

Commonwealth of Virginia

Thomas A. Lisk, Chair



Andrew Kubincanek, Program  
Coordinator

Pocahontas Building  
900 E. Main St. Eighth Floor  
Richmond, Virginia 23219  
(Phone) 804-786-3591  
(Fax) 804-692-0625  
akubincanek@dls.virginia.gov  
<http://codecommission.dls.virginia.gov/alac/alac.shtml>

Administrative Law Advisory Committee

**AGENDA**

**Administrative Law Advisory Committee  
Electronic Records Work Group  
November 5, 2021  
11:30 AM  
Senate Room 3, Capitol Building**

**I. Welcome and call to order**

*Mike Quinan, Work Group Chair*

**II. Electronic Records of Final Orders**

**III. Other Potential Changes in the APA**

**IV. Public Comment/Adjourn**

Thomas A. Lisk, Chair  
John Daniel  
Michelle Gowdy  
Paul Kugelman

Eric M. Page  
Jeffrey S. Palmore  
Karen Perrine  
Mike Quinan

Alexander F. Skirpan, Jr.  
Brooks Smith  
Jennifer Williamson  
Kristi S. Wright

**§ 2.2-4023. Final orders.**

The terms of any final agency case decision, as signed by it, shall be served upon the named parties by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals or digitized copies identical to the signed originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies; and they, or facsimiles thereof, together with the full record or file in every case shall be made available for public inspection or copying except (i) so far as the agency may withhold the same in whole or part for the purpose of protecting individuals mentioned from personal embarrassment, obloquy, or disclosures of a private nature including statements respecting the physical, mental, moral, or financial condition of such individuals or (ii) for trade secrets or, so far as protected by other laws, other commercial or industrial information imparted in confidence. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the agency head or his designee.

## **Model APA**

SECTION 418. AVAILABILITY OF ORDERS; INDEX. (a) Except as otherwise provided in subsections (b) and (c), an agency shall create an index of all final orders in contested cases and make the index and all final orders available for public inspection and copying, at cost, in its principal offices. (b) Except as otherwise provided in subsection (c), final orders that are exempt, privileged, or otherwise made confidential or protected from disclosure by [the public records law of this state] are not public records and may not be indexed. The final order may be excluded from an index and disclosed only by order of the presiding officer with a written statement of reasons attached to the order

(15) “Index” means a searchable list in a record of subjects and titles with page numbers, hyperlinks, or other connectors that link each index entry to the text to which it refers.

## **Florida**

120.533 Coordination of the transmittal, indexing, and listing of agency final orders by Department of State.—The Department of State shall:

- (1) Coordinate the transmittal, indexing, management, preservation, and availability of agency final orders that must be transmitted, indexed, or listed pursuant to s. 120.53.
- (2) Provide guidelines for indexing agency final orders. More than one system for indexing may be approved by the Department of State, including systems or methods in use, or proposed for use, by an agency. More than one system may be approved for use by a single agency as best serves the needs of that agency and the public.
- (3) Provide for storage and retrieval systems to be maintained by agencies pursuant to s. 120.53(5) for indexing, and making available agency final orders by subject matter. The Department of State may authorize more than one system, including systems in use by an agency. Storage and retrieval systems that may be used by an agency include, without limitation, a designated reporter or reporters, a microfilming system, an automated system, or any other system considered appropriate by the Department of State.
- (4) Provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to the division, as required under s. 120.53, and, to protect the integrity and authenticity of information publicly accessible through the electronic database, coordinate and provide standards and guidelines to ensure the security of copies of agency final orders transmitted and maintained in the electronic database by the division under s. 120.53(1).
- (5) For each agency, determine which final orders must be indexed or transmitted.
- (6) Require each agency to report to the department concerning which types or categories of agency orders establish precedent for each agency.
- (7) Adopt rules as necessary to administer its responsibilities under this section, which shall be binding on all agencies including the division acting in the capacity of official compiler of administrative final orders under s. 120.53, notwithstanding s. 120.65. The Department of State may provide for an alternative official compiler to manage and operate the division’s database

and related services if the Administration Commission determines that the performance of the division as official compiler is unsatisfactory.

## **Texas**

Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS. (a) A state agency shall notify each party to a contested case of any decision or order of the agency using at least one of the following methods of service:

- (1) personal service;
  - (2) if agreed to by the party to be notified, service by electronic means sent to the current e-mail address or facsimile number of the party's attorney of record or of the party if the party is not represented by counsel;
  - (3) service by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel; or
  - (4) service by a method required under the state agency's rules or orders for a party to serve copies of pleadings in a contested case.
- (b) When a decision or order in a contested case that may become final under Section [2001.144](#) is signed or when an order ruling on a motion for rehearing is signed, a state agency shall deliver or send a copy of the decision or order to each party in accordance with Subsection (a). The state agency shall keep a record documenting the provision of the notice provided to each party in accordance with Subsection (a).

