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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-613
VAC Chapter title(s)	Regulations for Alternative Onsite Sewage Systems
Date this document prepared	June 6, 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*.

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.

All acronyms utilized in this document are included in the "Definitions" section of the regulations (12VAC5-613-10).

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 promulgating agency is the Board of Health. Chapters 1 and 6 of Title 32.1 of the Code of Virginia enumerate the legal authority for the State Board of Health (“Board”) to promulgate regulations to establish installation, performance, operation, and maintenance requirements for alternative onsite sewage systems.

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.”

Section 32.1-164 (B) & (I) of the Code of Virginia, state, in relevant part:

“B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be designed to protect the public health and promote the public welfare [...]

I. The Board shall promulgate regulations governing the requirements for maintaining alternative onsite sewage systems.”

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.

There are no viable alternatives for achieving the purpose of the Regulations for Alternative Onsite Sewage Systems (“Regulations”). The Regulations enable the Department to fulfill its statutory mandates as established in Chapters 1 and 6 of Title 32.1 of the Code of Virginia.

The Regulations are necessary to ensure the Board’s statutory requirements are executed in the least burdensome and most efficient and cost-effective manner 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’s 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.

No public comments were received.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 health and safety as it relates to alternative onsite sewage systems. The Regulations were reviewed, and it was determined they are essential to protecting public health.

The Regulations meet the criteria set forth in Executive Order 19 (2022). The Regulations are necessary to interpret and apply the requirements imposed by the Board and are clearly written and understandable.

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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Regulations have not undergone a comprehensive review since its initial administrative codification, approximately 12 years ago. The Regulations would benefit from a comprehensive review to explore advancements in technology, engagement with the public (industry, academia, general public, state and federal partners) to ensure the regulations reflect best and current industry practices, and cross reference with guidance documents to reduce regulatory burden.

The agency is recommending to amend the Regulation.

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.

Chapters 1 and 6 of Title 32.1 of the Code of Virginia mandate the promulgation of regulations to govern the collection, conveyance, transportation, treatment, and disposal of sewage by alternative discharging sewage systems. In addition, the regulations shall address the maintenance, inspection, and reuse of alternative onsite sewage systems. The continued need for the Regulations is established in state law and is not discretionary. No comments were received during the periodic review's public comment period.

The Regulations are clearly written, easily understandable, and do not overlap, duplicate, or conflict with any federal, state law, or regulation. The Regulations have not undergone revision since 2017 and would benefit from comprehensive review to evaluate the degree to which

technology, economic conditions, and other factors may impact the administration and enforcement of the Regulations as well as the regulant population and the general public.

As the agency is recommending amending 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 and consider regulatory reduction where possible, while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.

