

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

Meeting Summary
Administrative Law Advisory Committee
June 17, 2025 – 2:00 PM

Senate Room C – General Assembly Building

Members Present: Tom Lisk, John Daniel, Michelle Gowdy, Craig Maxey, Mike Quinan, Noah Sullivan, Jennifer Williamson, Kristi Wright
Members Participating Electronically: Holly Trice
Members Absent: Paul Kugelman, Jeff Palmore, Brooks Smith
Staff Present: Andrew Kubincanek

I. Welcome and call to order – Tom Lisk called the meeting to order at 2:07 pm.

II. 2025 Work Plan additions – The Committee discussed five items, which were introduced by members at the previous meeting.

A. Grammatical issue in § 2.2-4012 B – The Committee reviewed a sentence in § 2.2-4012 B that is grammatically unclear, along with a report on a previous recodification to better understand the intent of the section. John Daniel agreed that the section would benefit from additional clarity and made a motion to add Item A to the 2025 Work Plan. Holly Trice seconded the motion and explained that the section predates the use of electronic submission of regulations and that there may be electronic methods currently filing the role of a signed order. Tom Lisk suggested further study of the issue related to signed orders along with rewriting the sentence for clarity. The Committee voted unanimously to add Item A to the 2025 Work Plan.

B. Definition of “adverse effects” in § 2.2-4007 – Craig Maxey stated that he was concerned with the way the definition of “small business” also varies across code sections. Tom Lisk expressed a concern that defining “adverse effects” and “small business” would be a substantive question beyond the purview of ALAC, and that the Department of Planning and Budget (DPB) would be better positioned to seek legislative clarity or uniformity if ALAC does not have a preferred solution. John Daniel suggested inviting DPB to a future meeting. Tom Lisk

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agreed that it would be best to add this item to a future agenda when it could be discussed with members of DPB.

C. 30-day comment period after the deletion of a guidance document –Tom Lisk stated that he could envision scenarios where an individual may disagree with the deletion of guidance document and would want to comment on such an action. He added that he would not want to deprive an individual of that opportunity, but is uncertain how often agencies receive public comments during this period or how often such deletions take place. Holly Trice explained that the code section on guidance documents in the VAPA was created to prevent agencies from regulating through a guidance document, and that prior to 2018, there was no public participation required for guidance documents. There is not a clear statutory requirement for a public comment period after the deletion of a guidance document in the code, but it is a requirement on Town Hall. Holly Trice stated that, after the adoption of the code section, some agencies uploaded an abundance of documents and have since realized that many of those do not qualify as guidance documents. Tom Lisk stated that he would favor maintaining the status quo, as it may be a small burden on the agency, but it does offer additional transparency for the public. John Daniel agreed, saying that if an agency deletes a guidance document, they are essentially creating new guidance. Mike Quinan and Craig Maxey also concurred with maintaining the status quo as long as there has not been a challenge to the right include such a comment period. Tom Lisk added that ALAC can ask DPB if they feel statutory clarity is necessary, but will not add this item to the work plan for now.

D. 30-day comment period after the publication of a final adopted regulation – Holly Trice explained that agencies' model public participation guidelines include a 30-day public comment period after the publication of a final adopted regulation, but there is no clear statutory requirement for such a comment period. Tom Lisk stated that a regulation is not effective until 30 days after publication and there is a window for 25 or more people to petition that a regulation be reconsidered in § 2.2-4007.06. Noah Sullivan suggested that members of the public may wish to comment if there is a significant change between the proposed and final regulation, and that Town Hall may use this 30-day public comment period as a forum in which that petition can occur. Holly Trice stated that, due to the lack of statutory clarity, members of the public may not understand what this public comment period is for, and that there is no clear guidance for the agency on how to respond to comments received during this period. Tom Lisk and Noah Sullivan agreed that the comment period helps effectuate § 2.2-4007.06, regardless of original intent, and that a note on Town Hall's interface could offer clarity. Craig Maxey stated that he does not see a clear or necessary statutory change, but suggested inviting Town Hall to further discuss the issue. Tom Lisk agreed with deferring the item to a later meeting.

E. Preservation of error doctrine under the VAPA – Noah Sullivan raised a question of how the preservation of error doctrine applies in the regulatory context. He added that there is nothing in the statute that creates a procedural default rule under the VAPA, and it could be an area where statutory clarity is helpful. There is also a question of how Virginia's existing rule of procedural default in case decisions compares with other states. Tom Lisk stated that this is a different issue from the harmless error doctrine issue, but it's a compatible issue that is worth

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studying. The committee agreed to form a work group with the understanding that this is a long-term study that will not be completed in 2025. The committee agreed unanimously to form a work group on this issue.

Holly Trice and Tom Lisk volunteered to work on Item A, while Noah Sullivan, Michelle Gowdy, and Mike Quinan formed the work group for Item E.

III. Public Comment/Adjourn – Hearing no public comment, the meeting was adjourned at 2:55 pm.

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