

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-4006 and 2.2-4007.01 of the Code of Virginia, relating to the*
 3 *Administrative Process Act; timing for filing certain regulations.*

4 [H 1939]
 5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 2.2-4006 and 2.2-4007.01 of the Code of Virginia are amended and reenacted as follows:**
 8 § 2.2-4006. Exemptions from requirements of this article.

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

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

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

18 4. Regulations that are:

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

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

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

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

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

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

37 8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13
 38 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control
 39 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
 40 seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater
 41 Management Act (§ 10.1-603.1 et seq.) of Title 10.1, and (d) the development and issuance of general
 42 wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the
 43 respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance
 44 with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the
 45 Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant
 46 stakeholders, including potentially affected citizens groups, to assist in the development of the general
 47 permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and
 48 (iv) conducts at least one public hearing on the proposed general permit.

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

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

53 11. Regulations of the Marine Resources Commission.

54 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)
 55 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et
 56 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the

57 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of
58 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written
59 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in
60 §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the
61 provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the
62 provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning
63 review by the Governor and General Assembly.

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

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

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

75 § 2.2-4007.01. Notice of intended regulatory action; public hearing.

76 A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006,
77 2.2-4011, or 2.2-4012.1, an agency shall (i) provide the Registrar of Regulations with a Notice of
78 Intended Regulatory Action that describes the subject matter and intent of the planned regulation: ~~At and~~
79 (ii) allow at least 30 days ~~shall be provided~~ for public comment, to include an on-line public comment
80 forum on the Virginia Regulatory Town Hall, after publication of the Notice of Intended Regulatory
81 Action.

82 *Whenever a Virginia statutory change necessitates a change to, or repeal of, all or a portion of a*
83 *regulation or the adoption of a new regulation, the agency shall file a Notice of Intended Regulatory*
84 *Action with the Registrar within 120 days of such law's effective date.*

85 An agency shall not file proposed regulations with the Registrar until the public comment period on
86 the Notice of Intended Regulatory Action has closed.

87 B. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a
88 public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings
89 if required by basic law. If the agency states an intent to hold a public hearing on the proposed
90 regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the
91 agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the
92 proposed regulation, then no public hearing is required unless, prior to completion of the comment
93 period specified in the Notice of Intended Regulatory Action, (i) the Governor directs the agency to hold
94 a public hearing or (ii) the agency receives requests for a public hearing from at least 25 persons.