

§ 2.2-4101. Definitions.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth with express or implied authority to issue regulations other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § [30-150](#), and educational institutions operated by the Commonwealth with respect to regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students. "Virginia Administrative Code" means the codified publication of regulations under the provisions of Chapter 15 (§ [30-145](#) et seq.) of Title 30.

"Commission" means the Virginia Code Commission.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, *or program rules and policies in the case of non-regulatory state agencies*, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Non-regulatory state agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth that (i) adopts and publishes program rules or guidance documents of general applicability to the staff or public to interpret or implement its programs or policies and (ii) does not have express or implied authority to issue regulations. [Note: does this definition need to include the long list of exemptions contained in the "agency" definition?]

"Registrar" means the Registrar of Regulations appointed as provided in § [2.2-4102](#).

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

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

1973, c. 535, § 9-6.16; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1985, cc. 67, 602; 1993, c. 669; 1997, cc. [11](#), [87](#); 2001, c. [844](#).

§ 2.2-4103. Agencies to file regulations with Registrar; *Non-regulatory state agencies to file guidance documents with Registrar*; other duties; failure to file.

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

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

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

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

It shall be the duty of every agency *and every non-regulatory state agency* to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency *or non-regulatory state agency* currently relies. The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar.

Each agency *and non-regulatory state agency* shall also (i) maintain a complete list of all of its currently operative guidance documents and make such list available for public inspection, (ii) make available for public inspection the full texts of all such guidance documents to the extent such inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

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

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

1973, c. 535, § 9-6.18; 1975, c. 502; 1982, c. 489; 1989, c. 299; 1997, cc. [11](#), [87](#); 2001, c. [844](#); 2007, c. [41](#); 2010, cc. [178](#), [407](#), [728](#).

ALAC Executive Review Process Recommendations (Draft v.2)

Based on JLARC Report: Review of Exemptions to the Virginia Administrative Process Act (2009)

ALAC Recommendation 1: Amend VAPA to codify executive branch review at the NOIRA stage to increase timeliness and transparency at this stage. The statute would allow the executive branch to approve the NOIRA, ~~recommend that the agency withdraw the NOIRA~~ within a prescribed timeframe, or suspend the timeframe period indefinitely. If the executive branch takes no action within the prescribed timeframe, the NOIRA will be considered approved. The executive branch shall provide an explanation to the agency if the timeframe is suspended.

JLARC Recommendation 1: VAPA and future executive orders could be written to eliminate executive branch review at the NOIRA stage. At this stage, the agency or board is only indicating that it is considering developing or amending a regulation on a particular subject matter. The purpose of the NOIRA is to gain feedback from the public and others as to what it should consider before proposing a regulation in this area. If executive branch reviewers have any concerns, their consideration and feedback could be provided simultaneously with the public comment period on the NOIRA.

ALAC Recommendation 2: Amend VAPA to codify timeframes for DPB review where none exist or limit DPB review to certain stages of the process. This does not prevent DPB from reviewing regulations from a policy perspective. The Governor's office will be free to define the scope of DPB review in the Executive Order.

JLARC Recommendation 2: VAPA and future executive orders could be written to limit DPB's review responsibilities to its preparation of the economic impact analysis already required by the act. VAPA currently requires DPB to perform an analysis of the economic impact of proposed regulations. However, the Act does not require DPB to conduct reviews of regulatory policy. Currently, both DPB and Governor policy office staff review regulations from a policy perspective. This redundancy adds time to the process. To the extent that the Governor's Office is active in such policy reviews, the DPB review could be eliminated.

ALAC Recommendation 3: Amend VAPA to eliminate redundancies at the proposed stage and authorize agencies to proceed with submitting regulatory packages within an established timeframe, similar to Recommendation 1. Allow the Governor's office to suspend this timeframe indefinitely as in recommendation 1. Also allow DPB to certify that a proposed regulation which received no public comment or only positive public comment is unchanged and does not need to be reviewed by the Governor at the Final stage.

JLARC Recommendation 3: For regulations to which the standard VAPA process applies, both VAPA and future executive orders could be written to explicitly authorize agencies to proceed with submitting their proposed regulatory package either (1) within 15 days following completion by DPB of its statutorily-prescribed economic impact analysis, or (2) sooner, if advised that the executive branch review is complete. The purpose of this option is to set for than expectation that agencies can proceed with the process if reviewers have not responded to the agency with their comments within an established timeframe.

ALAC Recommendation 4: Work with the current administration to ensure that future Executive Orders are consistent with the provisions of the VAPA with regard to fast-track regulations. Any amendments to the VAPA would have a delayed effective date so as to not impact the current administration.

JLARC Recommendation 4: For fast-track regulations, both VAPA and future executive orders could be written to expedite executive branch review. Executive orders could be written to include a requirement that executive branch review of fast-track regulations shall be completed within no more than 40 or 50 days from the time of agency submission of the regulation to DPB. The 40-day maximum time would include ten days for an assessment of the fast-track status and 30 days for DPB's required economic impact analysis. Up to an additional ten days could be allotted if further review by the secretary or Governor is deemed necessary.