

1. Definitions

- In § 2.2-4007.04 A1, because the definition of "Small Business" differs from other Code definitions (at §§ [2.2-1604](#) and [2.2-4310](#)), data from the Departments of Small Business and Supplier Diversity, and General Services, are not usable.
- In §§ 2.2-4007.04 and 2.2-4007.1, are "adverse effect" and "economic impact" synonyms?
- Does "regulation" correspond to a single VAC chapter, or sections thereof¹?

2. Exemptions

- May an exemption be used to exempt a program from rulemaking altogether, or just exempt the resulting rule from the APA?²
- Do the exemptions in §§ 2.2-4002 and 2.2-4006 apply to currently effective regulations (e.g., thus exempting them from petitions and periodic reviews) to the process of adopting regulations (e.g., a fast-track regulation), or to both?

3. Timeframes and Dates

- Do comment periods begin "after publication" (i.e., the next day) or "on the date of publication" (i.e., the same day). See §§ 2.2-4002.1 B, 2.2-4007 C, 2.2-4007.01 A, 2.2-4007.03 A, 2.2-4007.06, 2.2-4007.1 F, 2.2-4012.1, 2.2-4013 D, 2.2-4014 A.)
- In § 2.2-4011: when is the "enactment" date? (The day the Governor approves a bill? And on a reconvened day, when the bodies agree to Governor's amendments?)

4. Applicability

- In § 2.2-4002.1, guidance documents are issued by an "agency," which is a defined term. Thus, may only agencies that are "empowered by the basic laws to make regulations or decide cases" issue a guidance document?
- In § 2.2-4007.1, do subsections D and E apply to "all regulations" or only to those that have an "impact on small businesses"?
- In § 2.2-4011 A, does "approval" apply to the "consultation" with OAG or the "discretion" of the Governor? In other words, may OAG unilaterally "disapprove" the use of an emergency?

5. Organization

- If §§ 2.2-4007.01 through 2.2-4007.06 represent the promulgation process, might they be in a stand-alone "Part" that clearly delineates the adoption process?
- Could similar sections be combined, such as combining § 2.2-4017 and § 2.2-4013 to form a single EO section?

¹ See [Melendez v. State Board of Health, Henrico CL17-1164 \(2019\)](#).

² See [OAG certification memo](#).

§ 2.2-4012 B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations, including those that agencies, pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011, may elect to dispense with the public procedures provided by §§ 2.2-4007.01 and 2.2-4009, may be formally and finally adopted by the signed order of the agency so stating.

Grammatically, this is the sentence:

All regulations may be formally and finally adopted by the signed order of the agency so stating.

The verb "may" (preceding "be") is problematic because it means this sentence is not a requirement; it's content is optional. If this is to be a requirement, change that instance of "may" to "must" (preferred) or "shall".

How did it get this way? Probably, the very "may" preceding "be" was not original, but inserted erroneously to be parallel with "may elect" (which is appropriately to offer an option).

The green clause modifies "regulations" only.

Such regulations include regulations that agencies may elect to dispense with the public procedures provided by the green citations.

The blue clause modifies "agencies" only.

Currently, as written, the blue clause modifies (probably) the wrong word; it's modifying "agencies" instead of the action being taken by an agency. If the goal of the sentence is to stress that this sentence applies to agencies that are (i) exempt wholly or partially from the APA or (ii) filing an emergency regulation, a better phrase might be: including those regulatory actions taken pursuant to.... for which an agency may elect...

Cited sections catchlines (content):

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

§ 2.2-4014. Legislative review of proposed and final regulations.

§§ 2.2-4002 & 2.2-4006 contain exemptions from, respectively, the entire APA and Article 2 of the APA.

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

§ 2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations.

§ 2.2-4009. Evidentiary hearings on regulations.

Put that all together:

B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations must be formally and finally adopted by a signed order of an agency stating that such action is a final adoption of the regulation. This includes regulatory actions taken pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011 for which an agency may elect to dispense with the public procedures provided by §§ 2.2-4007.01 and 2.2-4009.

