


Commonwealth of Virginia		
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Andrew Kubincanek, Program Coordinator		
Administrative Law Advisory Committee		

**Administrative Law Advisory Committee Policy Draft
for Electronic Meetings Held under § 2.2-3708.3 of the Code of Virginia
Adopted May 28, 2025**

This policy shall apply to the entire membership of the Administrative Law Advisory Committee (ALAC) and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. Whenever an individual member wishes to participate from a remote location, the law requires a quorum of ALAC to be physically assembled at the primary or central meeting location.

I. Remote Participation by an Individual Member of ALAC

- A. It is the policy of ALAC that individual members may participate in meetings of ALAC by electronic communication as permitted by § 2.2-3708.3 of the Code of Virginia.
- B. When such individual participation is due to a personal matter, such participation is limited by law to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.
- C. Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). If a member's participation from a remote location is challenged, then ALAC shall vote whether to allow such participation.

II. Remote Participation by the Entire Body

- A. It is the policy of ALAC that ALAC may hold all virtual public meetings pursuant to subsection C of § 2.2-3708.3.
- B. Requests for remote participation or requests that ALAC conduct an all-virtual public meeting shall be conveyed to ALAC staff who shall then relay such requests to the chair of the public body.

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- C. Such all-virtual public meetings are also limited by law to two meetings per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.
- D. Additionally, an all-virtual public meeting may not be held consecutively with another all-virtual public meeting.


III. Minutes Requirements

- A. The request for remote participation or that ALAC conduct an all-virtual public meeting shall be recorded in the minutes of the meeting.
- B. If ALAC votes to disapprove of the member's participation because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity.
- C. The minutes shall include other information as required by §§ 2.2-3707 and 2.2-3708.3 depending on the type of remote participation or all-virtual public meeting.

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2025 Work Plan Draft Administrative Law Advisory Committee

Hearing Officer Deskbook

ALAC will form a work group to update the Hearing Officer Deskbook to account for any recent changes.

Harmless Error Doctrine

ALAC previously formed a work group to discuss amending language on harmless error in § 2.2-4027 to more closely conform with federal law and other state laws. No amendment was formally adopted by the full committee, and a new work group will continue to study this issue and further refine the language as necessary.

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ALAC Harmless Error Work Group Draft (November 2022)

§ 2.2-4027. Issues on review.

The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure ~~where any failure therein is not mere harmless error~~, and (iv) the substantiality of the evidentiary support for findings of fact. The determination of such fact issue shall be made upon the whole evidentiary record provided by the agency if its proceeding was required to be conducted as provided in § 2.2-4009 or 2.2-4020 or, as to subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for opportunity for an agency record of and decision upon the evidence therein. In addressing any of the issues of law or fact set forth above, the court shall consider whether any error is a harmless error.

In addition to any other judicial review provided by law, a small business, as defined in subsection A of § 2.2-4007.1, that is adversely affected or aggrieved by final agency action shall be entitled to judicial review of compliance with the requirements of subdivision A 2 of § 2.2-4007.04 and § 2.2-4007.1 within one year following the date of final agency action.

When the decision on review is to be made on the agency record, the duty of the court with respect to issues of fact shall be to determine whether there was substantial evidence in the agency record to support the agency decision. The duty of the court with respect to the issues of law shall be to review the agency decision de novo. The court shall enter judgment in accordance with § 2.2-4029.

Where there is no agency record so required and made, any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings under § 2.2-4007.01 or 2.2-4019 as augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency.

Whether the fact issues are reviewed on the agency record or one made in the review action, the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.