


<b>Commonwealth of Virginia</b>		
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<b>Administrative Law Advisory Committee</b>		

**MEETING SUMMARY**  
**Administrative Law Advisory Committee**  
**Regulation Adoption Date Work Group**  
**Thursday, September 19, 2013**  
**2:30 PM**  
**Speaker's Conference Room**  
**6th Floor, GAB**

**MEMBERS PRESENT:** Elizabeth Andrews (Work Group Chair), Karen Perrine, Roger Chaffe, Cindy Berndt, Brooks Smith, Edward Mullen (via phone)

**MEMBERS ABSENT:** N/A

**STAFF PRESENT:** Andrew Kubincanek, Jane Chaffin

**Call to order and Welcome:** Elizabeth Andrews called the meeting to order at 2:34 PM.

**Discuss Work Group member comments:** The group reviewed a series of amendments tying the date of adoption for the purpose of appeal to the publication date in the Virginia Register of Regulations. This solution included exceptions for suspended regulations and emergency regulations. As a result of concerns voiced by Cindy Berndt, an additional amendment had also been drafted stating that the date of adoption for the purpose of appealing a fast-track regulation shall be 30 days after the close of the comment period. This solution included amendments to §§ 2.2-4011, 2.2-4012.1, 2.2-4013, and 2.2-4015 of the Code of Virginia. The group agreed that the first solution had gotten very complicated.

Roger Chaffe proposed a shorter amendment that would be added as a new section in the Administrative Process Act (APA). This amendment clarified that the date of adoption would be the date of final action for actions taken by a board at a public meeting or the date of publication for actions taken by an agency head.

The group considered defining the date of filing as the date of adoption for the purpose of appeals. Jane Chaffin stated that the date of filing is also published in the register. Cindy Berndt and Brooks Smith voiced support for using the date of filing as the date of adoption as it is closer to the final agency action.

Thomas A. Lisk, Chair  
 Elizabeth Andrews  
 Cindy Berndt  
 Roger L. Chaffe

Jeffrey S. Gore  
 Katya Herndon  
 Edward A. Mullen  
 Eric M. Page

Karen Perrine  
 Michael Quinan  
 Alexander F. Skirpan, Jr.  
 Brooks Smith

The group decided that no action was necessary regarding fast-track regulations as the APA already provides a process for objecting to these regulations.

The group discussed whether or not ripeness would be an issue and decided that, because of the clear language in the proposed statute, it would not be.

Mr. Smith suggested putting the amendment in § 2.2-4026 of the Code of Virginia. The group agreed to create a subsection B for the amendment. The group voted to recommend a modified version of proposal two as an amendment to § 2.2-4026 of the Code of Virginia. Mr. Smith made a motion to approve the amendment, which was seconded by Ms. Berndt, and passed with a unanimous vote.

**Discuss VMRC Comments:** Karen Perrine and Ms. Andrews outlined how current practices at Virginia Marine Resources Commission (VMRC) are at odds with the APA due to a recodification error.

The group agreed that this could create a serious enforcement problem, but finding a solution is beyond the scope of the work group. The group agreed that a correction bill to place VMRC back in its proper section would likely be the best option. Ms. Chaffin planned to raise this issue with the Code Commission and Ms. Andrews stated that she would discuss the issue further with VMRC's counsel.

**Public comment; adjournment:** Ms. Andrews opened the floor for public comment. Jane Chaffin informed the group that she had received a question regarding retroactive application of the new 18-month initial time period for emergency regulations. The group agreed that the new time period could not be applied retroactively.\*\* Ms. Andrews adjourned the meeting at 3:31 PM.

**\*\* NOTE:** It was later determined that this question likely arose from a misunderstanding. The issue was not pursued further.

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