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

- A. The purpose of the regulatory procedures shall be to provide a regulatory plan that is predictable, based on measurable and anticipated outcomes, and is inclined toward conflict resolution.
- B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations, including those that agencies, pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011, may elect to dispense with the public procedures provided by §§ 2.2-4007.01 and 2.2-4009, may be formally and finally adopted by the signed order of the agency so stating. No regulation except an emergency regulation or a noncontroversial regulation promulgated pursuant to § 2.2-4012.1 shall be effective until the expiration of the applicable period as provided in § 2.2-4015. In the case of an emergency regulation filed in accordance with § 2.2-4011, the regulation shall become effective upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as required by other laws.
- C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies of the summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget and the agency's response thereto as required by § 2.2-4007.04 shall be transmitted to the Registrar of Regulations, who shall retain these documents.
- D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the Code of Virginia that authorizes or requires the regulations and, where the regulations are required to conform to federal law or regulation in order to be valid, a citation to the specific federal law or regulation to which conformity is required.
- E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1989, c. 71; 1992, c. 829; 1993, c. 898; 1994, c. 938; 2001, c. 844; 2003, c. 224; 2007, cc. 873, 916.

Grammatical Issue in § 2.2-4012 B

From Ashley Colvin, DPB

Per the 2001 recodification report for Title 2.1, § 2.2-4012 B used to be 9-6.14:9. According to HD 26 (page 13) that text said:

Adoption, dating, availability.-All regulations, including those as to which agencies pursuant to § 9-6.14:6 may elect to dispense with the public procedures provided by §§ 9-6.14:7 and 9-6.14:8, may be formally and finally adopted by the signed order of the agency so stating. [31] But no regulation shall be operative in less than thirty days after such adoption and the filing thereof in accordance with the Virginia Register Act except that in the case of an emergency under § 9-6.14:6(iii) hereof the regulation shall become operative upon its adoption and filing unless a later date is specified. [32] The originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. [33] They, or facsimiles thereof, shall be made available by the agency for public inspection or copying. [34] Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as may be required by other laws. [35]

The numbers in brackets refer to explanatory endnotes, but the online copy of the PDF is missing endnotes 22-35, because its missing pages 23 and 24. So we need a hardcopy and/or a fresh scan to see what the purpose of this section was.

Aha! The pages are there but the PDF has them out of order.

Endnote #31 says, "This assumes that all regulations will be in writing. The normal method of adoption would be a signed order stating that the attached (or "foregoing") regulation is "hereby adopted." The signing may be by the official or officials authorized to act, or by some duly designated subordinate such as the secretary or chief clerk of the agency who is by agency minute or otherwise authorized to sign "for" the agency."

ADMINISTRATIVE PROCESS ACT

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**REPORT OF THE
VIRGINIA CODE COMMISSION**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



House Document No. 26

**COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1975**

argument to the agency itself. [29] Whether or not subordinates take the evidence, after opportunity for the submittal of briefs on request and such oral argument as may be scheduled in its discretion, the agency may settle the terms of the regulation and shall promulgate it only upon (i) its findings of fact based upon the record of evidence made pursuant to this section and facts of which judicial notice may be taken, (ii) statements of basis and purpose as well as comment upon data received in any informational proceedings held under § 9-6.14:7 and (iii) the conclusion or conclusions required by the terms of the basic law under which the agency is operating. [30]

§ 9-6.14:9. Adoption, dating, availability.—All regulations, including those as to which agencies pursuant to § 9-6.14:6 may elect to dispense with the public procedures provided by §§ 9-6.14:7 and 9-6.14:8, may be formally and finally adopted by the signed order of the agency so stating. [31] But no regulation shall be operative in less than thirty days after such adoption and the filing thereof in accordance with the Virginia Register Act except that in the case of an emergency under § 9-6.14:6(iii) hereof the regulation shall become operative upon its adoption and filing unless a later date is specified. [32] The originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. [33] They, or facsimiles thereof, shall be made available by the agency for public inspection or copying. [34] Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as may be required by other laws. [35]

Article 3.

