

1 **§ 2.2-4007.01. Notice of intended regulatory action; public hearing.**

2 A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, 2.2-
3 4011, or 2.2-4012.1, an agency shall (i) provide the Registrar of Regulations with a Notice of
4 Intended Regulatory Action that describes the subject matter and intent of the planned regulation
5 and (ii) allow at least 30 days for public comment, to include an on-line public comment forum on
6 the Virginia Regulatory Town Hall, after publication of the Notice of Intended Regulatory Action.

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

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

12 B. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a
13 public hearing on the proposed regulation after it is published. Agencies shall hold such public
14 hearings if required by basic law. If the agency states an intent to hold a public hearing on the
15 proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public
16 hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to
17 hold a hearing on the proposed regulation, then no public hearing is required unless, prior to
18 completion of the comment period specified in the Notice of Intended Regulatory Action, (i) the
19 Governor directs the agency to hold a public hearing or (ii) the agency receives requests for a
20 public hearing from at least 25 persons.

21 *C. The executive order required by § 2.2-4013 may include procedures for the Governor to review
22 and comment on the Notice of Intended Regulatory Action prior to publication in the Virginia
23 Register of Regulations. The executive order may not require the Governor's approval of the
24 Notice of Intended Regulatory Action prior to publication or posting on the Virginia Regulatory
25 Town Hall.*

26 *The Governor shall complete his review and transmit his comments, if any, on the Notice of
27 Intended Regulatory Action no later than 30 days following the agency's submission of the Notice
28 of Intended Regulatory Action for review as may be provided for in the executive order. The
29 Governor may recommend modifications to the Notice of Intended Regulatory Action.*

30 *Upon the expiration of the 30 days, the agency is authorized to (i) submit the Notice of Intended
31 Regulatory Action for publication in the Virginia Register even if the Governor has not
32 transmitted comments; (ii) modify and adopt the Notice of Intended Regulatory Action after
33 considering or incorporating the Governor's comments, if any; or (iii) adopt the Notice of
34 Intended Regulatory Action without change despite the Governor's recommendation for
35 modification.*

36 **§ 2.2-4007.03. Informational proceedings; effect of noncompliance.**

37 A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, or
38 2.2-4011, the proposed regulation and general notice of opportunity for oral or written submittals
39 as to that regulation shall be posted on the Virginia Regulatory Town Hall and published in the
40 Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031.
41 In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and (ii)
42 publicize the notice through press releases and such other media as will best serve the purpose and

Comment [A1]: 30 days to cover 14 days for
DPB review and 14 days for rest of review.

43 subject involved. The Register and any newspaper publication shall be made at least 60 days in
44 advance of the last date prescribed in the notice for such submittals. All notices, written
45 submittals, and transcripts and summaries or notations of oral presentations, as well as any agency
46 action thereon, shall be matters of public record in the custody of the agency.

47 B. If an agency wishes to change a proposed regulation before adopting it as a final regulation, it
48 may choose to publish a revised proposed regulation, provided the latter is subject to a public
49 comment period of at least 30 additional days and the agency complies in all other respects with
50 this section.

51 C. In no event shall the failure to comply with the requirements of this section be deemed mere
52 harmless error for the purposes of § 2.2-4027.

53 **§ 2.2-4007.04. Economic impact analysis.**

54 A. Before delivering any proposed regulation under consideration to the Registrar as required in §
55 2.2-4007.05, the agency shall submit on the Virginia Regulatory Town Hall a copy of that
56 regulation to the Department of Planning and Budget. In addition to determining the public
57 benefit, the Department of Planning and Budget in coordination with the agency shall, within 45
58 days, prepare an economic impact analysis of the proposed regulation, as follows:

