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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Housing and Community Development
Virginia Administrative Code (VAC) citation(s)	<u>13</u> VAC <u>5</u> - <u>31</u>
Regulation title(s)	Virginia Amusement Device Regulations (VADR)
Action title	Update of VADR to reference the newest available nationally-recognized standards
Date this document prepared	March 19, 2019

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 subject matter is the regulation of amusement devices, which are devices or structures open to the public by which persons are conveyed or moved in an unusual manner for diversion, including passenger tramways. The regulations are closely related to the Uniform Statewide Building Code (13VAC5-63) (USBC), which applies to amusement devices to the extent not superseded by the provisions of the VADR. Local building departments charged with enforcement of the USBC also enforce the VADR. The intent and goal of this action is to update the VADR to incorporate the latest editions of the ASTM standards for amusement devices and to amend any administrative and enforcement provisions of the VADR as determined necessary for the proper enforcement of the regulation and to coordinate the VADR with the USBC.

Acronyms and Definitions

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

VADR – Virginia Amusement Device Regulations
ASTM – American Society for Testing and Materials
USBC – Virginia Uniform Statewide Building Code

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.”

National model codes produced by ASTM are routinely updated; as the basis for Virginia’s Amusement Device Regulations it is important to stay in sync with the national model codes. At its January 28, 2019 meeting, the Board of Housing and Community Development adopted a tentative regulatory schedule and directed staff to proceed with initiating the code development process.

The Board approved publication of the Notice of Intended Regulatory Action (NOIRA) at its March 18, 2019 meeting.

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 agency is the Board of Housing and Community Development. The legal authority for amendments to the regulation is § 36-98.3 of the Code of Virginia.

This action is exempt from Article 2 of the Administrative Process Act in accordance with subdivision A 12 of § 2.2-4006 of the Code of Virginia.

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.

Updating the VADR to use the newest available ASTM standards for amusement devices at the same time the USBC is being amended assures coordination between the regulations. This coordination assures the protection of the health, safety and welfare of the users of amusement devices.

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.

The action will update the VADR with the latest available ASTM standards for amusement devices which address new designs and arrangements of amusement devices. In addition, administrative and enforcement provisions of the VADR will be updated as determined necessary by the Board in conjunction with the updating of the USBC and in response to proposals or comments received from interested or affected parties.

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.

As the use of national recognized model codes and standards for amusement devices and the coordination of the VADR with the USBC is a statutory directive, the agency believes this action to be the least burdensome or intrusive method of meeting the essential purpose of the action as well as assuring the least intrusive or costly impact on small businesses.

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.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the *Code of Virginia*, the Board of Housing and Community Development is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation 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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The Board of Housing and Community Development 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 also 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 or fax to Kyle Flanders; address: 600 East Main Street, Suite 300, Richmond, VA 23219; telephone number: (804) 786-6767; fax number: (804) 371-7090; email address: kyle.flanders@dhcd.virginia.gov. 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 prior to and 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.