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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC5-460
<b>VAC Chapter title(s)</b>	Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools
<b>Action title</b>	Repeal and replace 12VAC5-460 as a result of a periodic review
<b>Date this document prepared</b>	February 21, 2023

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 Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools (hereafter, "Regulations") protect public health and safety at public swimming pools, saunas, and other similar water recreational facilities located at tourist establishments (campgrounds, hotels, and summer camps). This action, following a periodic review concluded in April of 2022, seeks to repeal and replace the regulatory text to ensure an effective regulatory program governing water facility safety is maintained throughout the Commonwealth. This action will: remove outdated information; add and replace text to reflect best practices and the latest science from industry, academia, public health experts, and other stakeholders; and clarify regulatory and enforcement standards.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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

"Bed-and-breakfast" means a residential-type establishment that provides (i) two or more rental accommodations for transient guests and food service to a maximum of 18 transient guests on any single day for five or more days in any calendar year or (ii) at least one rental accommodation for transient guests and food service to a maximum of 18 transient guests on any single day for 30 or more days in any calendar year.

"Campground" means any area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements, including any travel trailer camp, recreation camp, family campground, camping resort, or camping community. "Campground" does not mean a summer camp, migrant labor camp, or park for manufactured homes as defined in this section and in §§ 32.1-203 and 36-85.3, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing his sanitary facilities within his property lines.

“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. This definition of a hotel includes bed and breakfast facilities as defined in 12VAC5-431 and § 35.1-1.

“PPM” means part per million.

"Summer camp" means any building, tent, or vehicle, or group of buildings, tents, or vehicles, if operated as one place or establishment, or any other place or establishment, public or private, together with the land and waters adjacent thereto, that is operated or used in this Commonwealth for the entertainment, education, recreation, religious instruction or activities, physical education, or health of persons under 18 years of age who are not related to the operator of such place or establishment by blood or marriage within the third degree of consanguinity or affinity, if 12 or more such persons at any one time are accommodated, gratuitously or for compensation, overnight and during any portion of more than two consecutive days.

“Tourist establishment,” for the purposes of this review, means any facility or establishment offering to the public lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities such as hotels, campgrounds or summer camps as determined by varying nomenclature, that is permitted by the Department.

## **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.”*

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The Department conducted a periodic review of the Regulations pursuant to Executive Order 14 (as amended, July 16, 2018). In its finding, filed on April 8, 2022, the Department recommended the regulation be amended. Through review of the proposed amendments and communication with the stakeholder workgroup, the Department found that the more appropriate action is to repeal and replace the Regulations. The NOIRA to amend the regulations was withdrawn on January 23, 2023, and the Department submits this NOIRA with the intention to repeal 12VAC5-460 and replace it with 12VAC5-461.

### 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.*

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The promulgating agency is the Virginia Department of Health (VDH). Chapter 2 of Title 35.1 of the Code of Virginia enumerates the legal authority for VDH to regulate certain public swimming pools, saunas, and other similar facilities, including personnel standards and the operation thereof.

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.”

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.”

Section 35.1-16 of the Code of Virginia states,

“The regulations of the Board governing summer camps shall include, but not be limited to: (i) an approved drinking water supply; (ii) an approved sewage disposal system; (iii) an approved solid waste disposal system; (iv) the adequate and sanitary preparation, handling, protection and preservation of food; (v) the proper maintenance of buildings, grounds, and equipment; (vi) vector and pest control; (vii) toilet, swimming, and bathing facilities, including shower facilities; (viii) a procedure for obtaining a license.”

Lastly, Section 35.1-17 of the Code of Virginia states,

“The regulations of the Board governing campgrounds shall include minimum standards for (i) an approved drinking water supply; (ii) an approved sewage disposal system; (iii) an approved solid waste disposal system; (iv) the proper maintenance of buildings, grounds, and equipment; (v)

vector and pest control; (vi) toilet, swimming, and bathing facilities, including shower facilities; (vii) effective measures for the control of animals and pets; (viii) appropriate procedures and safeguards for hazardous situations, including specifically the maintenance and sale of propane gas or other explosives and combustibles; 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.*

While the Regulations are essential to protecting the health and safety of patrons at pools, spas, and recreational water facilities at tourist establishments located within the Commonwealth, they are also statutorily mandated as outlined in §§35.1-13, 35.1-16, and 35.1-17 of the Code of Virginia.

The Regulations have not undergone a comprehensive review in sixty years. In their current form, they lack provisions to address adequate disinfection and filtration standards to prevent communicable illnesses such as cryptosporidiosis, giardiasis, shigellosis, and legionellosis. In addition, the public would benefit from repealing and replacing the text to include up-to-date standards related to facility maintenance, safety equipment, staffing, and general operations which could mitigate the risks of pool-associated injuries and death, including cuts, falls, diving or fall-associated spinal cord or head injuries, entrapment evisceration, and drowning.

While the current regulation contains some provisions addressing these issues, incorporating developments from recent advancements in science and emerging technologies will bring the chapter up to current standards.

## 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.*

Repeal and replacement of the Regulations will result in substantive revisions and new substantive provisions to the regulation that will include repealing, replacing, and adding text related to administrative and enforcement provisions, definitions, pool operation and maintenance (including water treatment and chemical handling), signage and safety provisions, management, and other provisions or standards deemed necessary.

## 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.*

No viable alternatives for achieving the purpose of the regulation could be determined. The regulations enable the Department to fulfill its statutory mandates as established in Chapter 2 of Title 35.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Department’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.

### **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.*

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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 website at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Briana Bill, [briana.bill@vdh.virginia.gov](mailto: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.