


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

Meeting Summary

Regulatory Work Group 5th Floor West Conference Room, General Assembly Building August 11, 2011, 9:15 A.M.

Members present: Tom Lisk, Mike Quinan, Phyllis Errico, Karen Perrine, Angela Bowser, Alex Skirpan, Elizabeth Andrews, Cindy Berndt

Staff present: Elizabeth Palen, Beth Jamerson

I. Welcome and Call to Order

- **Tom Lisk**, *Chair*
 - The meeting was called to order at 9:30 a.m.
- **Mike Quinan** clarified that ALAC is reviewing the Revised Model State Administrative Procedure Act (MSAPA) not because any issue with the Virginia Administrative Process Act (APA) has been identified, but rather because the MSAPA has been recently revised by the Uniform Law Commission. The committee will ascertain whether the MSAPA contains any provisions that should be included in the Virginia APA, and a recommendation will be made to the Code Commission later in the year.

II. Model State Administrative Procedure Act

- **Discussion of Article 2**
 - The committee decided to proceed by discussing each section of Article 2 individually, beginning with section 201, which codifies requirements related to publication, compilation, indexing, and public inspection of rulemaking documents.
 - **Alex Skirpan** noted that the majority of revisions done to Article 2 of the MSAPA appear to have been directed toward establishing electronic publication requirements. Virginia already publishes regulations both electronically and in print through the *Virginia Register of Regulations* (<http://register.dls.virginia.gov/>).
 - **Karen Perrine** mentioned that in addition to the *Virginia Register*, the Virginia Regulatory Town Hall website

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(<http://townhall.virginia.gov/>) publishes regulations as well as documents and information related to regulations and the regulatory process. Section 201 requires that the publisher, which in Virginia would be the Registrar's office, create and maintain an internet website of rulemaking documents. Although there is no provision in Virginia law that is quite that specific, the Registrar's office does maintain the *Virginia Register* website, which contains the updated Virginia Administrative Code, emergency regulations, guidance documents, information for citizen participation, and other resources. As far as section 201 is concerned, Virginia already follows the recommendations of the MSAPA.

- **Cindy Berndt** pointed out that the *Virginia Register* website only provides a list of guidance documents from each agency, rather than the actual documents. However, agencies are required to post their guidance documents on their websites. The full text of each guidance document is publicly available, but not on the publisher's website, as suggested by the MSAPA. Additionally, only executive branch regulatory agencies are on Town Hall. Other agencies, including the Virginia Housing Development Authority and the Virginia Marine Resources Commission, do not make guidance documents available. Those agencies are subject to global exemptions with regard to the regulatory adoption process, and guidance documents are copyrighted material only available via purchase.
 - **Mike Quinan** expressed concern over agency exemptions regarding the regulatory adoption process, and the lack of a single source to locate all regulations and guidance documents from all state agencies.
 - **Karen Perrine** acknowledged that if the goal is a single source where all regulatory information can be found, then agencies must be required to file guidance documents with the Registrar's office, which can then be published through the *Virginia Register*.
 - **Cindy Berndt** pointed out that there is no requirement in the APA to update the list of currently effective guidance documents through the Registrar's office more than once every year. However, Town Hall does update its website with currently effective guidance documents several times each month.
 - **Jane Chaffin**, audience participant (Virginia Registrar), suggested adding hyperlinks to the list of guidance documents on the *Virginia Register* website that would direct the user to the full text of each guidance document, or in the case of exempt agencies, where the full text may be purchased. The work group agreed.
- **There was a consensus among work group members to recommend that hyperlinks be added to the list of guidance documents on the *Virginia Register* website directing the user to the full text of each**

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document. The group further agreed that Virginia law already sufficiently provides for the remaining provisions of section 201, and proceeded on to section 202 of the MSAPA. Section 202 specifies agency duties for publication.

- **Cindy Berndt** pointed out that in Virginia, there is an executive order that describes the information agencies must publish, but typically agencies make all information they have available on their websites.
- **Karen Perrine** agreed, and noted that the current system in Virginia where agencies fulfill their publishing obligation by submitting their regulations and documents to the Registrar is the system recommended in the comments of the MSAPA. Additionally, Virginia already has notification requirements in place, as is recommended by the MSAPA.
- **The work group agreed that section 202 provisions of the MSAPA are duplicative of current Virginia requirements. Accordingly, the group agreed that no action be taken on section 202. The group proceeded to discuss section 203 of the MSAPA, which specifies requirements related to agency publication and recordkeeping.**
- **There was a consensus among the group that all processes, including those that involve submitting applications for licenses or benefits as well as public hearing rules, are sufficiently described by agencies on their websites. Consequently, the group agreed that no action be taken on section 203, and section 204 was discussed, which establishes rules related to a declaratory order**
 - **Mike Quinan** noted that Virginia does not currently have a system in place that allows people to petition an agency for a declaratory order regarding a rule or guidance document of the agency. However, this type of system is unwarranted because it addresses a problem that does not exist.
 - **Cindy Berndt** agreed, and pointed out that agencies make decisions on a case-by-case basis, which renders a request as to how a rule would be applied individually unnecessary. Further, if there was ever a question of how an agency rule would be interpreted on a global level the agency would issue a guidance document or a regulation.
 - **Elizabeth Andrews** agreed, and mentioned that there has not been any feedback from the public expressing a need for this type of system.
- **The work group agreed that a statute establishing a declaratory order system is unnecessary, as agencies already provide sufficient guidance regarding agency rules. Accordingly, the group agreed that no action be take on section 204. Section 205 was then discussed, which provides standard procedural rules.**

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- **Cindy Berndt** pointed out that Virginia’s APA already provides that all agencies that adopt regulations are required to issue public participation guidelines that specify procedural rules and are adopted as regulations. This is standard for all agencies.
- **Tom Lisk polled the group for input, and the consensus was that since the Virginia APA already includes provisions requiring agencies to adopt standard procedural rules, no action should be taken on section 205. However, the group discussed the fact that formal hearings are conducted differently across agencies and is an issue the Judicial Work Group should perhaps discuss during its meetings.**
- **Discussion of Article 3**
 - The work group agreed to defer discussion of Article 3 until the next meeting on August 24, 2011.

III. Public Comment

- There was no public comment.

IV. Adjourn

- The meeting was adjourned at 10:34 a.m.

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