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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation(s)	12VAC5-460
Regulation title(s)	Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools
Action title	Amend Regulations following Periodic Review
Date this document prepared	February 10, 2020

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 (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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") were intended to protect the health and safety of patrons using water recreation facilities at Virginia's tourist establishment facilities. Environmental Health staff inspect these facilities for water quality and safe operation during hotel, campground, and summer camp annual inspections. On October 14, 2016, the agency completed a Periodic Review of the Regulations, and concluded that they required amendment. On October 17, 2019, fast track amendments to the Regulations addressed legal conflicts with the Virginia Uniform Statewide Building Code. However, the chapter requires further revision.. This regulatory action intends to update the Regulations with modern standards for health and safety at water recreation facilities.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

Water Recreation Facilities: swimming or wading pools, spas, splash pads, and saunas.

Tourist Establishments: Hotels, motels, campgrounds, and overnight summer camps for juveniles.

Mandate and Impetus

Please 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, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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."

This regulatory action derives from a 2016 periodic review of this chapter.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The Virginia Department of Health has general authority to promulgate regulations pursuant to Virginia Code § 35.1-11, which states the Board of Health shall make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of this title to protect the public health and safety. Virginia Code § 35.1-13 states that the Board shall promulgate regulations for hotels, including minimum standards for swimming pools and spas. Additionally, Code of Virginia §§ 35.1-16 and 35.1-17 authorize the Board to regulate swimming facilities at summer camps and campgrounds, respectively.

Purpose

Please 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The Regulations are essential to protecting the health and safety of patrons to swimming pools and spas at tourist establishment facilities. The adequate disinfection and filtration of swimming water is critical to preventing many gastrointestinal and respiratory illnesses associated with unclean pools and spas, including cryptosporidiosis, giardiasis, shigellosis, and legionellosis. Effective facility maintenance, safety equipment, staffing, and general operations can 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 provisions addressing these issues, incorporating developments from more recent advancements in the water recreation industry will bring the chapter up to current standards. This update will assist Virginia water recreation facilities in providing safe and healthy environments for their patrons.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Substantive changes will be considered in the following areas:

1. Water treatment & chemical safety (storage and handling),
2. Water recirculation and entrapment prevention,
3. Signage and safety equipment,
4. Facility maintenance (decks, rails, electrical, fencing, etc.),
5. Management and staffing,
6. Water, sewer, and solid waste, and
7. Post-construction operational plan reviews, inspections, and general enforcement.

Alternatives

Please 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.

The alternative is to not revise the Regulations. However, this will result in maintaining outdated standards for water quality, facility maintenance and operation, safety equipment, and water recirculation systems. Providing clear and modern standards helps mitigate the risk of illness, injury, entrapment, and drowning at water recreation facilities.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

The Virginia Department of Health is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose 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 web site at

<https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail; email, Olivia McCormick, Olivia.McCormick@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 be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time. A panel will not be used.