

1 **I. Create a new section in the Virginia Register Act:**

2 **2.2-4103.01 or 2.2-4105 ?? Guidance documents; definitions.**

3 A. For the purposes of this section:

4 "Guidance document" means any document developed by an agency or staff that provides information
5 or guidance of general applicability to the staff or public to interpret or implement statutes or the
6 agency's rules, regulations, programs, or policies, excluding agency minutes or documents that pertain
7 only to the internal management of agencies. Nothing in this definition shall be construed or
8 interpreted to expand the identification or release of any document otherwise protected by law.

9 "Agency" means the same as defined in § 2.2-4101 of the Code of Virginia, except that it shall include
10 an authority, instrumentality, officer, board, or other unit of the government of the Commonwealth that
11 does not have express or implied authority to issue regulations.

12 B. It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia
13 Register of Regulations a list of any guidance documents upon which the agency currently relies. The
14 filing shall be made on or before January 1 of each year in a format to be developed by the Registrar.
15 Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents
16 and make the list available for public inspection, (ii) make available for public inspection the full texts
17 of all guidance documents to the extent inspection is permitted by law, and (iii) upon request, make
18 copies of such lists or guidance documents available without charge, at cost, or on payment of a
19 reasonable fee.

20 C. Nothing in this section is intended to nor shall it confer or impose any regulatory authority upon an
21 agency, nor shall this section create any rights to appeal or challenge a guidance document adopted by
22 an agency.

23 **II. Remove all provisions regarding guidance documents from other sections of the Virginia**
24 **Register Act and the Administrative Process Act.**

25 **Chapter 41 - Register Act**

26 **§ 2.2-4101. Definitions.**

27 As used in this chapter, unless the context requires a different meaning:

28 "Agency" means any authority, instrumentality, officer, board, or other unit of the government of the
29 Commonwealth with express or implied authority to issue regulations other than the General
30 Assembly, courts, municipal corporations, counties, other local or regional governmental authorities
31 including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the
32 Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made
33 under the provisions of § 30-150, and educational institutions operated by the Commonwealth with
34 respect to regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and
35 disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and
36 disciplining of students.

37 "Virginia Administrative Code" means the codified publication of regulations under the provisions of
38 Chapter 15 (§ 30-145 et seq.) of Title 30.

39 "Commission" means the Virginia Code Commission.

40 ~~"Guidance document" means any document developed by a state agency or staff that provides~~
41 ~~information or guidance of general applicability to the staff or public to interpret or implement statutes~~
42 ~~or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the~~

43 ~~internal management of agencies. Nothing in this definition shall be construed or interpreted to expand~~
44 ~~the identification or release of any document otherwise protected by law.~~

45 "Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

46 "Rule" or "regulation" means any statement of general application, having the force of law, affecting
47 the rights or conduct of any person, promulgated by an agency in accordance with the authority
48 conferred on it by applicable basic laws.

49 "Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§
50 2.2-4031 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

51 **§ 2.2-4103. Agencies to file regulations with Registrar; other duties; failure to file.**

52 It shall be the duty of every agency to have on file with the Registrar the full text of all of its currently
53 operative regulations, together with the dates of adoption, revision, publication, or amendment thereof
54 and such additional information requested by the Commission or the Registrar for the purpose of
55 publishing the Virginia Register of Regulations and the Virginia Administrative Code. Thereafter,
56 coincidentally with the issuance thereof, each agency shall from day to day so file, date, and
57 supplement all new regulations and amendments, repeals, or additions to its previously filed
58 regulations. The filed regulations shall (i) indicate the laws they implement or carry out, (ii) designate
59 any prior regulations repealed, modified, or supplemented, (iii) state any special effective or terminal
60 dates, and (iv) be accompanied by a statement or certification, either in original or electronic form, that
61 the regulations are full, true, and correctly dated. No regulation or amendment or repeal thereof shall
62 be effective until filed with the Registrar.

63 Orders condemning or closing any shellfish, finfish or crustacea growing area and the shellfish, finfish
64 or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, of Title 28.2,
65 which are exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) as
66 provided in subsection B of § 2.2-4002, shall be effective on the date specified by the promulgating
67 agency. Such orders shall continue to be filed with the Registrar either before or after their effective
68 dates in order to satisfy the need for public availability of information respecting the regulations of
69 state agencies.

70 An order setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden
71 for reduction purposes pursuant to § 28.2-1000.2, which is exempt from the requirements of the
72 Administrative Process Act as provided by subsection A of § 2.2-4002, shall be effective on the date
73 specified. Such orders shall be filed with the Registrar for prompt publication.

