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Periodic Review and Small Business Impact Findings Where Result is “Retain the Regulation As Is”

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12VAC5-462-10 et seq.
Regulation title	Swimming Pool Regulations Governing the Posting of Water Quality Test Results
Date	March 3, 2017

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

The Swimming Pool Regulations Governing the Posting of Water Quality Test Results are mandated by Article 10, Chapter 6, Title 32.1 of the *Code of Virginia* titled “Posting of water quality test results by certain recreational facilities” (§ 32.1-248.1). This statute directs the State Board of Health to promulgate regulations that require the daily posting of water quality test results at public swimming pools and other public water recreation facilities and establish safe standards for each water quality parameter to be tested.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

There is no viable alternative to the promulgation of these regulations, as such promulgation is mandated by *Code of Virginia* § 32.1-248.1.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Jennifer Hatfield Director, Government Affairs The Association of Pool & Spa Professionals 2111 Eisenhower Ave, Suite 500 Alexandria, VA 22314 (941)345-3263 jhatfield@apsp.org	We recognize this is a required review and want to take this opportunity to encourage the state to maintain regulation 12 VAC5-462. This regulation upholds the standards of safety and public health. Those who operate public pools must be held to standards and be accountable. This cannot be achieved without proper regulation. A regulation that seeks to uphold safety and public health is essential and vital; therefore, we recommend it stay in place.	The agency is in agreement with the comment, and will recommend that the regulation be retained.

Effectiveness

Please 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.

1. Minimal Intrusion- The regulations only apply to those who have assumed the responsibility of providing swimming pool or other water recreational facilities to the public.
2. Protection of public health- The regulations are necessary to prevent potential illnesses associated with exposure to untreated recreational waters. Without treatment, swimming pool water may be contaminated with viruses, bacteria, and other pathogens carried into the water by patrons of the facility.
3. Clearly written- The regulations use common, everyday language and common industry terminology that are readily understood by regulated entities and the public.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The agency believes the continuation of this regulation will protect the public from health risks associated with exposure to pathogens found in untreated public swimming pools.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, 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. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

1. Continuing need - The regulations are necessary to protect the public from potential illnesses associated with exposure to untreated recreational waters.
2. Public comment- One public comment was received concerning the regulation; this comment was in support of the regulation being retained.
3. Complexity of the regulation- This regulation has been in effect since August 1, 1994; the agency is unaware of any complaints concerning the complexity of the regulation.
4. Federal and state laws- This regulation does not conflict with any federal law or regulation. This regulation's water quality standards are in conflict with the Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools (12VAC5-460-10 et seq.); the later regulation will be amended in response to a recent periodic review in order to reflect the modern standards in the Swimming Pool Regulations Governing the Posting of Water Quality Test Results (12VAC5-462-10 et seq.).
5. Evaluation of Regulation- The regulation is evaluated on an on-going basis to ensure that its effect on small business is fair, properly administered, and minimized to the greatest extent possible.