Case Decisions.

§ 9-6.14:10. Exclusions.—This article shall not apply to case decisions respecting (i) the assessment of taxes or penalties under the tax laws, (ii) the award or denial of claims for workmen's compensation, (iii) the grant or denial of public assistance, or (iv) temporary restraining or like orders authorized by law to be issued summarily. [36]

§ 9-6.14:11. Informal fact finding.—Save to the extent that case decisions are made as provided by § 9-6.14:12, agencies shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings. [37] Such conference-consultation procedures include rights of parties to the case (i) to have reasonable notice thereof, (ii) to appear in person or by counsel or other qualified representative before the agency or its subordinates for the informal presentation of factual data, argument, or proof in connection with any case, (iii) to have notice of any contrary fact basis or information in the possession of the agency upon which it may rely in any way in making an adverse decision, (iv) to receive a prompt decision of any application for a license, benefit, or renewal thereof, and (v) to be informed, briefly and generally in writing, of the factual or procedural basis for an

[27] For the definition of “subordinates” see § 9-6.14:5 G.

[28] Note that it is only these evidential proceedings which require a verbatim record, not the informational proceedings under § 9-6.14:7. Another condition is the requirement of a report by such subordinates as mentioned in the next sentence.

[29] Only where subordinates preside at evidential hearings is a report required, the purpose of which is to serve as a basis for further proceedings before the agency itself.

[30] In all cases where evidential hearings are held it is contemplated that parties shall have the opportunity to submit briefs, but oral argument rests in the discretion of the agency. The agency itself must make the findings of fact on the basis of the record (and such judicial notice as is recognized) as well as state the basis and purpose required by the last paragraph of § 9-6.14:7 growing out of any separate informational proceedings. These must lead to the similarly stated ultimate conclusion or conclusions required by the language of the basic law under which the agency is acting. Such findings, statement, and conclusion may be short and simple unless the nature and number of the factual issues require elaboration of the findings.

[31] This assumes that all regulations will be in writing. The normal method of adoption would be a signed order stating that the attached (or “foregoing”) regulation is “hereby adopted.” The signing may be by the official or officials authorized to act, or by some duly designated subordinate such as the secretary or chief clerk of the agency who is by agency minute or otherwise authorized to sign “for” the agency.

[32] Note that, with the exception stated, the normal 30-day deferred effective date period begins to run upon and after the filing of regulations under the Virginia Register Act. Such filing is required only to the extent provided in that Act, amendments thereof, and any instructions or regulations issued thereunder respecting such filing.

[33] Every agency should provide for suitable custody of such public records as well as their availability under the remainder of this section.

[34] Where copies are made available, there would of course be no reason for public inspection or copying of originals unless some controversy should develop as to the existence, terms, dating, or otherwise of the originals.

[35] As stated in note 32 above, filing under the Virginia Register Act is required only to the extent provided therein or by any amendments of that act or any regulations or instructions issued thereunder respecting such filing. Other laws occasionally require the filing of regulations for other purposes, but those are neither made additional filing requirements under this chapter nor does this chapter repeal or modify them. Note that this chapter makes no provision for publishing regulations, which is left to

The APA (§ 2.2-4007.04) requires DPB to assess whether a regulation has “an adverse effect on small businesses...” Because “adverse effect” is not defined, and the definition of “small business” differs from other statutory definitions, DPB cannot make an effective determination. As a result, over 20% of all Economic Impact Analyses (EIA) report an adverse effect, which dilutes its usefulness.

Because Code does not define “adverse effect” DPB has crafted a broad definition

In each EIA, DPB indicates the following:

- Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.
- An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.