74 In addition, each agency shall itself (i) maintain a complete list of all of its currently operative
75 regulations for public consultation, (ii) make available to public inspection a complete file of the full
76 texts of all such regulations, and (iii) allow public copying thereof or make copies available either
77 without charge, at cost, or on payment of a reasonable fee. Each agency shall also maintain as a public
78 record a complete file of its regulations that have been superseded on and after June 1, 1975.

79 ~~It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia~~
80 ~~Register of Regulations a list of any guidance documents upon which the agency currently relies. The~~
81 ~~filing shall be made on or before January 1 of each year in a format to be developed by the Registrar.~~
82 ~~Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents~~
83 ~~and make such list available for public inspection, (ii) make available for public inspection the full~~
84 ~~texts of all such guidance documents to the extent such inspection is permitted by law, and (iii) upon~~
85 ~~request, make copies of such lists or guidance documents available without charge, at cost, or on~~
86 ~~payment of a reasonable fee.~~

87 Where regulations adopt textual matter by reference to publications other than the Federal Register or
 88 Code of Federal Regulations, the agency shall (i) file with the Registrar copies of the referenced
 89 publications, (ii) state on the face of or as notations to regulations making such adoptions by reference
 90 the places where copies of the referred publications may be procured, and (iii) make copies of such
 91 referred publications available for public inspection and copying along with its other regulations.

92 Unless he finds that there are special circumstances requiring otherwise, the Governor, in addition to
 93 the exercise of his authority to see that the laws are faithfully executed, may, until compliance with this
 94 chapter is achieved, withhold the payment of compensation or expenses of any officer or employee of
 95 any agency in whole or part whenever the Commission certifies to him that the agency has failed to
 96 comply with this section or this chapter in stated respects, to respond promptly to the requests of the
 97 Registrar, or to comply with the regulations of the Commission.

98 **Chapter 40 - Administrative Process Act**

99 **§ 2.2-4001. Definitions.**

100 As used in this chapter, unless the context requires a different meaning:

101 "Agency" means any authority, instrumentality, officer, board or other unit of the state government
 102 empowered by the basic laws to make regulations or decide cases.

103 "Agency action" means either an agency's regulation or case decision or both, any violation,
 104 compliance, or noncompliance with which could be a basis for the imposition of injunctive orders,
 105 penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by
 106 any agency or court.

107 "Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth
 108 authorizing an agency to make regulations or decide cases or containing procedural requirements
 109 therefor.

110 "Case" or "case decision" means any agency proceeding or determination that, under laws or
 111 regulations at the time, a named party as a matter of past or present fact, or of threatened or
 112 contemplated private action, either is, is not, or may or may not be (i) in violation of such law or
 113 regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or
 114 other right or benefit.

115 ~~"Guidance document" means any document developed by a state agency or staff that provides~~
 116 ~~information or guidance of general applicability to the staff or public to interpret or implement statutes~~
 117 ~~or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the~~
 118 ~~internal management of agencies. Nothing in this definition shall be construed or interpreted to expand~~
 119 ~~the identification or release of any document otherwise protected by law.~~

120 "Hearing" means agency processes other than those informational or factual inquiries of an informal
 121 nature provided in §§ 2.2-4007.01 and 2.2-4019 and includes only (i) opportunity for private parties to
 122 submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making
 123 of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in §
 124 2.2-4020 in connection with case decisions.

125 "Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the
 126 Supreme Court in accordance with § 2.2-4024.

127 "Public assistance and social services programs" means those programs specified in § 63.2-100.

128 "Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

129 "Rule" or "regulation" means any statement of general application, having the force of law, affecting
130 the rights or conduct of any person, adopted by an agency in accordance with the authority conferred
131 on it by applicable basic laws.

132 "Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an
133 agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons
134 designated by the agency to act in its behalf.

135 "Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§
136 2.2-4031 et seq.).

137 "Virginia Regulatory Town Hall" means the website operated by the Department of Planning and
138 Budget, which has online public comment forums and displays information about regulatory actions
139 under consideration in the Commonwealth and sends this information to registered public users.

140 **§ 2.2-4008. Availability of guidance documents. Repealed.**

141 ~~It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia~~
142 ~~Register of Regulations a list of any guidance documents upon which the agency currently relies. The~~
143 ~~filing shall be made on or before January 1 of each year in a format to be developed by the Registrar.~~
144 ~~Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents~~
145 ~~and make the list available for public inspection, (ii) make available for public inspection the full texts~~
146 ~~of all guidance documents to the extent inspection is permitted by law, and (iii) upon request, make~~
147 ~~copies of such lists or guidance documents available without charge, at cost, or on payment of a~~
148 ~~reasonable fee.~~