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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 5-460
VAC Chapter title(s)	Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools
Date this document prepared	April 1, 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 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.

"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.

"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 or other overnight accommodations determined by varying nomenclature, that is permitted by the Department.

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 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."

In addition, 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.”

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.”

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.

No viable alternatives for achieving the purpose of the regulation could be determined. The regulations enable the Board 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 Board’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.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency 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.

Commenter	Comment	Agency response
Ellen Meyer, Sigura	-The commenter suggests amending section 260 to increase chlorine residual range from 0.0-1.0, to 0.0- 10.0. Also, the commenter provided language for the consideration of cyanuric acid (when used) and safe content ranges.	The Board thanks the commenter for the suggestion.

	<p>-The commenter suggests amending section 280 to address chlorine residuals and provides three options for the Board's consideration with new language underlined, (1) 1.0ppm of chlorine <u>for pools with no cyanuric acid</u> or <u>2.0ppm for pools with cyanuric acid</u>; increasing the max allowance of chlorine from 3ppm to 4ppm (2) 1.0ppm of chlorine <u>for pools with no cyanuric acid</u>; and the addition of an acceptable range of cyanuric acid and minimum chlorine residual, increasing the max allowance of chlorine from 3ppm to 4ppm, and (3) 1.0ppm of chlorine <u>for pools with no cyanuric acid, cyanuric acid concentration divided by 15</u> for those pools with cyanuric acid.</p> <p>-The commenter suggests amending section 290 to provide an acceptable range of water alkalinity; (between 7.2 and 7.8).</p> <p>-The commenter suggests amending section 300 to include sodium bicarbonate, muriatic acid, sodium bisulfate, and calcium chloride to the list of chemicals that shall not be used to treat swimming pool water without permission.</p> <p>-The commenter also suggests adding a section for fecal/vomit contamination responses based on Centers for Disease Control and Prevention guidance.</p> <p>Additional resource information provided for the basis of the suggested change including the Model Aquatic Health Code.</p>	
<p>Robert B. Melvin, Director of Government Affairs, Virginia Restaurant, Lodging & Travel Association.</p>	<p>Requests the Board retain the current regulations governing tourist establishment swimming pools as currently written.</p>	<p>The Board thanks the commenter for the suggestion.</p>

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), 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 public health and safety as it relates to public swimming pools, saunas, and other similar facilities located at tourist establishments. The regulations were reviewed and it has been determined they are essential to protecting public health.

The regulation helps fulfill the statutory mandate from the General Assembly by administering and enforcing standards which require standards for the operation and maintenance of swimming pool facilities operated in conjunction with a tourist facility. The regulations address, among other things, disinfection equipment, chemical composition (alkalinity, chlorine, ph, etc.) of pool water and recommended safe levels, lighting, fences, pumps, waste discharge, and facility location.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation is necessary to interpret and apply the requirements imposed by the Board, and is clearly written and understandable. Lastly, the regulation achieves its objective in the most efficient and cost effective manner.

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).

The agency is recommending that the regulation be amended.

The Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools was amended in a fast track action in October of 2019 to remove conflicts with Virginia Uniform Statewide Building Code. Otherwise, it has remained unchanged since its promulgation in 1962. The regulation, in its current form, may not reflect changes in industry standards, best practices as it relates to public safety, or accurately represent regulatory and/or statutory citations.

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.

Chapter 2 of Title 35.1 of the Code of Virginia mandates the Board to make, adopt, regulate, and enforce regulations necessary to protect public health and safety as it pertains to public swimming pools, saunas, and other similar facilities located at tourist establishments. The continued need for the regulation is established in Code and is not discretionary. Comments received regarding the regulation appear to

highlight areas where the current requirements may not meet current industry standard and additional review is warranted.

The regulation is clearly written and easily understandable; however several sections may not reflect or reference current industry standards. While the regulations were amended in October of 2019 to address a conflict in regulation, it does not appear an evaluation to which technology, economic conditions, or other factors which may impact the regulant population, or the general public, has taken place since that time. Federal and other industry associations provide up to date information and guidance on the operation, maintenance and management of aquatic facilities (including pools and hot tubs). The Model Aquatic Health Code (MAHC) is based on the latest science and industry best practices to promote health and safety in public pools, hot tubs, and water playgrounds. The MAHC, a model code, is intended to assist states in adopting the guidelines or drafting similar processes and applying them to any applicable regulations or management plans. The Pool and Hot Tub Alliance encourages commercial pool and spa owners to follow the ANSI/APSP/ICC-11 2019 American National Standard for Water Quality in Public Pools and Spas, and provides a variety of resources and guidance documents reflective of current industry standards and best practices. Virginia pool regulations are not currently aligned with these or other association's guidance and practices, and exhibit significant deviations from industry standards and science.

On August 31, 2020, the agency published a Notice of Intended Regulatory Action (NOIRA) for this regulation. The NOIRA expressed an intent to conduct a full review and modernization of the regulation. Due to the amount of time lapsed since this stage's publication, the Virginia Department of Health has withdrawn this action and will initiate a new regulatory action in response to the most recent periodic review through a new NOIRA.

Since the agency has already begun work to amend the regulations, staff will continue to engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of regulations on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public. Public comments received during this review will be incorporated for discussion with stakeholders.