In short, if the regulatory change costs more than \$1, or results in a revenue loss of more than \$1, an adverse impact is reported by DPB. In contrast, Code requires VITA to take certain actions if a specific dollar threshold (\$1 million) is exceeded (§ 2.2-2006).

APA’s definition of “small business” differs from other Code definitions, hindering analysis

Per § 2.2-4007.1, “small business” means:

- “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Department of Small Business & Supplier Diversity:

- “at least 51 percent independently owned and controlled by one or more individuals....has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years” (§ 2.2-1604).

Public Procurement Act:

- “independently owned and controlled by one or more individuals... has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years” (§ 2.2-4310).

Because the APA definition differs from other Code definitions, data collected by other state agencies is not useful.

Article 2. Regulations.

§ 2.2-4006. Exemptions from requirements of this article.

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

1. Agency orders or regulations fixing rates or prices.
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.
4. Regulations that are:
 - a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;
 - b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or
 - c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.
5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.
6. Regulations of (i) the regulatory boards served by the Department of Labor and Industry pursuant to Title 40.1 and the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1, (ii) the Board of Accountancy, and (iii) the State Board of Health that are limited to reducing fees charged to regulants and applicants.
7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Energy authorized pursuant to §§ 45.2-560 and 45.2-1149.
8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board

pursuant to the State Water Control 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 seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

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

10. Regulations of the Board of the Commonwealth Savers Plan adopted pursuant to § 23.1-704.

11. Regulations of the Marine Resources Commission.

12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

13. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E of § 54.1-3443.

14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the provisions of this subdivision, any such waste load allocations adopted, amended, or

repealed by the Board shall be subject to the provisions of §§ [2.2-4013](#) and [2.2-4014](#) concerning review by the Governor and General Assembly.

15. Regulations of the Workers' Compensation Commission adopted pursuant to § [65.2-605](#), including regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in subdivision F 2 of § [65.2-605](#) to assist in the development of such regulations and (ii) provides an opportunity for public comment on the regulations prior to adoption.

16. Amendments to the State Health Services Plan adopted by the Board of Health following receipt of recommendations by the State Health Services Task Force pursuant to § [32.1-102.2:1](#) if the Board (i) provides a Notice of Intended Regulatory Action in accordance with the requirements of § [2.2-4007.01](#), (ii) provides notice and receives comments as provided in § [2.2-4007.03](#), and (iii) conducts at least one public hearing on the proposed amendments.

17. Rules of the Workers' Compensation Commission adopted pursuant to subsection A of § [65.2-201](#) and subsection B of § [65.2-703](#), provided the Workers' Compensation Commission provides an opportunity for public comment on the rules prior to adoption.

18. Amendments to the network adequacy standards for a managed care health insurance plan adopted by the Board of Health that conform to the network adequacy standards required for qualified health plans and qualified dental plans, as such terms are defined in § [38.2-6500](#), offered in the Commonwealth, provided that the Board of Health provides an opportunity for public comment on such amendments prior to adoption.

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

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

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. [237](#), [577](#), [649](#), [740](#), [743](#), [801](#); 1995, cc. [103](#), [499](#), [516](#); 1996, cc. [51](#), [152](#), [158](#), [189](#), [205](#), [279](#), [320](#), [345](#), [573](#), [590](#), [598](#), [638](#), [705](#), [735](#), [818](#), [1012](#); 1997, cc. [87](#), [88](#), [109](#), [212](#), [390](#), [439](#), [567](#), [624](#), [785](#), [806](#), [845](#), [850](#), [861](#), [868](#); 1998,

cc. [39](#), [619](#), [784](#); 1999, cc. [412](#), [421](#), [433](#), [603](#); 2000, cc. [382](#), [400](#), [924](#), [1011](#); 2001, c. [844](#); 2003, c. [436](#); 2005, c. [102](#); 2006, cc. [632](#), [719](#); 2007, cc. [873](#), [916](#); 2010, c. [65](#); 2011, c. [464](#); 2012, cc. [803](#), [835](#); 2013, cc. [756](#), [793](#); 2014, cc. [202](#), [674](#), [719](#); 2016, cc. [221](#), [279](#), [290](#); 2017, cc. [416](#), [432](#); 2018, cc. [46](#), [77](#); 2020, c. [1271](#); 2021, Sp. Sess. I, c. [532](#); 2024, cc. [217](#), [559](#); 2025, cc. [254](#), [265](#); 2026, cc. [652](#), [653](#).

