

From: Jacob Speidel
Sent: Monday, February 05, 2018 5:02 PM
To: 'chris.winters@sec.state.vt.us' <chris.winters@sec.state.vt.us>;
'aadler@leg.state.vt.us' <aadler@leg.state.vt.us>
Cc: Wendy Morgan <WMorgan@vtlegalaid.org>
Subject: incorporation by reference - draft APA revision

Dear Chris and Aaron:

I have attached a draft proposal for revisions to the Incorporation by Reference (IBR) section of "18-0114 - An act relating to the Administrative Procedure Act."

The central idea is that any material incorporated into a state rule or regulation should be considered a public record and should be accessible from the State of Vermont. Even if materials are available now from some private organization, that might change at any time. The way to guarantee access is for Vermont to provide it. I have therefore suggested removing the requirement that IBR materials be available from an outside source and have focused on access to the materials as public records.

Rather than creating a separate system of public access just for IBR materials, I suggest a cross-reference to the Vermont Public Records Law. Under this approach, the public will be able to request copies of IBR materials using the familiar public records process, subject to the existing fee system. Although ideally IBR materials would be available for free, the public records costs should be relatively low for these sorts of materials, especially when they can be provided electronically. I have also suggested requiring that newly-incorporated materials be made available for free online except where that is prevented by legal or technological barriers. That language is intended to encourage online access while allowing it to be withheld in appropriate cases.

I appreciate your consideration and would welcome your thoughts and suggestions. Wendy Morgan is hoping to be at the legislature tomorrow afternoon for the committee meeting on this legislation. She would be happy to discuss this with you as well.

Best regards,

Jacob Speidel
Staff Attorney
Vermont Legal Aid, Inc.
56 Main Street, Suite 301
Springfield, Vermont 05156
Phone: 802-885-5181
Fax: 802-885-5754