

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 9-6.14:4.1 of the Code of Virginia, relating to Administrative Process*
 3 *Act exemption for air and water general permits.*

4 [S 337]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 9-6.14:4.1 of the Code of Virginia is amended and reenacted as follows:**

8 § 9-6.14:4.1. Exemptions and exclusions.

9 A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the
 10 following agencies are exempted from the provisions of this chapter, except to the extent that they are
 11 specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

12 1. The General Assembly.

13 2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly
 14 granted any of the powers of a court of record.

15 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the
 16 management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2
 17 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7
 18 (§ 29.1-700 et seq.) of Title 29.1.

19 4. The Virginia Housing Development Authority.

20 5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created
 21 under this Code, including those with federal authorities, except for those created under Chapter 27
 22 (§ 15.1-1228 et seq.) of Title 15.1.

23 6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22,
 24 such educational institutions shall be exempt from the publication requirements only with respect to
 25 regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and
 26 disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and
 27 disciplining of students.

28 7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii)
 29 classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for
 30 producers' milk, time and method of payment, butterfat testing and differential.

31 8. The Virginia Resources Authority.

32 9. Agencies expressly exempted by any other provision of this Code.

33 10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments
 34 to the Formulary pursuant to § 32.1-81.

35 11. The Council on Information Management.

36 12. The Department of General Services in promulgating standards for the inspection of buildings for
 37 asbestos pursuant to § 2.1-526.14.

38 13, 14. [Repealed.]

39 15. The State Council of Higher Education for Virginia, in developing, issuing, and revising
 40 guidelines pursuant to § 23-9.6:2.

41 16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to
 42 subsection B of § 3.1-726.

43 17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and
 44 Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4,
 45 subsection B of § 3.1-126.12:1, § 3.1-271.1, subsections B and C of § 3.1-828.4, and subsection A of
 46 § 3.1-884.21:1.

47 18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of
 48 certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

49 19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating
 50 amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

51 20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner
 52 Formulary established pursuant to § 54.1-2957.01.

53 21. The Virginia War Memorial Foundation.

54 22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to
 55 the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage
 56 pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

57 23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to
58 § 22.1-280.3.

59 B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

60 1. Money or damage claims against the Commonwealth or agencies thereof.

61 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

62 3. The location, design, specifications or construction of public buildings or other facilities.

63 4. Grants of state or federal funds or property.

64 5. The chartering of corporations.

65 6. Customary military, naval or police functions.

66 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
67 the Commonwealth.

68 8. The conduct of elections or eligibility to vote.

69 9. Inmates of prisons or other such facilities or parolees therefrom.

70 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
71 well as the treatment, supervision, or discharge of such persons.

72 11. Traffic signs, markers or control devices.

73 12. Instructions for application or renewal of a license, certificate, or registration required by law.

74 13. Content of, or rules for the conduct of, any examination required by law.

75 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter
76 14 of Title 2.1.

77 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
78 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
79 published and posted.

80 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
81 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.

82 17. Any operating procedures for review of child deaths developed by the State Child Fatality
83 Review Team pursuant to § 32.1-283.1.

84 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
85 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

86 1. Agency orders or regulations fixing rates or prices.

87 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
88 including delegations of authority.

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

93 4. Regulations which:

94 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
95 agency discretion is involved;

96 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
97 discretion is involved; or

98 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
99 do not differ materially from those required by federal law or regulation, and the Registrar has so
100 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
101 determination shall be published in the Virginia Register not less than thirty days prior to the effective
102 date thereof.

103 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
104 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
105 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
106 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of
107 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not
108 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in
109 writing the nature of the emergency and of the necessity for such action and may adopt such regulations
110 with the prior approval of the Governor. Such regulations shall be limited to no more than twelve
111 months in duration. During the twelve-month period, an agency may issue additional emergency
112 regulations as needed addressing the subject matter of the initial emergency regulation, but any such
113 additional emergency regulations shall not be effective beyond the twelve-month period from the
114 effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject
115 matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace
116 the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this
117 chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be

118 published within sixty days of the effective date of the emergency regulation, and the proposed
119 replacement regulation shall be published within 180 days after the effective date of the emergency
120 regulation.

121 6. [Repealed.]

122 7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to
123 subsection C of § 10.1-1322.2.

124 8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or
125 clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board
126 meetings and one public hearing.

127 9. *General permits issued by the State Air Pollution Control Board pursuant to Chapter 13*
128 *(§ 10.1-1300 et seq.), of Title 10.1 if the Board (i) provides a Notice of Intended Regulatory Action in*
129 *conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days*
130 *from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee*
131 *composed of relevant stakeholders, including potentially affected citizens groups, to assist in the*
132 *development of the general permit, (iii) provides notice and receives oral and written comment as*
133 *provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed*
134 *general permit.*

135 10. *General permits issued by the State Water Control Board pursuant to the State Water Control*
136 *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*
137 *seq.) of Title 62.1 if the Board (i) provides a Notice of Intended Regulatory Action in conformance with*
138 *the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the*
139 *publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed*
140 *of relevant stakeholders, including potentially affected citizens groups, to assist in the development of*
141 *the general permit, (iii) provides notice and receives oral and written comment as provided in*
142 *subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general*
143 *permit.*

144 Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that
145 it will receive, consider and respond to petitions by any interested person at any time with respect to
146 reconsideration or revision. The effective date of regulations adopted under this subsection shall be in
147 accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall
148 become effective as provided in subsection A of § 9-6.14:9.

149 D. The following agency actions otherwise subject to this chapter are excluded from the operation of
150 Article 3 (§ 9-6.14:11 et seq.) of this chapter:

- 151 1. The assessment of taxes or penalties under the tax laws.
- 152 2. The award or denial of claims for workers' compensation.
- 153 3. The grant or denial of public assistance.
- 154 4. Temporary injunctive or summary orders authorized by law.
- 155 5. The determination of claims for unemployment compensation or special unemployment.
- 156 6. The award or denial of individual student loans by the Virginia Education Loan Authority.
- 157 7. The determination of applications for guaranty of individual student loans or the determination of
158 default claims by the State Education Assistance Authority.

159 E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia
160 Register Act, is excluded from the operation of subsection C of this section and of Article 2
161 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for
162 activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance
163 with the provisions of this chapter.

164 F. A regulation for which an exemption is claimed under this section and which is placed before a
165 board or commission for consideration shall be provided at least two days in advance of the board or
166 commission meeting to members of the public that request a copy of that regulation. A copy of that
167 regulation shall be made available to the public attending such meeting.

168 G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of
169 exemptions and exclusions authorized by this section. The purpose of this review shall be to assess
170 whether there are any exemptions or exclusions which should be discontinued or modified.

171 H. Minor changes to regulations being published in the Virginia Administrative Code under the
172 Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code
173 Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.