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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-431
VAC Chapter title(s)	Sanitary Regulations for Hotels
Date this document prepared	August 11, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" or "State Board" means the State Board of Health.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency is the State Board of Health. Chapter 2 of Title 35.1 of the Code of Virginia enumerates the legal authority for VDH to regulate hotels.

Section 35.1-11 of the Code of Virginia states,

“The Board shall make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of this title and to protect the public health and safety. In promulgating regulations, the Board shall consider the accepted standards of health including the use of precautions to prevent the transmission of communicable diseases, hygiene, sanitation, safety, and physical plant management.”

In addition, Section 35.1-13 of the Code of Virginia states,

“Regulations of the Board governing hotels shall provide minimum standards for, but shall not be limited to: (i) food preparation and handling; (ii) physical plant sanitation; (iii) the provision, storage, and cleansing of linens and towels; (iv) general housekeeping and maintenance practices; (v) requirements for approved water supply and sewage disposal systems; (vi) vector and pest control; (vii) swimming pools, saunas, and other similar facilities, including personnel standards for the operation thereof; (viii) ice machines and dispensers of perishable food items; and (ix) a procedure for obtaining a license.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no viable alternatives for achieving the purpose of the regulation. The Regulations enable the Board to fulfill its statutory mandates as established in Chapter 2 of Title 35.1 of the Code of Virginia. Further, the Regulations are necessary to ensure that the Board’s statutory requirements are executed in the least burdensome and most efficient and cost effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed for the purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Robert Melvin, Director, Government Affairs	The commenter provided several suggestions as the agency reviews the Regulations: 1) Amend section 12VAC5-431-80 to remove the date of mailing from the timeline in which an order becomes	The board thanks the commenter for their comment. The specific recommendations will be considered while the agency drafts the proposed amendments.

	<p>effective. Commenter states removing this language will allow more time for a regulant to comply with an order.</p> <p>2) Amend section 12VAC5-431-210 to include language that would allow a permit holder that fails to submit a written request for an informal fact finding conference within 10 working days of receipt of a suspension notice shall have the right to request an informal fact finding conference. The current language states the suspension is sustained when the permit holder fails to timely submit a hearing request. The commenter states this would allow the regulant to have a hearing after permit suspension.</p> <p>3) Amend section 12VAC5-431-260 to include language to allow additional time to schedule an informal fact finding conference following the release of an inspection report.</p> <p>4) Amend section 12VAC5-431-340 to remove language where a permit holder is required to notice/notify the public that any utensils or equipment supplied were sanitized and further sanitation of these items is available upon contacting the manager. The commenter stated this notice is unnecessary if equipment to sanitize items is available to the public.</p> <p>5) Amend section 12VAC5-431-370 to add language to allow staff to collect solid waste from rooms upon guest check out, upon guest request, or</p>	
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	<p>within three days of check in, whichever occurs first. The Regulations require daily solid waste collection. The commenter states this language is necessary as it takes into consideration when guests request not to be disturbed during their stay.</p> <p>6) Amend section 12VAC5-431-380 to add language where a permit holder is not found in violation of this section if they working with a reputable pest control vendor to mitigate pests on the premises, The commenter states this takes into account permit holder working in good faith to address infestations.</p> <p>7) Amend section 12VAC5-431-480 to certain language regarding the posting of hotel room rates. The commenter states the guest agrees to the rate for their stay and room rates fluctuate based on supply and demand.</p>	
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Regulations meet the criteria set forth in Executive Order 19 (2022) and the criteria set out by the Office of Regulatory Management.

The Regulations provide standards for the permitting of hotels in the Commonwealth of Virginia. Such standards address the following areas of public health and safety: physical plant sanitation; the provision, storage, and cleanliness of linens and towels; general housekeeping and maintenance practices; requirements for approved water supply and sewage disposal systems; vector and pest control; swimming pools, saunas, and other similar facilities, including personnel standards for the operation thereof; ice machine sanitation and operation; and a procedure for obtaining a license. These standards are necessary to protect the public health, safety, and welfare of hotel patrons and staff. In addition, the regulations are clearly written and understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The regulation has not undergone a comprehensive review since its initial administrative codification, approximately 20 years ago. The regulation, in its current form, does not reflect existing industry standards, changes in technology or safety, or best practices for public safety. The agency is recommending that the regulation be amended.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) 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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Chapter 2 of Title 35.1 of the Code of Virginia mandates the Board to make, adopt, regulate, and enforce regulations necessary to protect public health and safety at hotels. The continued need for the regulation is established in statute and is not discretionary. The sole comment received regarding the regulation appears to highlight areas where the current requirements may not represent best practices related to the administration of the regulation or industry standards. Additional review is warranted. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with any federal or state law or regulation.

As the agency is recommending to amend the regulations, staff will engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of regulations on small businesses, while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.