59 1. The economic impact analysis shall include but need not be limited to the projected number of
60 businesses or other entities to whom the regulation would apply; the identity of any localities and
61 types of businesses or other entities particularly affected by the regulation; the projected number
62 of persons and employment positions to be affected; the impact of the regulation on the use and
63 value of private property, including additional costs related to the development of real estate for
64 commercial or residential purposes; and the projected costs to affected businesses, localities, or
65 entities of implementing or complying with the regulations, including the estimated fiscal impact
66 on such localities and sources of potential funds to implement and comply with such regulation. A
67 copy of the economic impact analysis shall be provided to the Joint Commission on
68 Administrative Rules;

69 2. If the regulation may have an adverse effect on small businesses, the economic impact analysis
70 shall also include (i) an identification and estimate of the number of small businesses subject to
71 the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required
72 for small businesses to comply with the regulation, including the type of professional skills
73 necessary for preparing required reports and other documents; (iii) a statement of the probable
74 effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or
75 less costly alternative methods of achieving the purpose of the regulation. As used in this
76 subdivision, "small business" has the same meaning as provided in subsection A of § 2.2-4007.1;
77 and

78 3. In the event the Department cannot complete an economic impact statement within the 45-day
79 period, it shall advise the agency and the Joint Commission on Administrative Rules as to the
80 reasons for the delay. In no event shall the delay exceed 30 days beyond the original 45-day
81 period.

82 B. Agencies shall provide the Department with such estimated fiscal impacts on localities and
83 sources of potential funds. The Department may request the assistance of any other agency in
84 preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting
85 the regulation, which shall comment thereon as provided in § 2.2-4007.05, a copy to the Registrar

86 for publication with the proposed regulation, and an electronic copy to each member of the
87 General Assembly. No regulation shall be promulgated for consideration pursuant to § 2.2-
88 4007.05 until the impact analysis has been received by the Registrar. For purposes of this section,
89 the term "locality, business, or entity particularly affected" means any locality, business, or entity
90 that bears any identified disproportionate material impact that would not be experienced by other
91 localities, businesses, or entities. The analysis shall represent the Department's best estimate for
92 the purposes of public review and comment on the proposed regulation. The accuracy of the
93 estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with
94 or otherwise follow the procedures set forth in this subsection create any cause of action or
95 provide standing for any person under Article 5 (§ 2.2-4025 et seq.) or otherwise to challenge the
96 actions of the Department hereunder or the action of the agency in adopting the proposed
97 regulation.

98 C. In the event the economic impact analysis completed by the Department reveals that the
99 proposed regulation would have an adverse economic impact on businesses or would impose a
100 significant adverse economic impact on a locality, business, or entity particularly affected, the
101 Department shall advise the Joint Commission on Administrative Rules, the House Committee on
102 Appropriations, and the Senate Committee on Finance within the 45-day period. The Joint
103 Commission on Administrative Rules shall review such rule or regulation and issue a statement
104 containing the Commission's findings in accordance with § 30-73.3.

105 *D. The executive order required by § 2.2-4013 may include procedures for a review by the*
106 *Department and Planning and Budget that includes determinations other than those described in*
107 *subsection A of this section. The additional determinations shall be completed within the 45-day*
108 *period set forth in subsection A of this section.*

109 **§ 2.2-4007.05. Submission of proposed regulations to the Registrar.**

110 *A. The executive order required by § 2.2-4013 may include procedures for the Governor to review*
111 *and comment on the proposed regulatory package after completion of the review and economic*
112 *impact analysis by the Department of Planning and Budget and before delivery of the proposed*
113 *regulation to the Registrar for publication in the Virginia Register of Regulations. The executive*
114 *order may not require the Governor's approval of the proposed regulation prior to publication in*
115 *the Virginia Register of Regulations or posting on the Virginia Regulatory Town Hall.*

116 *The Governor shall complete his review and transmit his comments, if any, on the proposed*
117 *regulation no later than 60 days following submission of the proposed regulation for review as*
118 *may be provided for in the executive order. The Governor may recommend modifications to the*
119 *proposed regulation.*