## **Indiana**

IC 4-21.5-3-32 Final orders; public inspection; indexing; deletions; precedent Sec. 32. (a) Each agency shall make all written final orders available for public inspection and copying under IC 5-14-3. The agency shall index final orders that are issued after June 30, 1987, by name and subject. An agency shall index an order issued before July 1, 1987, if a person submits a written request to the agency that the order be indexed. An agency shall delete from these orders identifying details to the extent required by IC 5-14-3 or other law. In each case, the justification for the deletion must be explained in writing and attached to the order. (b) An agency may not rely on a written final order as precedent to the detriment of any person until the order has been made available for public inspection and indexed in the manner described in subsection (a). However, this subsection does not apply to any person who has actual timely knowledge of the order. The burden of proving that knowledge is on the agency. As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.15. IC 4-21.5-3-33

Records Sec. 33. (a) An agency shall maintain an official record of each proceeding under this chapter. (b) The agency record of the proceeding consists only of the following: (1) Notices of all proceedings. (2) Any prehearing order. Indiana Code 2016 (3) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings. (4) Evidence received or considered. (5) A statement of matters officially noticed. (6) Proffers of proof and objections and rulings on them. (7) Proposed findings, requested orders, and exceptions. (8) The record prepared for the administrative law judge or for the ultimate authority or its designee under sections 28 through

31 of this chapter, at a hearing, and any transcript of the record considered before final disposition of the proceeding. (9) Any final order, nonfinal order, or order on rehearing. (10) Staff memoranda or data submitted to the administrative law judge or a person presiding in a proceeding under sections 28 through 31 of this chapter. (11) Matters placed on the record after an ex parte communication. (c) Except to the extent that a statute provides otherwise, the agency record described by subsection (b) constitutes the exclusive basis for agency action in proceedings under this chapter.

IC 5-14-3-3 Right to inspect and copy public agency records or recordings; electronic data storage; use of information for commercial purposes; contracts

Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. If a request is for inspection or copying of a law enforcement recording, the request must provide the information required under subsection (i).

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). Within a reasonable time after the request is received by the agency, the public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
  - (A) on the agency's equipment; or
  - (B) on the person's own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

- (1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.
- (2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

## **California**

11425.60.

(a) A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340). An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review.

(c) An agency shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register.

(d) This section applies to decisions issued on or after July 1, 1997. Nothing in this section precludes an agency from designating and indexing as a precedent decision a decision issued before July 1, 1997.

## **North Dakota**

28-32-41. Effectiveness of orders. Unless a later date is stated in the order, a final order of an administrative agency is effective immediately, but a party may not be required to comply with a final order unless it has been served upon the party and notice is deemed given pursuant to section 28-32-39 or the party has actual knowledge of the final order. A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order. This section does not preclude an agency from taking emergency action to protect the public health, safety, or welfare as authorized by statute.

## **Michigan**

24.285 Final decision and order. Sec. 85. A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of

fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record. History: 1969, Act 306, Eff. July 1, 1970; □ Am. 1970, Act 40, Imd. Eff. July 1, 1970; □ Am. 1993, Act 83, Eff. Apr. 1, 1994. Popular name: Act 306 Popular name: APA 24.286 Official records of hearings. Sec. 86. (1) An agency shall prepare an official record of a hearing which shall include: (a) Notices, pleadings, motions and intermediate rulings. (b) Questions and offers of proof, objections and rulings thereon. (c) Evidence presented. (d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose. (e) Proposed findings and exceptions. (f) Any decision, opinion, order or report by the officer presiding at the hearing and by the agency. (2) Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

## **Vermont**

### Chapter 25 Subchapter 002 : Contested Cases

#### § 812. Decisions and orders

(a) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified forthwith either personally or by mail of any decision or order. A copy of the decision or order shall be delivered or mailed forthwith to each attorney of record and to each party not having an attorney of record. That mailing shall constitute actual knowledge to that person or party.

## **West Virginia**

### §29A-5-3. Orders or decisions.

Every final order or decision rendered by any agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. Prior to the rendering of any final order or decision, any party may propose findings of fact and conclusions of law. If proposed, all other parties shall be given an opportunity to except to such proposed findings and conclusions, and the final order or decision shall include a ruling on each proposed finding. Findings of fact, if set forth in statutory language, shall be accompanied by a

concise and explicit statement of the underlying facts supporting the findings. A copy of the order or decision and accompanying findings and conclusions shall be served upon each party and his attorney of record, if any, in person or by registered or certified mail.

## **North Carolina**

§ 150B-37. Official record.

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) Repealed by Session Laws 1987, c. 878, s. 25.
- (6) The administrative law judge's final decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the administrative law judge's final decision to each party. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 13, 25; 2000-190, s. 8; 2011-398, s. 21.)