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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation(s)	12VAC5-450
Regulation title(s)	Rules and Regulations Governing Campgrounds
Action title	Amend Campground Regulations following Periodic Review
Date this document prepared	April 27, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Rules and Regulations Governing Campgrounds are unchanged since the effective date; July 21, 1971. Significant changes in the camping industry over the past 40 years have rendered the current regulations antiquated. Changes include terminology, the size and duration of camping events, and the types of camping now popular. The intent of this regulatory action is to amend the regulations, to address current camping practices, update terminology, and remove or replace outdated requirements. The goals are to increase consistency and understanding in the campground program, reduce the number of requests the Virginia Department of Health (VDH) receives and ultimately grants to waive the regulatory requirements, and apply current public health practices industry-wide to promote public safety, while reducing burdensome, regulatory oversight.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The Virginia Department of Health has general authority to promulgate regulations pursuant to Code of Virginia § 35.1-11 which 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. The regulations of the Board specifically governing campgrounds pursuant to Code of Virginia § 35.1-17 shall include minimum standards for drinking water, sewage disposal, solid waste disposal, maintenance, vector and pest control, toilet and shower facilities, swimming facilities, control of animals and pets, procedures and safeguards for hazardous situations, maintenance and sale of propane gas, and procedures for obtaining a permit. Additionally, the Virginia Department of Health may also establish classes of campgrounds and concomitant requirements for each as authorized by Code of Virginia § 35.1-17.B.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The Rules and Regulations Governing Campgrounds (Regulations) have remained unchanged since becoming effective in 1971. Amending the Regulations is essential to protect the health and safety of citizens. The current definition of a campground (contained in the Code of Virginia § 35.1-1) requires an owner to comply with the Regulations when three or more designated campsites are intended for occupancy for periods of overnight or longer. Many festivals and short-term outdoor events occur today which draw large attendance where camping is provided. Meeting the requirements of the Regulations for these short-term duration events may be burdensome to property owners while public health and safety can be protected with other controls in place. In order for these festivals and related events to comply with the Regulations without undue hardship, waivers must be granted by the Commissioner. The Commissioner granted 36 waivers to allow for temporary camping throughout the Commonwealth in 2015. Processing waiver requests drains limited staff resources away from mandated services provided by VDH. Creating a new section in the Regulations to govern short-term events will avoid waiver request processing by permitting owners to offer camping without full application of the Regulations in limited instances.

Primitive camping, which is characterized by the absence of what is generally understood as modern conveniences, has always been enjoyed in Virginia. Requirements to provide drinking water, sewage disposal, and gray water systems for all types of primitive camping is not only an undue hardship placed upon many campground owners, but is also not desired by all campers. By creating an allowance in the Regulations that identifies different classes of camping, including what is commonly referred to as back country camping, zero-impact camping, or neutral footprint camping, campers will be permitted to provide necessities with them, such as a water supply or means of waste disposal to a campsite, and in turn, remove trash, waste etc. when they exit the campground. Creating different classes of campgrounds will be less burdensome on campground owners while providing the regulatory discretion needed to adapt to the evolving camping industry, which already exists in statute.

Substance

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

1. A provision to create a new section of the Regulations to address temporary short-term events with requirements that will protect public health and safety. This section should reduce the number of waivers requested by the public.
2. A provision to create a new section of the Regulations to protect public health and safety for different types of camping, including but not limited to: (i) Primitive camping with adequate, safe, potable drinking water and vault privies and gray water disposal; (ii) Primitive camping with vault privies; (iii) Primitive camping with no developed campsites; (iv) Other primitive camping methods such as back country, zero or low-impact, or neutral footprint lacking any designated campsites; and (v) Alternative camping methods as approved on a case by case basis. (vi) Campgrounds that include cabins and similar lodging units.
3. A provision for emergency preparedness planning to the extent possible.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

Alternatives to amending this regulation would be to leave the regulation in place without any revision. However, this will result in a regulation that does not incorporate the latest public health principles and the continued undue burden on the public to submit requests to allow for temporary camping. The proposed provisions should be less intrusive on property owners, less costly for the public, and promote eco-friendly tourism while ensuring public health and safety are protected.