§ 2.2-4007. Petitions for new or amended regulations; opportunity for public comment.

A. Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. The petition shall state (i) the substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections, and (ii) reference to the legal authority of the agency to take the action requested.

B. Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request and the agency's plan for disposition of the petition to the Registrar for publication in the Virginia Register of Regulations in accordance with the provisions of subsection B of § [2.2-4031](#).

C. A 21-day period for acceptance of written public comment on the petition shall be provided after publication in the Virginia Register. The agency shall issue a written decision to grant or deny the petitioner's request within 90 days following the close of the comment period. However, if the rulemaking authority is vested in an entity that has not met within that 90-day period, the entity shall issue a written decision no later than 14 days after it next meets. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations. Agency decisions to initiate or not initiate rulemaking in response to petitions shall not be subject to judicial review.

1984, c. 5, § 9-6.14:7.1; 1985, c. 602; 1989, c. 71; 1991, c. 488; 1993, cc. 898, 944; 1994, c. [938](#); 1995, cc. [25](#), [677](#), [717](#), [790](#); 1997, c. [87](#); 2001, c. [844](#); 2002, cc. [241](#), [391](#), [747](#); 2003, c. [224](#); 2005, cc. [619](#), [682](#); 2007, cc. [873](#), [916](#).

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

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

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

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

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

2007, cc. [873](#), [916](#); 2011, c. [464](#).

§ 2.2-4007.02. Public participation guidelines.

A. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted, and used by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate and (ii) be accompanied by and represented by counsel or other representative. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

2007, cc. [873](#), [916](#); 2012, c. [795](#).

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

A. In the case of all regulations, except those regulations exempted by § [2.2-4002](#), [2.2-4006](#), or [2.2-4011](#), the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations in accordance with the provisions of subsection B of § [2.2-4031](#). In addition, the

agency may, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. The Register and any newspaper publication shall be made at least 60 days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts and summaries or notations of oral presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

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

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

2007, cc. 873, 916.

§ 2.2-4007.04. Economic impact analysis.

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

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

2. If the regulation may have an adverse effect on small businesses, the economic impact analysis shall also include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. As used in this

subdivision, "small business" has the same meaning as provided in subsection A of § 2.2-4007.1.

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

C. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in § 2.2-4007.05, a copy to the Registrar for publication with the proposed regulation, and an electronic copy to each member of the General Assembly. No regulation shall be promulgated for consideration pursuant to § 2.2-4007.05 until the impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 5 (§ 2.2-4025 et seq.) or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

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

E. The Department shall revise and reissue its economic impact analysis within the time limits set forth for the Department's review of regulations at the final stage pursuant to the Governor's executive order for executive branch review if any of the following conditions is present that would materially change the Department's analysis:

1. Public comment timely received at the proposed stage indicates significant errors in the economic impact analysis; or

2. There is significant or material difference between the agency's proposed economic impact analysis and the anticipated negative economic impacts to the business community as indicated by public comment.

The determination of whether a condition is present under this subsection shall be made by the Department and shall not be subject to judicial review.

2007, cc. [316](#), [561](#), [873](#), [916](#); 2015, c. [608](#); 2017, cc. [483](#), [493](#), [599](#).

§ 2.2-4007.04:01. Notice required of certain departments.

A. At or prior to the time a new regulation is posted to the Virginia Regulatory Town Hall, the Department of Medical Assistance Services shall provide direct notice to stakeholders affected by the new regulatory change that such change has been initiated. At the time that the final stage of a regulation is posted to the Virginia Regulatory Town Hall, the Department shall provide direct notice to stakeholders affected by the regulatory change that such final stage has been posted.

