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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-462
VAC Chapter title(s)	Swimming Pool Regulations Governing the Posting of Water Quality Results
Action title	Amend 12VAC5-462 as a Result of a Periodic Review
Date this document prepared	June 3, 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*.

Brief Summary

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 Swimming Pool Regulations Governing the Posting of Water Quality Results (hereafter, "Regulations") protect public health and safety as it relates to water quality at public recreational water facilities located throughout the Commonwealth. This action, following a periodic review concluded in April of 2022, seeks to amend the regulatory text to ensure an effective regulatory program governing water quality standards for public recreational water facilities is maintained throughout the Commonwealth. This action will: remove outdated information; add and amend text to reflect best practices and the latest science from industry, academia, public health experts, and other stakeholders; clarify regulatory and enforcement standards; and include any additional amendments deemed necessary in response to public comment or input from subject matter experts.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” or “State Board” means the State Board of Health.

“Department” and “VDH” mean the Virginia Department of Health

Mandate and Impetus

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, or board decision). 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.”

In April of 2021, the Department conducted a periodic review of the Regulations pursuant to Executive Order 14 (as amended, July 16, 2018). In its finding, filed on April 8, 2022, the Department recommended the regulation be amended.

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 and 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 agency is the Virginia Department of Health. Chapters 1 and 6 of Title 32.1 of the Code of Virginia enumerate the legal authority for VDH to regulate the water quality of public recreational water facilities.

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.”

In addition, Section 32.1-248.1 of the Code of Virginia states,

“The Board of Health shall promulgate regulations to require the daily posting of water quality test results at swimming pools and other water recreational facilities operated for public use or in conjunction with a tourist facility or health spa. Such regulations shall require, among other things, the posting of water quality data regarding the current pH level, disinfectant type and concentration, and water temperature, and the recommended

safe levels of each, and shall not apply to private residential water recreational facilities, as defined by the Board.”

Purpose

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

While the Regulations are essential to protecting the health and safety of patrons through the regulatory oversight of water quality standards at public recreational water facilities located within the Commonwealth, they are also statutorily mandated as outlined in §§35.1-12 and 32.1-248.1 of the Code of Virginia.

The Regulations, which have not undergone a thorough review in approximately thirty years, do not appear to reflect current industry standards for recommended safe levels of water quality parameters, such as pH levels and water temperature, in addition to best practices regarding disinfectant types and concentrations, for a safe swimming environment.

Although the Regulations contain some provisions addressing these issues; incorporating developments from recent advancements in science and emerging technologies will bring the chapter up to current standards.

Substance

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 amendments and new substantive provisions to the regulation will include amending, adding, or repealing text related to the following:

- Definitions
- Standards for water quality
- Administrative processes
- Any additional amendments deemed necessary.

Alternatives to Regulation

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.

No viable alternatives for achieving the purpose of the regulation could be determined. The regulations enable the Department to fulfill its statutory mandates as established in Chapter 1 and 6 of Title 32.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the

Department's statutory requirements are executed in the least burdensome, most efficient, and cost effective manner possible, while protecting the health, safety and welfare of the citizens of Virginia.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

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

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts 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 website at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Briana Bill, briana.bill@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 not be held following the Proposed Stage.