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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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 of Virginia. Information may include: projected reporting, recordkeeping, and other administrative

costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **David Tiller, PO Box 298 Shackelfords, Virginia 23156, phone number: 804-785-2135, fax number: 804-785-2490, email address: dave.tiller@vdh.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A panel will be appointed and the agency's contact if you're interested in serving on the panel is **David Tiller, Environmental Health Coordinator, PO Box 298 Shackelfords, Virginia 23156, phone number: 804- 785-2135, fax number: 804- 785-2490, email address: dave.tiller@vdh.virginia.gov**

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

- (1) The Rules and Regulations Governing Campgrounds are needed in order to protect public health by requiring basic sanitation including potable drinking water, safe sewage disposal, vector control and safety.
- (2) The requirements of the Regulations are burdensome and not practical for temporary camping events. New requirements adjusted for primitive camping are needed.
- (3) The Regulations are clear and straight forward, but are antiquated and need to reflect current camping practices.
- (4) There are no overlaps, duplicates, or conflicts with federal or state law or regulation.
- (5) The Rules and Regulations Governing Campgrounds are unchanged since the effective date; July 21, 1971. A periodic review of this chapter was filed May 8, 2013. Many short-term outdoor festivals and events that draw large attendance provide for camping. Meeting the requirements of the Regulations for these short-term duration events may be burdensome to property owners while public health and safety can be protected with other controls in place.

Periodic Review Comments

Commenter	Comment	Agency response
<p>Katherine Williamson, VDH</p>	<p>Section 150, Safety, should include wording which addresses general safety matters such as trip / slip hazards, as well as accessory structures such as benches and fencing in common areas and especially playground equipment.</p> <p>Since many campgrounds now offer rental units such as cabins, stationary RVs, and even units which more resemble rental housing, there should be some guidelines for minimum standards for such facilities.</p> <p>The effective date of the regulations should be included with, or as a part of the regulations, especially when giving consideration to a facility that may not be in compliance with parts of the regulations, but may have been in existence prior to the effective date of the 'chapter'; see section -230.</p> <p>Regarding section -80, D.: many campgrounds have several to numerous individual water supplies, which are those serving the individual campsites. While prudence suggests that ALL such water supply sources be protected against backflow / back siphonage, it would be helpful if this were indicated in the regulations. Or, if it is acceptable to have one backflow device on the main supply, say from the well, that this also be clarified, with thought given to whether this would likely to be readily evident during an annual inspection.</p> <p>Many campgrounds have pools, restaurants, and other facilities which receive permits from VDH for their operation. As is done with the hotel regulations, consideration should be given to including 'Relationship to Food, Swimming Pool, etc. Regulations, so that it is clear that there are regulations governing these other facilities.</p>	<p>The agency will consider these comments during the drafting of proposed amendments to the regulations.</p>
<p>David Gorin, Executive Director, Virginia Campground Association</p>	<p>The Virginia Campground Association is pleased to have the opportunity to provide our comments on the periodic review of 12VAC5-450; Rules and Regulations Governing Campgrounds under Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia.</p> <p>The VCA proposes the following amendments to 12VAC5-450-10- Definitions</p> <p>The VCA proposes amending the definition of “outdoor bathing facilities” to include “swimming pools.” The new definition would read: Outdoor bathing facilities - means swimming pools, lakes, ponds, rivers, tidal waters, impoundments, beaches, streams or other places, whether natural or man-made, in which an area is held out for swimming or bathing purposes.</p> <p>The VCA proposes amending the definition of “self-contained camping unit” to include “generator.” The new definition would read: Self-contained camping unit - means a unit, which contains a water-flushed toilet,</p>	<p>The agency will consider these comments during the drafting of proposed amendments to the regulations.</p>

	<p>lavatory, shower and kitchen sink, all of which are connected, and/or a generator, as an integral part of the structure, to water storage and sewage holding tanks located within the unit.</p> <p>The VCA proposes adding the following exemption to 12VAC5-450-100- Service Buildings: Campgrounds that exclusively serve self-contained recreational vehicles and provide potable water and sewer hook-up at every site shall be exempt from the sanitary facilities requirements in 12VAC5-450-100, except when other provisions apply.</p> <p>Thank you for your attention to this important matter.</p>	
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