


| Commonwealth of Virginia | | |
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| <div>Christopher Nolen, Chair</div> <hr/> <div>Elizabeth Palen, Executive Director</div> |  | <div>General Assembly Building</div> <div>910 Capitol Street, Second Floor</div> <div>Richmond, Virginia 23219</div> <div>(Phone) 804-786-3591</div> <div>(Fax) 804-692-0625</div> <div>EPalen@dls.virginia.gov</div> <div>http://legis.state.va.us/codecomm/alac/alac.htm</div> |
| Administrative Law Advisory Committee | | |

Meeting Summary

Regulatory Work Group 5th Floor West Conference Room, General Assembly Building August 24, 2011, 9:15 A.M.

Members present: Alex Skirpan, Elizabeth Andrews, Cindy Berndt, Phyllis Errico, Karen Perrine, and Angela Bowser; Melanie West, Director Planning and Budget, was a guest attendee.

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- The meeting was called to order by ALAC's Director, Elizabeth Palen at 9:30 A.M.

II. Model State Administrative Procedure Act

- Discussion of Article 3**
 - Elizabeth Palen** announced that Tom Lisk (Chair) was unexpectedly called out of town; an additional meeting may need to be scheduled but the group will begin with a discussion comparing the model and the current APA beginning with Section A of 301 on page 30, emergency rules in Virginia. She then asked the group for their input and if the current word choices could be improved.
 - A discussion evolved about this section with the conclusion being that section 301 is essentially what is available currently on Town Hall.*
 - Cindy Berndt** answered upon inquiry from Alex Skirpan that there is no Code of Virginia section for Town Hall; everything that would be on docket is subject to FOIA the notice and the actual regulatory text that is what is usually comment on, and there is no charge under FOIA. If they want a paper copy it is sent free of charge; if they want to go into the agency files and see what the background information is a person can come and look or they need

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to pay to have copies made; she would prefer this section not be changed from the current APA.

- *Next, section 302 was discussed.*
- A discussion took place regarding what constitutes the official record of a rulemaking procedure.
- **Alex Skirpan** asked the others to note the portion concerning the copy of the transcript.
- **Melanie West** commented that Virginia does not require any history on regulations in the agency background statement, and it is good information for the public to access. She suggested modifying the agency background statement.
- **Elizabeth Palen** said that she thinks that is something ALAC can ask to have the Code Commission change; we may want to make the change administratively rather than statutorily; that would help the general public and interested parties understand the reason a rule change was taking place.
- **Melanie West** remarked that sometimes it seems to an outsider to be arbitrary as to why an agency is proposing a rule change. **Phyllis Errico** concurred with this line of reasoning, and agreed that the reason for the regulation would be advisable.
- **Karen Perrine** disagreed; she stated that the information is laid out in meetings, each step is explained to a board as to why you're recommending the rule, although she noted when you get to the end of the regulatory process all that detail gets taken out for the minutes, but that is her experience with her former agency; it depends on how the agency constructs its minutes.
- **Cindy Berndt** said that there should already be something in the need statement; the problem is that because the statements are so long, a global reason as to why the agency has made a change is not conveyed. Her agency does most work on an informal basis.
- *Section 303 was then discussed.*
- A was found to be the same as Virginia's administrative bulletin, simply a change in word choice; A is equivalent to the NOIRA. B is similar to Virginia's negotiated rulemaking.
- *Section 304 was discussed next, which is the provision regarding notice requirements of a proposed rule.*
- **Cindy Berndt** inquired whether that is something the Registrar could do through the Registrar Act, conceivably outside of the APA.
- **Melanie West** questioned whether there was anyplace in the APA that requires notice of the proposed rulemaking to be sent via regular mail by a certain date, a reasonable period of time, or even mentioned at all.
- **Karen Perrine** thought possibly the Public Participation Guidelines (PPG) more than the APA had mailing guidelines.
- **Melanie West** agreed that the mailing requirements were probably addressed in the PPG's, and there are no issues with mailing requirements or with the status quo.
- *The group discussed section 305, and it was determined that Virginia's APA is sufficient with regard to regulatory analysis.*

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- *The public participation section, 306, was studied next.*
- **Alex Skirpan** provided an overview of the topic and put the discussion in context.
- **Melanie West** asked the group to look at the last sentence of A, which requires an agency to consider all comments on a proposed rule. She explained that they have had problems with spam showing up in the public comments form, and it would be nice to provide some guidance as to whether or not agencies have to include those types of comments and if they have any responsibility to mention them at all.
- *Elizabeth Palen directed the group to section, 307 which requires a regulation to be promulgated within a two-year time period and asked again for comments.*
- **Angela Bowser** inquired if some regulatory processes went on for longer than that time frame, and **Melanie West** responded that some take as long as eight years.
- **Cindy Berndt** noted that people only want the agency to be expedient when they want something done; the process takes a long time. She reminded the group about the review procedures they have had issues with during every administration. Until this is fixed by legislation or the Governor we will continue to see maneuvering through the regulatory process.
- **Elizabeth Palen** asked everyone in the group to go home and think about timelines, not just in section 307, but whether there is something they need to do to add changes to the current process. Also the group will be discussing Guidance Documents at the next meeting as well; this will constitute the bulk of discussion at the next meeting.
- **Melanie West** remarked that she is responding to requests by universities about time frames at each regulatory stage, and she will bring that data to the next meeting
- **Karen Perrine** mentioned she would like to look at the JLARC report (published 2009) and see if any recommendations that the group may wish to suggest adding to Virginia's APA. She will bring that information to the next meeting as well.

III. Public Comment

- There was no public comment.

IV. Adjourn

- The meeting was adjourned at 10:45 A.M.

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