B. At the time a change to a provider manual is being developed, the Department of Medical Assistance Services shall provide direct notice to stakeholders affected by the provider manual change that such change has been initiated. The Department shall post a notice of such change to the Virginia Regulatory Town Hall, to include a public comment forum, for a period of 30 days. Such notice shall include a description of the change and provide contact information for the Department's designated contact person.

C. At or prior to the time a new regulation relating to licensed providers is posted to the Virginia Regulatory Town Hall, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the new regulatory change that such change has been initiated.

D. At the time that the final stage of a regulation is posted to the Virginia Regulatory Town Hall, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the regulatory change that such final stage has been posted.

E. At the time any change to guidance documents related to licensure requirements is being developed, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the change that such change has been initiated. The Department shall post the proposed change to the Virginia Regulatory Town Hall, to include a public comment forum, for a period of 30 days. Such notice shall include a description of the change and provide contact information for the Department's designated contact person. If it is anticipated that the change shall have an impact on staffing or payment matters for the affected stakeholders, the direct notice to stakeholders shall note this fact and request specific

comments regarding an appropriate time frame for the implementation of such changes.

2017, c. 599.

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

Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety, or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to § 2.2-4007.04. Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure that the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary; the statement of the basis, purpose, substance, and issues; the economic impact analysis; and the agency's response shall be published in the Virginia Register of Regulations and be available on the Virginia Regulatory Town Hall, together with the notice of opportunity for oral or written submittals on the proposed regulation.

2007, cc. 873, 916.

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

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

Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

2007, cc. [873](#), [916](#).

§ 2.2-4007.07. State Air Pollution Control Board; variances.

The provisions of §§ [2.2-4007](#) through [2.2-4007.06](#) shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

2007, cc. [873](#), [916](#).

§ 2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations.

A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.

B. In addition to the requirements of §§ [2.2-4007](#) through [2.2-4007.06](#), prior to the adoption of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of the following methods of reducing the effects of the proposed regulation on small businesses:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

C. Prior to the adoption of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

D. In addition to other requirements of § [2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to

minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law. When a regulation has undergone a comprehensive review as part of a regulatory action that included the solicitation of public comment on the regulation, a periodic review shall not be required until four years after the effective date of the regulatory action.

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

F. Prior to commencement of the regulatory review required by subsection D, the agency shall publish a notice of the review in the Virginia Register of Regulations and post the notice on the Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment after publication of the notice. No later than 120 days after close of the public comment period, the agency shall publish a report of the findings of the regulatory review in the Virginia Register of Regulations and post the report on the Virginia Regulatory Town Hall.

2005, cc. [619](#), [682](#); 2007, cc. [873](#), [916](#); 2011, cc. [241](#), [315](#).

§ 2.2-4007.2. Regulations requiring the submission of documents or payments.

A. On or after January 1, 2010, each agency having regulations promulgated in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) that require the submission of documents or payments, including fees and fines, shall (i) examine such regulations to determine whether the submission of the required documents or payments may be accomplished by electronic means, and (ii) if so, consider amending the regulation that is being promulgated to offer the alternative of submitting the documents or payments by electronic means. If an agency chooses to amend the regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 (§ [2.2-4006](#) et seq.) of Chapter 40 of Title 2.2 provided the amended regulation is (a) adopted by December 31, 2010, and (b) consistent with federal and state law and regulations.

B. Nothing in this section shall be construed to create an independent or private cause of action to enforce its provisions.

C. Unless otherwise exempt, any amendments to an agency's regulations pursuant to this section made after December 31, 2010, shall be subject to the requirements of the Administrative Process Act (§ 2.2-4000 et seq.).

D. For the purposes of this section,

"Agency" and "regulations" mean the same as those terms are defined in § 2.2-4001.

