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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-431
VAC Chapter title(s)	Sanitary Regulations for Hotels
Action title	Amend 12VAC5-431 as a Result of a Periodic Review
Date this document prepared	

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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Sanitary Regulations for Hotels (hereafter, "Regulations") protect public health and safety at hotels and other establishments offering overnight lodging, including motels, travel lodges, tourist homes, bed and breakfasts, hostels, or similar facilities that consist of two or more lodging units. This action, following a periodic review concluded in 2022, seeks to amend the regulatory text to ensure an effective regulatory program governing overnight lodging facilities is maintained throughout the Commonwealth. This action will: remove outdated information; add and amend text to reflect best practices and the latest science from industry, academia, public health experts, and other stakeholders; clarify regulatory and enforcement standards; and include any additional amendments deemed necessary in response to public comment or input from industry and subject matter experts.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” or “State Board” means the State Board of Health.

“Department” and “VDH” mean the Virginia Department of Health

"Hotel" means any establishment offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels and similar facilities by whatever name called that consist of two or more lodging units.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory change is not a result of a mandate.

In February of 2022, the Department conducted a periodic review of the Regulations. In its finding, filed on October 19, 2022, the Department recommended the regulation be amended. This regulatory change is prompted by (i) feedback received as part of the public comment received during the periodic review process, (ii) agency staff review of the regulation, and (iii) the amount of time that has elapsed since the Regulations have undergone a comprehensive review (2002).

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 and 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.”

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Regulations are essential to protecting the health and safety of patrons through regulatory oversight of overnight lodging facilities throughout the Commonwealth. The Regulations mitigate the risks associated with overnight travel by requiring effective facility maintenance, general sanitation, sewage disposal, vector control, food services, and a safe water supply. The Regulations are also statutorily mandated as outlined in §§35.1-11 and 35.1-13 of the Code of Virginia.

The Regulations have not undergone a thorough review in over 20 years (2002). Regulatory citations within the Regulations are outdated, may not reflect current industry standards, and do not align with the Virginia Register of Regulations style manual. The review and revisions of the Regulations will provide consistent protections to the patrons of Virginia hotels and will support a safe and trusted tourism industry throughout the Commonwealth. Additionally, opportunities for regulatory reduction will be considered where possible.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Substantive amendments and new substantive provisions to the regulation will include amending, adding, or repealing text related to the following:

- Definitions
- Applicability of other Virginia regulations to hotels, including the regulations applicable to food, sewage, water supply regulations, public pools, the Virginia Uniform Statewide Building Code, and the Virginia Statewide Fire Prevention Code.
- Administrative processes and procedural requirements
- Design, construction, operation, management, and maintenance criteria
- FORMS, including permit and plan review applications
- Updates to past sunset or effective dates related to regulatory requirements
- Any additional amendments deemed necessary by the industry workgroup

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small

businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

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 whilst protecting the health, safety, and welfare of the citizens of Virginia.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Briana Bill, Environmental Health Coordinator; 109 Governor Street, Richmond, VA 23219; briana.bill@vdh.virginia.gov; or fax (804) 864-7475. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.