

# VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

## CHAPTER 629

*An Act to amend and reenact § 2.2-4011 of the Code of Virginia, relating to the Administrative Process Act; emergency regulations.*

[S 1043]

Approved March 20, 2013

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

**1. That § 2.2-4011 of the Code of Virginia is amended and reenacted as follows:**

**§ 2.2-4011. Emergency regulations; publication; exceptions.**

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A-4. of § 2.2-4006. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations.

C. All emergency regulations shall be limited to no more than ~~twelve~~ 18 months in duration. During the ~~twelve-month~~ 18-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the ~~twelve-month~~ 18-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the ~~twelve-month~~ 18-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within ~~sixty~~ 60 days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

D. In the event that an agency concludes that despite its best efforts, a replacement regulation cannot be adopted before expiration of the ~~12-month~~ 18-month period described in subsection C, it may seek the prior written approval of the Governor to extend the duration of the emergency regulation for a period of not more than six additional months. Any such request must be submitted to the Governor at least 30 days prior to the scheduled expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a replacement regulation together with the reasons that a replacement regulation cannot be adopted before the *scheduled* expiration of the emergency regulation. Upon approval of the Governor, *provided such approval occurs prior to the scheduled expiration of the emergency regulation*, the duration of the emergency regulation shall be extended for a period of no more than six months. Such approval shall be in the sole discretion of the Governor and shall not be subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable.

E. Emergency regulations shall be published as soon as practicable in the Register.

F. The Regulations of the Marine Resources Commission shall be excluded from the provisions of this section.