

Commonwealth of Virginia		
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Administrative Law Advisory Committee		

**Incorporation by Reference
 Work Group Summary
 April 17, 2008; 12 PM
 House Room 2, The Capitol
 Richmond, Virginia**

1. Call to Order-Jim Guy (Chair)

2. Work Plan

- a. Notes from the last meeting were reviewed. The goal is to create surveys to send to localities, other states, affected industries within Virginia and administrative agencies in Virginia.
- b. Proposed survey questions will be sent to Elizabeth Palen and Patrick Regan.
- c. They will be organized and posted on the ALAC website under the “Current Studies” tab, under the work group section for all work group members to review.
- d. A meeting will be held in May to discuss which questions to send out and to whom they should be sent.

3. Other Topics for Discussion

- a. Incorporation by Reference through the Internet
 - i. Incorporating documents by reference to websites poses several problems for publishing regulations.
 - ii. Websites changes, sections that are referenced become obsolete, or they are copyrighted and can’t be published online, and references to the Code of Federal Regulations often change without the state reference recognizing those changes.
 - iii. *Jane Chaffin*- In Virginia, agencies are not permitted to incorporate documents by reference using websites alone. Hard copies of all documents must be filed with the registrar’s office and if practicable the registrar’s office will list the website along with the regulation.
 - iv. The Administrative Code is updated daily, but there are not many documents incorporated by reference through the internet at this time. It seems incorporating documents through the internet will become more prevalent however.
 - v. *Martin Kent*-Virginia regulations often make references to the CFR, many times those references are now obsolete. So, how do we notify the public

of changes in those separate references; especially when there have been changes to the publication dates and effective dates?

- vi. *Alex Skirpan*-Sometime new federal regulations trump state regulations, but the state regulation still refers to the old federal regulation.
 - vii. *Jane Chaffin*-Should all references to Federal Regulations have a date of publication? Should the registrar's office advise agencies when they publish that they should update references to the CFR to ensure they are correct?
 - viii. *Jim Guy*-Perhaps there should be a warning on the registrar's website informing viewers that the references incorporated through websites may not be accurate and they should be sure to check for the most recent publication of that referenced document.
- b. Exemptions to Adoption by Reference
- i. An issue arises when a document that is being referenced is copyrighted and so the agency is not able to publish the referenced document.
 - ii. Perhaps this is another exemption that should be permitted in the publishing process.
 - iii. Currently, agencies have to assure the registrar that a copy of the referenced document is on file with their office.
 - iv. There may be other exemptions that should be looked at and evaluated.
 - v. Jane Chaffin will look for examples of exemptions to adoption by reference and see if there are any that highlight the potential problems. She will also send out the section in the Administrative Code that references this problem.
- c. Recommendations
- i. Code Commission Regulations should be amended to require agencies to specify the publication date of documents that are referenced in regulations published through the registrar's office. Perhaps putting a date next to the actual link or site referenced, and placing a last updated date at the bottom of the regulation.

4. Work Plan for Next meeting

- a. Martin Kent will draft language for a disclaimer to add to the Registrar's website to notify the public that not all references incorporated in a regulation through the internet may be the most recent editions.
- b. All work group members will look for their notes from the last meeting.
- c. Survey questions will be sent to ALAC staff members to publish on the website for all work group members to read and evaluate.

5. Schedule Next Meeting and Outline Agenda

- a. Finalize surveys and establish who they will be sent to.
- b. Discuss introductory language drafted by Elizabeth Palen and Phyllis Errico from December meeting.
- c. Review Incorporation by Reference through the internet disclaimer language. Finalize recommendation to the Code Commission.
- d. Review adoption by reference exemptions.

- e. Possible meeting dates are May 13, 15, 20, 21. This may be done in conjunction with a full ALAC meeting. More information will be sent out over email.

6. The meeting adjourned at 12:40 PM.