120 *Upon the expiration of the 60 days, the agency is authorized to (i) submit the proposed regulation*
121 *for publication in the Virginia Register even if the Governor has not transmitted comments; (ii)*
122 *modify and adopt the proposed regulation after considering or incorporating the Governor's*
123 *comments, if any; or (iii) adopt the proposed regulation without change despite the Governor's*
124 *recommendations for modification.*

125 *B. Before ~~promulgating any regulation under consideration~~ adopting a proposed regulation as a*
126 *final regulation, the agency shall deliver a copy of that regulation to the Registrar together with a*
127 *summary of the regulation and a separate and concise statement of (i) the basis of the regulation,*
128 *defined as the statutory authority for promulgating the regulation, including an identification of*
129 *the section number and a brief statement relating the content of the statutory authority to the*

130 specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or
131 justification for the new provisions of the regulation, from the standpoint of the public's health,
132 safety, or welfare; (iii) the substance of the regulation, defined as the identification and
133 explanation of the key provisions of the regulation that make changes to the current status of the
134 law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the
135 public, and as applicable for the agency or the state, of implementing the new regulatory
136 provisions; and (v) the agency's response to the economic impact analysis submitted by the
137 Department of Planning and Budget pursuant to § 2.2-4007.04. Any economic impact estimate
138 included in the agency's response shall represent the agency's best estimate for the purposes of
139 public review and comment, but the accuracy of the estimate shall in no way affect the validity of
140 the regulation. Staff as designated by the Code Commission shall review proposed regulation
141 submission packages to ensure that the requirements of this subsection are met prior to publication
142 of the proposed regulation in the Register. The summary; the statement of the basis, purpose,
143 substance, and issues; the economic impact analysis; and the agency's response shall be published
144 in the Virginia Register of Regulations and be available on the Virginia Regulatory Town Hall,
145 together with the notice of opportunity for oral or written submittals on the proposed regulation.

146 **§ 2.2-4007.06. Changes between proposed and final regulations.**

147 If one or more changes with substantial impact are made to a proposed regulation from the time
148 that it is published as a proposed regulation to the time it is published as a final regulation, any
149 person may petition the agency within 30 days from the publication of the final regulation to
150 request an opportunity for oral and written submittals on the changes to the regulation. If the
151 agency receives requests from at least 25 persons for an opportunity to submit oral and written
152 comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for
153 30 days to solicit additional public comment and (ii) file notice of the additional 30-day public
154 comment period with the Registrar of Regulations, unless the agency determines that the changes
155 made are minor or inconsequential in their impact. The comment period, if any, shall begin on the
156 date of publication of the notice in the Register. Agency denial of petitions for a comment period
157 on changes to the regulation shall be subject to judicial review.

158 **§ 2.2-4012. Purpose; adoption; effective date; filing; duties of Registrar of Regulations.**

159 A. The purpose of the regulatory procedures shall be to provide a regulatory plan that is
160 predictable, based on measurable and anticipated outcomes, and is inclined toward conflict
161 resolution.

162 B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations, including those that
163 agencies, pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011, may elect to dispense with the public
164 procedures provided by §§ 2.2-4007.01 and 2.2-4009, may be formally and finally adopted by the
165 signed order of the agency so stating. No regulation except an emergency regulation or a
166 noncontroversial regulation promulgated pursuant to § 2.2-4012.1 shall be effective until the
167 expiration of the applicable period as provided in § 2.2-4015. In the case of an emergency
168 regulation filed in accordance with § 2.2-4011, the regulation shall become effective upon its
169 adoption and filing with the Registrar of Regulations, unless a later date is specified. The originals
170 of all regulations shall remain in the custody of the agency as public records subject to judicial
171 notice by all courts and agencies. They, or facsimiles thereof, shall be made available for public
172 inspection or copying. Full and true copies shall also be additionally filed, registered, published, or
173 otherwise made publicly available as required by other laws.

