



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12 VAC 5-460-10 et seq.
Regulation title	Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools
Action title	Amend Regulations to reflect current technology and accepted swimming pool design
Date this document prepared	December 9, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The State Board of Health (the "board") adopted the Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools in 1962, and the board has not amended them since. The board intends to revise the regulations to bring them up to date with technology and accepted swimming pool design. Several of the sections of the regulations are likely in conflict with the Virginia Uniform Statewide Building Code (*Code of Virginia* § 36-97 et seq.) and, as such, the board intends to delete them. The board seeks to thoroughly amend and eliminate unnecessary provisions of the regulations; in doing so, the board will seek participation from the swimming pool industry and the Department of Housing and Community Development.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 35.1-11 of the *Code of Virginia* mandates that the board make, adopt, promulgate and enforce regulations necessary to carry out the provisions of title 35.1 and protect the public health and safety. Section 35.1-13 of the *Code* mandates that the board promulgate minimum standards for swimming pools, saunas, and other similar facilities in its regulations governing hotels. Section 35.1-16 of the *Code* mandates that the board include swimming and bathing facilities in its regulations governing summer camps. Section 35.1-17 of the *Code* mandates that the board promulgate governing campgrounds provide minimum standards for swimming and bathing facilities in its regulations governing summer camps.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulations protect public health by providing standards designed to ensure the safety and sanitation of swimming pools at hotels, summer camps, and campgrounds. However, the regulations need to be revised to reflect present-day accepted standards for the construction and operation of swimming pools.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The regulations need to be revised to reflect present-day accepted standards for the construction and operation of swimming pools. The regulations also need to be revised to repeal sections that conflict with the Virginia Uniform Statewide Building Code.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

These regulations are mandated by the *Code*. Some sections of the regulations will be repealed that conflict with the Virginia Uniform Statewide Building Code. Other sections that pertain to the operation of the pool itself need to be updated to reflect current industry standards. The other available alternative is to continue with the current regulations, but in light of the antiquated standards and the potential conflicts with the Virginia Uniform Statewide Building Code that are contained in the current regulations, the board feels that amending the regulations will better enable the board to effectively carry out its public health responsibilities under title 35.1 of the *Code*.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and, 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code. Information may include 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and, 3) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Gary L. Hagy, Director, Division of Food and Environmental Services, 109 Governor Street, Richmond, VA 23219, 804-864-7455, Fax 804-864-7475, or via email at gary.hagy@vdh.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

The agency will hold a public hearing and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

VDH will use the participatory approach and invite comments from all interested parties including but not limited to participants in the swimming pool construction industry and the Virginia Department of Housing and Community Development. All interested parties who would like to participate should notify and provide contact information to Gary L. Hagy, Director, Division of Food and Environmental Services, 109 Governor Street, Richmond, VA 23219, 804-864-7455, Fax 804-864-7475, or via email at gary.hagy@vdh.virginia.gov.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will positively impact families by providing accepted standards for the construction and operation of swimming facilities at hotels, campgrounds, and summer camps.

1) The proposed modification of these regulations will neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children.

2) The proposed modification of these regulations will neither encourage nor discourage economic self-sufficiency, self-pride, nor the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.

3) The proposed modification of these regulations will neither strengthen nor erode the marital commitment.

4) The proposed modification of these regulations will neither increase nor decrease disposable family income.

Periodic review

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

1. No comments were received during the comment period following the publication of the Notice of Periodic Review.
2. The regulations meet the criteria set out in Executive Order 14. The regulations are clearly written and easily understood. The regulations are also necessary for the board to carry out the provisions of title 35.1 so as to protect public health and the environment. The regulations are based on the best reasonably available and reliable, scientific, economic, and other information concerning the need for, and consequences of, the regulations. The regulations are designed to achieve their intended objective in the most efficient, cost-effective manner. In addition, the regulations are in accordance with statutory provisions related to impact on small businesses. Further, the regulations do not adversely impact existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will not include a review of the entire regulation for small business impact, please delete this entire section.

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the

regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The board adopted the regulations in 1962 and has not amended them since. These regulations continue to be necessary to protect public health and the environment. The regulations are very basic and not complex. Parts of the regulations may contradict or duplicate requirements in the Virginia Uniform Statewide Building Code. The board will eliminate any such duplication or contradictions from these regulations and the resulting amended regulations will be more concise and more clearly written. VDH's Division of Food and Environmental Services has evaluated the regulations and has determined that they do not impose any unnecessary economic burdens on small businesses. Furthermore, the board will review the proposed amendments to ensure that the minimum standards for swimming pools and other public pools do not impose any unnecessary economic burdens on small businesses.