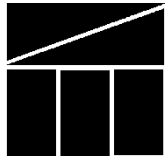


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes<sup>1</sup>  Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



## Virginia Department of Planning and Budget Economic Impact Analysis

---

### **12 VAC 5-460 Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**

**Virginia Department of Health**

**Town Hall Action/Stage: 5197 / 8496**

March 6, 2019

---

### **Summary of the Proposed Amendments to Regulation**

The Board of Health (Board) proposes to repeal design/construction criteria for tourist establishment and other public swimming pools in this regulation.

### **Result of Analysis**

The benefits likely exceed the costs for all proposed changes.

### **Estimated Economic Impact**

The purpose of this regulation is to prevent illnesses and injuries at tourist establishment and other public swimming pools through design/construction and operation/maintenance standards. Environmental health staff inspect these facilities for water quality and safe operation during hotel, campground, and summer camp periodic inspections.

Currently, the regulation contains both design/construction and operation/maintenance standards. According to the Virginia Department of Health (VDH), at the time of the regulation's promulgation in 1962, Virginia's building codes contained few requirements for swimming pools and spas; and those building code design/construction requirements for tourist lodging pools

---

<sup>1</sup> Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

were incorporated into the regulation by reference. On July 14, 2014, the 2012 International Swimming Pool and Spa Code (ISPSA) was adopted by reference into the Virginia Uniform Statewide Building Code (USBC), increasing the specificity of pool design/construction standards found in the USBC. Virginia Code § 36-98 specifies that the design/construction criteria of the Virginia Uniform Statewide Building Code supersede the regulations of other state agencies.<sup>2</sup> Therefore, design/construction criteria contained in this regulation are effectively void. The Board proposes to repeal the void provisions and reword the operation/maintenance requirements for consistency without introducing any new requirements. Tourist lodging establishments that would have previously sought a construction permit from VDH would now undergo a plan review of items similar to those previously reviewed prior to the issuance of a construction permit, minus design/construction criteria. Local building official approval procedures will not be affected by this regulatory change.

The main effect of repealing the design/construction standards from this regulation is elimination of a potential source of confusion among touristic and public pool owners and VDH field staff. For example, currently, the required deck width in this regulation is four feet while it is three feet in ISPSA.<sup>3</sup> The proposed amendments will eliminate such void and potentially conflicting design/construction standards in this regulation. Owners and operators of tourist lodging pools should benefit from greater transparency and clarity regarding the division of authority over tourist lodging facility pools and spas. The revision to reflect applicable standards may also result in incidental cost savings to VDH, local USBC administrators, and pool owners related to resolving conflicts that may be created by improper application of authority.

### **Businesses and Entities Affected**

There are approximately 1,000 touristic and public swimming pools in the Commonwealth, the majority of which are believed to be owned by small businesses.<sup>4</sup> Inspections generally occur annually, but may be performed up to every three years in some localities.

---

<sup>2</sup> <https://law.lis.virginia.gov/vacode/title36/chapter6/section36-98/>

<sup>3</sup> Source: VDH

<sup>4</sup> Ibid

**Localities Particularly Affected**

This regulation particularly affects localities with higher concentrations of touristic establishments (e.g. eastern shore).

**Projected Impact on Employment**

The proposed amendments are unlikely to significantly affect total employment.

**Effects on the Use and Value of Private Property**

The proposed amendments are unlikely to significantly affect the use and value of private property.

**Real Estate Development Costs**

The proposed amendments are unlikely to significantly affect real estate development costs.

**Small Businesses:****Definition**

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

**Costs and Other Effects**

The majority of affected pool owners are estimated to be small businesses. The proposed amendments would not significantly affect costs for small businesses. The other effects on them are the same as discussed above.

**Alternative Method that Minimizes Adverse Impact**

The proposed amendments do not adversely affect small businesses.

**Adverse Impacts:****Businesses:**

The proposed amendments do not adversely affect businesses.

**Localities:**

The proposed amendments do not adversely affect localities.

**Other Entities:**

The proposed amendments do not adversely affect other entities.

**Legal Mandates**

**General:** The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.