174 C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies
175 of the summary and statement as to the basis, purpose, substance, issues, and the economic impact
176 estimate of the regulation submitted by the Department of Planning and Budget and the agency's
177 response thereto as required by § 2.2-4007.04 shall be transmitted to the Registrar of Regulations,
178 who shall retain these documents.

179 D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the
180 Code of Virginia that authorizes or requires the regulations and, where the regulations are required
181 to conform to federal law or regulation in order to be valid, a citation to the specific federal law or
182 regulation to which conformity is required.

183 *E. The executive order required by § 2.2-4013 may include procedures for the Governor to review
184 and comment on the final regulation after adoption by the agency and prior to publication in the
185 Virginia Register of Regulations. The executive order may not require the Governor's approval of
186 the final regulation prior to publication.*

187 *The Governor shall complete his review and transmit his comments, if any, on the final regulation
188 no later than 30 days following the agency's submission of the final regulation. The Governor may
189 recommend modifications to the final regulation.*

190 *Upon the expiration of the 30 days, the agency is authorized to (i) submit the final regulation for
191 publication in the Virginia Register even if the Governor has not transmitted comments; (ii)
192 modify and adopt the final regulation after considering or incorporating the Governor's
193 comments, if any; or (iii) adopt the final regulation without change despite the Governor's
194 recommendations for modifications.*

195 ~~E F. Immediately upon the adoption by any agency of any regulation in final form~~ Upon final
196 adoption of the regulation *or upon the expiration of the 30 days as set forth in subsection E of this*
197 *section, if applicable, the agency shall forward* a copy of (i) the regulation, (ii) a then current
198 summary and statement as to the basis, purpose, substance, issues, and the economic impact
199 estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the
200 agency's summary description of the nature of the oral and written data, views, or arguments
201 presented during the public proceedings and the agency's comments thereon ~~shall be transmitted to~~
202 *the Registrar of Regulations for publication as soon as practicable in the Virginia Register of*
203 *Regulations. All changes to the proposed regulation shall be highlighted in the final regulation,*
204 *and substantial changes to the proposed regulation shall be explained in the final regulation, where*
205 *The Registrar shall retain these documents as permanent records and make them available for*
206 *public inspection.*

Comment [A2]: Modified to coordinate with 2.2-4013 B and the new provisions.

207 **G.** A draft of the agency's summary description of public comment shall be sent by the agency to
208 all public commenters on the proposed regulation at least five days before final adoption of the
209 regulation.

210

211 **§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial**
212 **impact.**

213 A. ~~The~~ *By June 30 of the year in which the Governor takes office, the* Governor shall adopt and
214 publish procedures by executive order for review of all proposed regulations governed by this
215 chapter *after publication of a proposed regulation in the Virginia Register of Regulations* ~~by June~~
216 ~~30 of the year in which the Governor takes office.~~ The procedures shall include (i) review by the

Comment [A3]: current APA is designed for Governor's review to occur after publication; see next paragraph as to when comments are transmitted (total of 75 days for review - 60 day comment period and 15 days). This amendment clarifies that the mandated EO is for review post publication. The new language in subsection E allows for review prior to publication, but with timeframes and default provisions.

217 Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination
218 by the Governor to determine if the proposed regulations are (a) necessary to protect the public
219 health, safety and welfare and (b) clearly written and easily understandable. The procedures may
220 also include review of the proposed regulation by the appropriate Cabinet Secretary.

221 The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and
222 the agency no later than fifteen days following the completion of the public comment period
223 provided for in § 2.2-4007.03. The Governor may recommend amendments or modifications to
224 any regulation that would bring that regulation into conformity with statutory authority or state or
225 federal laws, regulations or judicial decisions.

Comment [A4]: This is the comment period after publication of the proposed.

226 Not less than fifteen days following the completion of the public comment period provided for in
227 § 2.2-4007.03, the agency may (i) adopt the proposed regulation if the Governor has no objection
228 to the regulation; (ii) modify and adopt the proposed regulation after considering and
229 incorporating the Governor's objections or suggestions, if any; or (iii) adopt the regulation without
230 changes despite the Governor's recommendations for change.