"Electronic" means the same as that term is defined in § 59.1-480.

2009, cc. 85, 624.

§ 2.2-4008. Repealed.

Repealed by Acts 2017, c. 488, cl. 2.

§ 2.2-4009. Evidentiary hearings on regulations.

Where an agency proposes to consider the exercise of authority to promulgate a regulation, it may conduct or give interested persons an opportunity to participate in a public evidentiary proceeding; and the agency shall always do so where the basic law requires a hearing. Evidentiary hearings may be limited to the trial of factual issues directly related to the legal validity of the proposed regulation in any of the relevant respects outlined in § 2.2-4027.

General notice of the proceedings shall be published as prescribed in § 2.2-4007.03. In addition, where the proposed regulation is to be addressed to named persons, the latter shall (i) also be given the same notice individually by mail or otherwise if acknowledged in writing and (ii) be entitled to be accompanied by and represented by counsel or other representative. The proceedings may be conducted separately from, and in any event the record thereof shall be separate from, any other or additional proceedings the agency may choose or be required to conduct for the reception of general data, views, and argument pursuant to § 2.2-4007.02 or otherwise. Any probative evidence may be received except that the agency shall as a matter of efficiency exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, and may deny rebuttal, or cross-examination. Testimony may be admitted in written form provided those who have prepared it are made available for examination in person.

The agency or one or more of its subordinates specially designated for the purpose shall preside at the taking of evidence and may administer oaths and affirmations. The proceedings shall be recorded verbatim and the record thereof shall be made available to interested persons for transcription at their expense or, if transcribed by or for the agency, for inspection or purchase at cost.

Where subordinates preside at the taking of the evidence, they shall report their recommendations and proposed findings and conclusions that shall be made available upon request to the participants in the taking of evidence as well as other interested

persons and serve as a basis for exceptions, briefs, or oral argument to the agency itself. Whether or not subordinates take the evidence, after opportunity for the submittal of briefs on request and such oral argument as may be scheduled, the agency may settle the terms of the regulation and shall promulgate it only upon (a) its findings of fact based upon the record of evidence made pursuant to this section and facts of which judicial notice may be taken, (b) statements of basis and purpose as well as comment upon data received in any informational proceedings held under § 2.2-4007.03 and (c) the conclusions required by the terms of the basic law under which the agency is operating.

1975, c. 503, § 9-6.14:8; 1985, c. 602; 2001, c. 844; 2007, cc. 873, 916; 2012, c. 795.

§ 2.2-4010. Pilot programs for regulations imposing local government mandates.

Where an agency proposes to consider the exercise of authority to promulgate a regulation that will impose a statewide mandate on the Commonwealth's localities, the agency shall consider, where appropriate, implementing the regulation on a limited basis with a representative number of localities. An agency may use such a pilot program to determine the effectiveness or impact of proposed regulations prior to statewide adoption.

1993, c. 168, § 9-6.14:8.1; 2001, c. 844.

§ 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 18 months in duration. During the 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 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 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 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 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.

1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 71, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793, 829; 1993, cc. 537, 669, 898; 1994, cc. [237](#), [577](#), [649](#), [740](#), [743](#), [801](#), [938](#); 1995, cc. [103](#), [499](#), [516](#); 1996, cc. [51](#), [152](#), [158](#), [189](#), [205](#), [279](#), [320](#), [345](#), [573](#), [590](#), [598](#), [638](#), [705](#), [735](#), [818](#), [1012](#); 1997, cc. [87](#), [88](#), [109](#), [212](#), [390](#), [439](#), [567](#), [624](#), [785](#), [806](#), [845](#), [850](#), [861](#), [868](#); 1998, cc. [39](#), [619](#), [784](#); 1999, cc. [412](#), [421](#), [433](#), [603](#); 2000, cc. [382](#), [400](#), [924](#), [1011](#); 2001, c. [844](#); 2007, cc. [873](#), [916](#); 2013, c. [629](#).

