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Fast-Track Regulation Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-450-187
VAC Chapter title(s)	Rules and Regulations for Campgrounds
Action title	Fast-track Amendments: Temporary Campground Water Quality/hand washing Sinks
Date this document prepared	Oct 25, 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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Virginia Department of Health (VDH) seeks to amend the Rules and Regulations Governing Campgrounds (12VAC5-450; hereinafter referred to as 'Regulations') to clarify standards for water storage and distribution at temporary campgrounds. Temporary campgrounds are those associated with temporary events, such as fairs, festivals, or music concerts. These events often do not have permanent infrastructure, and thus basic sanitation needs are met through the use of portable toilets, and often, portable hand washing sinks.

The Regulations provide that any tanks, hoses, or appurtenances that are used to distribute water shall be of food-grade construction. This requirement extends to any tanks or appurtenances providing water, including those associated with portable hand washing sinks. Current industry design of the majority of portable hand washing sinks do not meet this requirement through standard materials and design. As a result, the current regulation may discourage the use of portable hand washing sinks, and thus hand

washing, at temporary campgrounds. As hand washing is a primary component to reducing communicable disease, it is not the goal of the regulation to prohibit or discourage hand washing. VDH proposes to amend the Regulations to allow for the use of equipment that is more in line with industry standard, less burdensome to regulated entities, while protecting the public through signage stating that water in portable handwashing sinks is not for human consumption.

Acronyms and Definitions

Define all acronyms used in this form, 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.

"VRRM" means the Virginia Register of Regulations Form, Style and Procedure Manual for Publication of Virginia Regulations (April 2014).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Health approved these Fast Track amendments to the Rules and Regulations for Campgrounds (12VAC5-450-187) on December 15, 2022.

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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The amendment was prompted by industry stakeholders notifying local health department staff that the food grade equipment requirement for portable hand washing sinks was unattainable, as many portable hand washing sinks did not certify equipment to meet such requirements.

This proposed rulemaking is expected to be noncontroversial because it relaxes the requirements related to water in portable handwashing sinks and is expected to be welcomed by the regulated industry, therefore appropriate for the fast-track process.

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.

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, subsection A of § 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. B. The Board may in its sole discretion prescribe regulations for classes of campgrounds and different requirements for each class.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The purpose of this regulatory change is to clarify standards for material used in the conveyance and storage of hand washing water at temporary campgrounds. Currently, the Regulations require any tanks, hoses, or appurtenances used to store or distribute water to be of “food-grade” construction. However, most portable hand washing sinks used by industry do not meet this standard. In traditional plumbed settings, hand washing water is considered potable water, and thus is required to meet the standard of water provided for drinking. In the settings of temporary campgrounds, temporary hand washing sinks, when used, provide extra sanitation for campers using portable toilets, but are not used as drinking water fountains.

The proposed amendment exempts portable hand washing sinks from meeting the full requirements applied to other water provided for drinking or showering in temporary campgrounds. To ensure this change has no adverse impact on public health, any portable hand washing sink that does not meet food-grade standards will be required to post a sign notifying campers not to drink the water.

Without this fast-track amendment, the current language potentially creates a hardship on temporary campground operators and portable hand washing sink distributors and service providers, could discourage hand washing and the use of hand washing sinks, or unintentionally promote certain brands or providers.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed amendment exempts portable hand washing sinks at temporary campgrounds from meeting the existing construction requirement for water distribution or storage tanks, while displaying a sign stating "Hand washing water is not for drinking."

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of this regulatory change is additional flexibility provided to campground operators and companies that supply portable sanitation facilities. The amendments align requirements to current industry standards, while still protecting public health through other existing provisions and the requirement for signage. This is not only a benefit to the public, but the agency will benefit from clearer and practical standards for portable hand washing sinks.

There are no known or anticipated disadvantages to the public or the Commonwealth associated with the proposed changes or pertinent matters of interest to the regulated community, government officials or the public.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in this regulatory action that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by this regulatory change.

Localities Particularly Affected

There are no localities particularly affected by this regulatory change.

Other Entities Particularly Affected

Temporary campground operators, portable hand washing sink distributors, and service providers will be affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no projected costs, savings, fees or revenues anticipated to the agency due to this change; temporary campgrounds are already regulated and inspected by VDH.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected costs, savings, fees or revenues anticipated to other state agencies due to this change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no direct impacts on state agencies, with the potential exception of any state agency that hosts a temporary campground. These agencies may experience benefits as campground operators.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no projected costs, savings, fees or revenues anticipated to localities due to this change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no direct impacts on localities, but localities hosting temporary campgrounds may experience benefits as campground operators.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Temporary campground operators, portable hand washing sink distributors and service providers.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>There were approximately 45 temporary campground applications processed in CY 2021, and 35 in 2022 to date. VDH does not require submission of information regarding the ownership status or number of employees. There are 408 campgrounds currently permitted in the Commonwealth for 2022.</p> <p>Based on employing 500 or fewer employees, an estimated 95 to 100% of these campgrounds are small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>There are no projected costs, for affected individuals, businesses or other entities resulting from the regulatory change for localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Amending the regulations will provide more flexibility to campgrounds and companies that provide portable sanitation equipment, with no negative impact to public health.</p>

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.

This information has been reported in Table 1b of the ORM Economic Impact form.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting

requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This analysis has been reported in Table 1b of the ORM Economic Impact form.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Department of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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
109 Governor Street Richmond, VA 23235
(804) 584-6340
Fax number (804) 864-7475
briana.bill@vdh.virginia.gov.

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are

being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC5-450-187		<p>This section provides standards for temporary campgrounds.</p> <p>Currently, the tanks, hoses, or appurtenances that are used to distribute water are required to be of food-grade construction, be disinfected between uses, and be protected from contamination and backflow</p>	<p>Change: Portable hand washing sinks are exempted from the requirement that tanks, hoses, or appurtenances used to distribute water be of food-grade construction, disinfected between uses, and protected from contamination and backflow. A requirement is added that the sinks maintain a one-parts-per million free chlorine residual, and display a sign stating "Hand washing water is not for drinking." Additionally, text amended to update regulatory citations, to comply with VRRM style requirements, and grammatical edits.</p> <p>Intent: To exempt portable handwashing sinks from unnecessary regulatory requirements.</p> <p>Rationale: Current regulation limits the use of tanks and accessories used to transport and convey water, including portable hand washing sinks at temporary campgrounds, to those made out of food grade material. This is not the industry standard for portable hand washing sinks and may negatively impact small business, with no associated public health rationale, as portable hand washing sinks are not used as drinking water fountains. The proposed language is in line with industry practice and easily understood.</p> <p>Impact: It will add flexibility for campground operators when procuring portable hand washing sinks, remove a limitation to businesses that rent portable sanitation equipment, and align regulations with industry standards. It is expected that more temporary campgrounds may elect to provide portable hand washing sinks due to the reduced regulatory requirements.</p>

