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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)	12 VAC 5-462
VAC Chapter title(s)	Swimming Pool Regulations Governing the Posting of Water Quality Results
Date this document prepared	April 1, 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 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.

"PPM" means parts per million.

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 agency is the Virginia Department of Health (VDH). Chapter 1 and 6 of Title 32.1 of the Code of Virginia enumerate the legal authority for VDH to regulate the water quality of certain recreational water facilities.

Section 32.1-12 of the Code of Virginia states,

“The Board may make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions therefrom as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner or the Department.”

In addition, Section 32.1-248.10 of the Code of Virginia states,

“The Board of Health shall promulgate regulations to require the daily posting of water quality test results at swimming pools and other water recreational facilities operated for public use or in conjunction with a tourist facility or health spa. Such regulations shall require, among other things, the posting of water quality data regarding the current pH level, disinfectant type and concentration, and water temperature, and the recommended safe levels of each, and shall not apply to private residential water recreational facilities, as defined by the Board.”

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.

No viable alternatives for achieving the purpose of the regulation could be determined. The regulations enable the Board to fulfill its statutory mandates as established in Chapter 1 and Chapter 6 of Title 32.1 of the Code of Virginia. Further, the regulation is 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 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.

Commenter	Comment	Agency response
Ellen Meyer, Sigura	-The commenter suggests amending section 290 to address chlorine residuals and provides three options for the Board’s consideration with new language underlined, (1) 1.0ppm of chlorine <u>for pools with no cyanuric acid</u> or <u>2.0ppm for pools with cyanuric acid</u> ; increasing the max allowance of chlorine from 3ppm to 4ppm (2) 1.0ppm of chlorine <u>for pools with</u>	The Board thanks the commenter for the suggestion.

	<p><u>no cyanuric acid</u>; and the addition of an acceptable range of cyanuric acid and minimum chlorine residual, increasing the max allowance of chlorine from 3ppm to 4ppm, and (3) 1.0ppm of chlorine for pools with no cyanuric acid, <u>cyanuric acid concentration divided by 15</u> for those pools with cyanuric acid.</p> <p>-The commenter suggests to amend section 290 to add a section for water quality standards for the use of cyanuric acid. The amendment would include a range for cyanuric acid of 0-30ppm in pools and prohibit the use of cyanuric acid in spas.</p> <p>Additional resource information was provided for the basis of the suggested change.</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 Executive Order 14 (as amended, July 16, 2018), 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 General Assembly has charged the Board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect public health and safety as it relates to water quality at public recreational water facilities. The regulations were reviewed and it was determined they are essential to protecting public health.

The regulation helps fulfill the statutory mandate from the General Assembly by administering and enforcing standards which require the daily posting of water quality test results at swimming pools and other water recreational facilities operated for public use or in conjunction with a tourist facility or health spa. Such regulations also require, among other things, the posting of water quality data regarding the current pH level, disinfectant type and concentration, and water temperature, and the recommended safe levels of each.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation is necessary to interpret and apply the requirements imposed by the Board and is clearly written and understandable. Lastly, the regulation is designed to achieve its objective in the most efficient and cost effective manner.

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).

The agency is recommending that the regulation be amended.

The Swimming Pool Regulations Governing the Posting of Water Quality Results has not undergone a comprehensive review since its initial administrative codification in 1994. The regulation, in its current form, may not reflect changes in industry standards and best practices for public safety, or accurately represent regulatory and/or statutory citations.

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 1 and 6 of Title 32.1 of the Code of Virginia mandate the Board to make, adopt, regulate, and enforce regulations necessary to protect public health and safety as it pertains to water quality at certain public recreational water facilities. The continued need for the regulation is established in regulation and is not discretionary. Comments received regarding the regulation appear to highlight areas where the current requirements may not meet industry standard and additional review is warranted.

The regulation is clearly written and easily understandable; however several sections may not reflect or reference current regulatory and or industry standards. The regulations have not undergone a comprehensive review since its initial regulatory codification in 1994. It does not appear an evaluation to which technology or other factors which may impact the regulant population or the general public has taken place since that time. Federal and other industry associations provide up to date information and guidance on the operation, maintenance and management of aquatic facilities (including pools and hot tubs). The Model Aquatic Health Code (MAHC) is based on the latest science and industry best practices to promote health and safety in public pools, hot tubs, and water playgrounds. The MAHC, a model code, is intended to assist states in adopting the guidelines or drafting similar processes and applying them to any applicable regulations or management plans. The Pool and Hot Tub Alliance encourages commercial pool and spa owners to follow the ANSI/APSP/ICC-11 2019 American National Standard for Water Quality in Public Pools and Spas, and provides a variety of resources and guidance documents reflective of current industry standards and best practices. Virginia pool regulations are not currently aligned with these or other association's guidance and practices, and exhibit significant deviations from industry standards and science.

Since 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. Public comments received during this review will be incorporated for discussion with stakeholders.