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

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

B. Subject to the provisions of §§ [2.2-4013](#) and [2.2-4014](#), all regulations, including those that agencies, pursuant to § [2.2-4002](#), [2.2-4006](#), or [2.2-4011](#), may elect to

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

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

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

E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1989, c. 71; 1992, c. 829; 1993, c. 898; 1994, c. 938; 2001, c. 844; 2003, c. 224; 2007, cc. 873, 916.

§ 2.2-4012.1. Fast-track rulemaking process.

Notwithstanding any other provision, rules that are expected to be noncontroversial may be promulgated or repealed in accordance with the process set out in this section.

Upon the concurrence of the Governor, and after written notice to the applicable standing committees of the Senate of Virginia and the House of Delegates, and to the Joint Commission on Administrative Rules, the agency may submit a fast-track regulation without having previously published a Notice of Intended Regulatory Action. The fast-track regulation shall be published in the Virginia Register of Regulations and posted on the Virginia Regulatory Town Hall, along with an agency statement setting out the reasons for using the fast-track rulemaking process. Such regulations shall be subject to the requirements set out in §§ [2.2-4007.03](#), [2.2-4007.04](#), and [2.2-4007.05](#), except that the time for receiving public comment need not exceed 30 days after (i) publication of the regulation in the Virginia Register of Regulations and (ii) a public comment forum opens on the Virginia Regulatory Town Hall. The time for preparation of the economic impact analysis shall not exceed 30 days. If an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation will become effective or shall be repealed as appropriate, 15 days after the close of the comment period, unless the regulation or repeal is withdrawn or a later effective date is specified by the agency.

2003, c. [224](#); 2007, cc. [873](#), [916](#).

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

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

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

Not less than fifteen days following the completion of the public comment period provided for in § [2.2-4007.03](#), the agency may (i) adopt the proposed regulation if the

Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's recommendations for change.

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

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

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

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

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

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

1984, c. 5, § 9-6.14:9.1; 1993, cc. 551, 772, 898; 1995, cc. 25, 736; 2001, c. 844; 2007, cc. 873, 916; 2015, cc. 29, 450.

§ 2.2-4014. Legislative review of proposed and final regulations.

A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable or the Joint Commission on Administrative Rules may meet and, during the promulgation or final adoption process, file with the

Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the objecting legislative committee or the Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within the final adoption period, subdivision A 1 of § 2.2-4015 shall govern.

B. In addition or as an alternative to the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable or the Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or (ii) the Joint Commission on Administrative Rules may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the 30-day final adoption period, or if a later effective date is specified by the agency the statement may be transmitted at any time prior to the specified later effective date, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of § 2.2-4006, if it makes no changes to the regulation other than those required by statutory law or (ii) shall follow the provisions of §§ 2.2-4007.01 through 2.2-4007.06, if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.

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

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

1984, c. 5, § 9-6.14:9.2; 1993, cc. 551, 772; 2001, c. 844; 2002, c. 677; 2003, c. 212; 2004, c. 777; 2007, cc. 873, 916; 2015, cc. 29, 450.

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

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

1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable twenty-one-day extension period provided in § 2.2-4014;
2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;
3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular legislative session; or
4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.

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

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

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

1984, c. 5, § 9-6.14:9.3; 1993, cc. 551, 772, 898; 1995, c. 25; 2001, c. 844; 2002, cc. 391, 677; 2004, c. 777; 2007, cc. 873, 916.

§ 2.2-4016. Withdrawal of regulation.

Nothing in this chapter shall prevent any agency from withdrawing any regulation at any time prior to the effective date of that regulation. A regulation may be repealed after its effective date only in accordance with the provisions of this chapter that govern the adoption of regulations.

1984, c. 5, § 9-6.14:9.4; 1985, c. 602; 2001, c. 844.

§ 2.2-4017. Periodic review of regulations.

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

1984, c. 5, § 9-6.14:25; 2001, c. [844](#).