effective date of regulations adopted under this subsection shall be in  
80 accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall  
81 become effective as provided in subsection B of § 2.2-4012.

82 C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and  
83 that is placed before a board or commission for consideration shall be provided at least two days in  
84 advance of the board or commission meeting to members of the public that request a copy of that  
85 regulation. A copy of that regulation shall be made available to the public attending such meeting.