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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-590
VAC Chapter title(s)	Waterworks Regulations
Date this document prepared	6/8/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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" means the State Board of Health.
"DEQ" means Virginia's Department of Environmental Quality.
"EPA" means the United States Environmental Protection Agency.
"NPDWR" means the National Primary Drinking Water Regulations.
"ODW" means the Virginia Department of Health – Office of Drinking Water.
"PWSL" means Virginia's Public Water Supplies Law.
"SDWA" means the federal Safe Drinking Water Act.
"VDH" means the Virginia Department of Health.

Any relevant technical terms are defined in 12VAC5-590-10. *Definitions*, in the Waterworks Regulations.

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.

(1) The promulgating agency is the State Board of Health

(2) Code of Virginia § 32.1-12 authorizes the Board to make, adopt, promulgate, and enforce regulations as necessary to carry out Title 32.1 of the Code of Virginia and other laws of the Commonwealth of Virginia administered by the Board, the State Health Commissioner or VDH.

Code of Virginia § 32.1-170 authorizes the Board to promulgate regulations “governing waterworks, water supplies, and pure water” that shall “protect public health and promote the public welfare and shall include criteria and procedures to accomplish these purposes.”

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.

There is no viable alternative to the Board’s regulation of the drinking water supply through the Waterworks Regulations. The Waterworks Regulations enable the Board to fulfill its statutory mandate for supervision and regulation of the drinking water supply and waterworks as set forth in Code of Virginia §§ 32.1-169 and 32.1-170.

Additionally, the Waterworks Regulations are necessary for Virginia to retain primacy for enforcement of the SDWA and NPDWR. If Virginia failed to maintain state primacy, then Virginia would return responsibility for compliance and enforcement of the SDWA and NPDWR to the EPA. Additionally, failure to maintain primacy would result in Virginia suffering a loss of over \$96 million in federal fiscal year 2023 grant money from EPA drinking water funding sources. The loss of the grant money would severely impact ODW’s ability to carry out the Board’s statutory obligation with respect to drinking water supplies and waterworks, and ODW’s mission to help ensure that Virginians have access to safe and adequate supplies of drinking water. That, in turn, would potentially result in an increased risk of water-borne illness and negative health impacts.

Public Comment

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

No public comments were received

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

(a) The PWSL was enacted to help ensure that all Virginians have access to an adequate and safe supply of drinking water and to adapt to emerging health concerns in drinking water treatment and distribution systems. It also requires the enactment of a simple and effective regulatory system for waterworks to achieve this mission and to create a way to improve waterworks through compliance and enforcement of the PWSL, SDWA, and NPDWR through the Waterworks Regulations. The Waterworks Regulations are necessary to comply with the requirements to retain primacy and to regulate water sources, site and construction of waterworks, water treatment techniques, distribution, monitoring and sampling for existing and emerging contaminants such as lead, bacteria and viruses, radioactive substances, chemicals, and other substances known to cause health problems. These regulations also help ensure that people served by waterworks are notified of any potential health risks that arise during monitoring and sampling and that waterworks are provided with technical assistance to aid them in complying with state and federal law.

(b) As required by the PWSL, these regulations are clearly written and understandable by the regulants.

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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Waterworks Regulations need to be amended to recognize improvements in technology that enable waterworks to operate more efficiently and with reduced costs, to respond to suggestions from external and internal stakeholders, and to improve clarity and style.

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.

(1) These regulations are required to conform to Virginia's PWSL, and the federal SDWA and NPDWR in order to help ensure that Virginians have a safe and adequate supply of drinking water and to maintain Virginia's primacy for enforcement of the SDWA.

(2) No comments were received.

(3) The regulations are written to minimize complexity.

(4) These regulations do not overlap, duplicate, or conflict with federal or state law or regulations other than to be at least as stringent as the NPDWR. As required by ODW's state primacy agreement with the EPA, these regulations are at least as stringent as the NPDWR.

(5) These regulations were last reviewed and amended on June 21, 2021.

The types of amendments that are contemplated following the periodic review will help account for changes in regulations and guidance made by other agencies that impact the drinking water program and will enable small businesses to use newer and improved technology in their waterworks operations with the likely result of lower costs and greater efficiencies.

