



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12 VAC 5-570-10 et seq.
Regulation title	Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings
Action title	Amend regulations to reflect current state of marina industry
Date this document prepared	December 22, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In response to the evolving marina industry in Virginia, the State Board of Health (the "board") intends to revise and amend the Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings in an effort to improve boater accommodations and to ensure that boaters will have a place to dispose of sewage in a sanitary manner so as not to present a public health or environmental hazard resulting in a degradation of water quality.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Statutory Authority:

Section 32.1-12 of the *Code of Virginia* authorizes the board to make, adopt, promulgate and enforce regulations that may be necessary to carry out the provisions of title 32.1 and other laws of the Commonwealth administered by it or the State Health Commissioner ("commissioner"). Section 32.1-246

of the *Code* empowers and directs the board to promulgate all necessary rules and regulations establishing minimum requirements as to adequacy of sewage facilities at marinas and other places where boats are moored. These facilities must be sufficient to serve the number of boat slips or persons that such marinas and places are designed to accommodate, regardless of whether such establishments serve food. Section 28.2-1205 of the *Code* states that no permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Virginia Marine Resources Commission a plan for sewage treatment or disposal facilities which has been approved by the board.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The board adopted the current Marina Regulations in 1990 to provide procedures to implement the minimum standards necessary to ensure adequate sanitary facilities at all marinas and other places where boats are moored. In drafting the Marina Regulations, the board strove to write provisions that are clear and easily understandable by the individuals and entities affected. The regulations have become outdated and are in need of extensive revision to update the minimum standards necessary to protect public health and the environment. The Marina Regulations Advisory Committee (committee) participated in a comprehensive regulations review in 2003 and recommended that the regulations be revised at that time. However, VDH did not actually initiate a regulatory action at that time. In light of the recommendations of the committee and the current state of the industry, the board has determined that a new set of regulations is necessary in order to clarify the existing regulatory standards and to update the regulatory standards to reflect the recent innovation and evolution of the marina industry.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The board intends to amend existing regulatory standards to reflect the innovation and evolution of the marina industry. The construction and renovation of boating facilities in the coastal and inland lake regions of the state have progressed at a rapid pace. The new boating facilities tend to be smaller in size but maintain the same accommodations as large facilities. The proposed changes will address the need for an appropriate number of sanitary fixtures at smaller facilities. The placement of sanitary facilities at boat ramps will address the public health and environmental impacts associated with the discharge of raw sewage. The board will draw from national standards when developing the proposed amendments.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The two alternatives that the board considered to meet the essential purpose of this action were to continue with the current regulations or to amend the current regulations. The board evaluated the current regulations and found them to be outdated and in need of reorganization in order to clarify the standards that are necessary to ensure that adequate sanitary facilities are provided at marinas and boat mooring facilities. The board determined that a revised set of regulations was necessary in order for the board to effectively carry out its duties under title 32.1 of the Code so as to protect public health and the environment.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

VDH is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and, 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code. Information may include 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and, 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall web site (<http://www.townhall.virginia.gov>) or by mail, email, or fax to Mr. Preston Smith, 109 Governor Street, Richmond, Virginia 23219, telephone (804-864-7468) or fax (804-864-7475), or email preston.smith@vdh.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, VDH is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and, (4) 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.

The agency will not hold a public hearing unless public comments received indicate a need for such action.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

VDH will use the participatory approach. On August 13, 2003, the agency held a meeting with the Marina Advisory Committee to solicit comments as part of a comprehensive review of the regulations. The committee was composed of representatives from the Virginia Association of Marine Industries, Virginia Department of Environmental Quality, Virginia Marine Resources Commission, US Coast Guard, Virginia Association of Counties, Marina Consultants, Virginia Municipal League, Piankatank Watershed Environmental Group, Smith Mountain Lake Policy Advisory Committee, Virginia Institute of Marine Science, Virginia Department of Game & Inland Fisheries, Shellfish Advisory Committee, Chesapeake Bay Foundation, Virginia Department of Conservation and Recreation and VDH representatives. The committee supported the development of revisions to the regulations. Agency staff subsequently developed a draft set of proposed amendments regulations, which were reviewed and endorsed by an ad hoc committee of marina owners, environmentalists, interested citizens and the Virginia Association of Marine Industries. However, VDH did not actually initiate a regulatory action at that time.

The agency intends to re-convene the committee to solicit comments and feedback prior to finalizing the proposed amendments to the regulation. In addition, all interested parties who would like to participate should notify and provide contact information to Mr. Preston Smith, 109 Governor Street, Richmond, Virginia 23219, or phone: 804-864-7468 or fax 804-864-7475, or email preston.smith@vdh.virginia.gov

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

- 1) The proposed modification of the regulations will neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed modification of the regulations will neither encourage nor discourage economic self-sufficiency, self-pride, nor the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.
- 3) The proposed modification of the regulations will neither strengthen nor erode the marital commitment.
- 4) The proposed modification of the regulations will neither increase nor decrease disposable family income.

Periodic review

*Per Executive Order 14 (2010), each existing regulation shall be reviewed **at least once every four years**.*

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

1. The agency did not receive any comments during the periodic review.
2. The regulations meet the criteria set out in Executive Order 14; the regulations are clearly written and easily understandable and provides a comprehensive set of minimum standards necessary to ensure that sewage facilities at marinas and other places where boats are moored are adequate to protect public health and the environment. The regulations will be amended so that they are based on the best reasonably available and reliable, scientific, economic and other information concerning the need for, and consequences of, the regulations. The regulations are designed to achieve their intended objective in the most efficient, cost-effective manner. In addition, the regulations are in accordance with statutory provisions related to impact on small businesses. Further, the regulations do not adversely impact existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will not include a review of the entire regulation for small business impact, please delete this entire section.

If this NOIRA will include a review of the entire regulation for small business impact, 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 complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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 agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

1. The marina industry continues to evolve based on the specific needs of the boater and services desired. Marinas today are diversifying their business models by providing additional accommodations that include an extensive variety of onshore services. As a corollary to the provision of these new services, marinas will likely attract additional boaters thereby placing additional pressure on and potentially overwhelming their sanitary facilities and onsite sewage systems. This can result in sewage system failures and other public health or environmental hazards that could lead to a degradation of water quality.
2. The regulation sections that the board proposes to eliminate are detailed, though not complex, and the regulations that the board proposes for retention are neither detailed nor complex.
3. The regulations do not overlap, duplicate or conflict with federal or state law or regulation.
4. The board last evaluated the regulations in 1990.

The regulations are being amended to alleviate the economic burden on small businesses. The existing regulations call for smaller facilities to maintain the same sanitary accommodations as large facilities. The proposed changes will address the need for an appropriate number of sanitary fixtures at smaller facilities, thus smaller facilities will not be required to incur unnecessary expenses. Furthermore, the proposed new regulations will be reviewed by the board to ensure that the minimum standards for sanitary facilities to be located at boat mooring facilities do not impose any unnecessary economic burdens on marinas or other places where boats are moored.