


Commonwealth of Virginia		
<p>Thomas A. Lisk, Chair</p> <hr/> <p>Andrew Kubincanek, Program Coordinator</p>		<p>General Assembly Building 201 North 9th St., Second Floor Richmond, Virginia 23219 (Phone) 804-786-3591 (Fax) 804-692-0625 akubincanek@dls.virginia.gov http://codecommission.dls.virginia.gov/alac/alac.shtml</p>
Administrative Law Advisory Committee		

MEETING SUMMARY
Administrative Law Advisory Committee
August 13, 2014
12:00 p.m.
Capitol Building
House Room 2

MEMBERS PRESENT: Karen Perrine (Work Group Chair), Elizabeth Andrews, Edward Mullen, Kristina Stoney

MEMBERS ABSENT: Brooks Smith

STAFF PRESENT: Andrew Kubincanek

Welcome and call to order: Karen Perrine welcomed the group and called the meeting to order at 12:10 p.m. She stated that the purpose of the meeting was to suggest ways in which the executive branch could expedite the regulatory process and directed the group to an outline of the stages in the process at which the executive branch has opportunities for review. Ms. Perrine asked the members of the work group to consider factors that could delay the regulatory process at each stage and make recommendations accordingly.

Recommendations on implementation of EO-17: Development and Review of State Agency Regulations: Ms. Perrine began by noting that the Governor's Office and the Office of the Attorney General are usually not constrained by set periods for review, whereas the Department of Planning and Budget (DPB) does have time frames. Edward Mullen asked if the Office of the Attorney General or any Cabinet Secretary has had issues with missed deadlines. Jeannine Rose from DPB stated that, to her knowledge, the agency had missed only one deadline in seven years. The group had no knowledge of delays from Cabinet Secretaries.

NOIRA Stage

The group moved on to discussion of the NOIRA Stage. Ms. Perrine explained the various ways a NOIRA can be initiated. Ms. Stoney pointed out that the default approval process for NOIRAs was eliminated in EO-17, and NOIRAs must now be approved by the Governor before they may be published in the *Register of Regulations*. Previously, NOIRAs were approved by default after 14 days. Ms. Stoney stated that the 2009 JLARC report on the regulatory review process indicated that many delays occurred at this stage and recommended an internal time frame for

Thomas A. Lisk, Chair
Elizabeth Andrews
Roger L. Chaffe
Jeffrey S. Gore

Katya Herndon
Edward A. Mullen
Eric M. Page
Karen Perrine

Michael Quinan
Alexander F. Skirpan, Jr.
Brooks Smith
Kristina Stoney

NOIRA approvals. The group agreed to recommend that the Governor's Office adopt an internal policy creating a 14-day time frame for NOIRA approvals, consistent with other agencies at this stage and the previous 14-day default period. Elizabeth Andrews added that clear time frames provide certainty and reassurance for both agencies and the regulated public.

Proposed/Revised Proposed Stage

Ms. Perrine summarized the order of executive branch review at this stage and stated that, because this stage is often the first at which anyone has seen the full text of a regulation, longer periods for review may be required, especially if the regulation is complicated or very technical.

Ms. Stoney noted that the 10-day time frame in which DPB would notify agencies if a submission was incomplete was removed from EO-17 and asked why. Ms. Rose responded that she did not know the reason for the removal, but, to her knowledge, incomplete submissions had not been a major issue in recent memory. Mr. Mullen stated that it helped agencies to know that 10 days after submission they could assume the submission was complete and proper unless notified otherwise. Ms. Andrews recommended a continuation of the 10-day time frame as an internal policy for certainty's sake. Ms. Stoney suggested adding a note to that effect to the automated confirmation email that agencies receive upon submission.

Mr. Mullen asked a general question about when delays occur. Tom Lisk replied that, in his experience, delays occur most frequently at the proposed and final stages, but that delays can occur and have occurred at any point in the process. Mr. Mullen asked if there was any utility to instituting time frames at every level. Mr. Lisk replied that he was hesitant to restrict executive privilege, especially for complex or technical regulations. Mr. Mullen suggested that time frames with affirmative extensions could protect executive privilege, but still provide reasonable expectations to agencies and the regulated public.

Ms. Perrine considered if regulations could be prioritized to ensure that noncontroversial or nontechnical regulations move through the system in a timely fashion. Ms. Andrews stated that this could be subjective, as some regulations are held up because of staffing issues, others are delayed because stakeholders are providing input, and some may be delayed due to an unwillingness to address a controversial issue. She added that even the fast track process does not always work as intended. Mr. Mullen reaffirmed his belief that there would be some utility in establishing time frames that could be extended, especially for regulations that are largely unchanged from the proposed to the final stage.

Mr. Mullen asked if time frames should be imposed at the proposed stage. Ms. Perrine suggested that her first inclination would be to create a 120-day time frame. The group agreed that such a long time time frame would not necessarily be helpful.

The group moved on to a discussion of time frames at the Office of the Attorney General. Ms. Stoney stated that her section was usually very prompt and offered to solicit feedback on adopting an internal policy on a 10-day to 14-day time frame. Mr. Mullen suggested that if regulations are being reviewed in a timely manner already, a longer time frame may not be necessary.

Thomas A. Lisk, Chair
Elizabeth Andrews
Roger L. Chaffe
Jeffrey S. Gore

Katya Herndon
Edward A. Mullen
Eric M. Page
Karen Perrine

Michael Quinan
Alexander F. Skirpan, Jr.
Brooks Smith
Kristina Stoney

Final Stage

Ms. Perrine clarified the three types of regulations at the final stage: those with no changes, those with no substantial changes, and those with substantial changes. She stated that regulations with no changes or no substantial changes should be able to move through the system fairly quickly.

Mr. Lisk added that the Governor's Office has two opportunities to review the identical language in the final stage and in the 30-day final adoption period.

Mr. Mullen asked if any regulations currently at the final stage are from the previous administration, adding that in this case review may take longer as staff members may be seeing those regulations for the first time. Ms. Perrine confirmed that some regulations at the final stage were submitted under the previous administration.

Mr. Mullen recommended an internal policy that regulations with no changes or no substantial changes should be reviewed within 30 days and regulations with substantial changes should be reviewed within 60 days. These time frames could be extended by additional 30-day and 60-day periods as necessary.

Fast Track

Ms. Andrews asked if the time frame for the final period of the fast track process should also be 30 days. The group agreed that this was appropriate.

Emergency Regulations

Ms. Perrine suggested that bills might have fewer enactment clauses if review periods were more consistent. The group agreed that a set time frame for emergency regulations is unnecessary, as the 280-day requirement is already in place.

Board Meetings

Considering that some agency boards may only meet once every six months, Ms. Perrine suggested including a way for agencies to indicate if they have a target publication date to help prioritize work. Ms. Andrews asked if it would look bad for an agency if the target date is not met. The group agreed that this could be a confidential field that only the agencies see. The group did not reach a full consensus on a recommendation, but agreed that this issue could be discussed further.

Comments on Other Changes

Ms. Stoney stated that the changes to periodic review and the clarification on guidance documents would both be helpful.

Public Comment: Adjournment: Ms. Perrine opened the floor for public comment. Hearing no public comment, Ms. Perrine adjourned the meeting at 1:52 p.m.

Thomas A. Lisk, Chair
Elizabeth Andrews
Roger L. Chaffe
Jeffrey S. Gore

Katya Herndon
Edward A. Mullen
Eric M. Page
Karen Perrine

Michael Quinan
Alexander F. Skirpan, Jr.
Brooks Smith
Kristina Stoney