231 B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the
232 Registrar of Regulations for publication as soon as practicable in the Register. All changes to the
233 proposed regulation shall be highlighted in the final regulation, and substantial changes to the
234 proposed regulation shall be explained in the final regulation.

235 C. If the Governor finds that one or more changes with substantial impact have been made to the
236 proposed regulation, he may require the agency to provide an additional thirty days to solicit
237 additional public comment on the changes by transmitting notice of the additional public comment
238 period to the agency and to the Registrar within the 30-day final adoption period described in
239 subsection D, and publishing the notice in the Register. The additional public comment period
240 required by the Governor shall begin upon publication of the notice in the Register.

241 D. A 30-day final adoption period for regulations shall commence upon the publication of the final
242 regulation in the Register. The Governor may review the final regulation during this 30-day final
243 adoption period and if he objects to any portion or all of a regulation, the Governor may file a
244 formal objection to the regulation, suspend the effective date of the regulation in accordance with
245 subsection B of § 2.2-4014, or both.

246 If the Governor files a formal objection to the regulation, he shall forward his objections to the
247 Registrar and agency prior to the conclusion of the 30-day final adoption period. The Governor
248 shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he
249 fails to suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014.
250 The Governor's objection, or the suspension of the regulation, or both if applicable, shall be
251 published in the Register.

252 A regulation shall become effective as provided in § 2.2-4015.

253 *E. The Governor may also adopt and publish procedures by executive order for review of all*
254 *Notices of Intended Regulatory Action required by this chapter and all proposed or final*
255 *regulations governed by this chapter prior to publication in the Virginia Register of Regulations.*
256 *The procedures shall comply with subdivision C of § 2.2-4007.01, subdivision D of § 2.2-4007.04,*
257 *subdivision A of § 2.2-4007.05, and subdivision E of § 2.2-4012.*

258 ~~E. F.~~ This section shall not apply to the issuance by the State Air Pollution Control Board of
259 variances to its regulations.

260 **§ 2.2-4015. Effective date of regulation; exception.**

261 A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100
262 et seq.) shall become effective at the conclusion of the thirty-day final adoption period provided
263 for in subsection D of § 2.2-4013, or any other later date specified by the agency, unless:

264 1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the
265 regulation, unless withdrawn by the agency, shall become effective on a date specified by the
266 agency that shall be after the expiration of the applicable twenty-one-day extension period
267 provided in § 2.2-4014;

268 2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to
269 provide for additional public comment, in which event the regulation, unless withdrawn by the
270 agency, shall become effective on a date specified by the agency that shall be after the period for
271 which the Governor has provided for additional public comment;

272 3. The Governor and (i) the appropriate standing committees of each house of the General
273 Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in
274 accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the
275 end of the next regular legislative session; or

276 4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any
277 reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the
278 agency, shall become effective in accordance with subsection B.

279 B. Whenever the regulatory process has been suspended for any reason, any action by the agency
280 that either amends the regulation or does not amend the regulation but specifies a new effective
281 date shall be considered a re adoption of the regulation for the purposes of appeal. If the regulation
282 is suspended under § 2.2-4007.06, such re adoption shall take place after the thirty-day public
283 comment period required by that subsection. Suspension of the regulatory process by the agency
284 may occur simultaneously with the filing of final regulations as provided in subsection B of § 2.2-
285 4013.

286 When a regulation has been suspended, the agency must set the effective date no earlier than
287 fifteen days from publication of the re adoption action and any changes made to the regulation.
288 During that fifteen-day period, if the agency receives requests from at least twenty-five persons for
289 the opportunity to comment on new substantial changes, it shall again suspend the regulation
290 pursuant to § 2.2-4007.06.

291 C. This section shall not apply to the issuance by the State Air Pollution Control Board of
292 variances to its regulations.