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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-570
VAC Chapter title(s)	Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings
Date this document prepared	March 7, 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.

No acronyms are used in the periodic review report of findings.

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.

The promulgating agency is the Board of Health. Chapter 6, Article 10 of the Code of Virginia enumerates the legal authority for the State Board of Health (“Board”) to adopt and promulgate regulations related to marinas.

Section 32.1-246 of the Code of Virginia, states,

“A. The Board is empowered and directed to adopt and promulgate all necessary regulations establishing minimum requirements for adequate sewerage facilities at marinas and other places where boats are moored according to the number of boat slips and persons such marinas and places are designed to accommodate. The provisions of this section shall be applicable to every such marina and place regardless of whether such establishment serves food.

B. The Commissioner shall enforce the provisions of this section and regulations adopted thereunder.

C. No such marina or place shall operate unless in accordance with this section and regulations adopted and promulgated thereunder.

D. Whenever the Commissioner shall have approved the plan for the sewerage facilities of a proposed marina for presentation to the Marine Resources Commission as provided in § [62.1-3](#), he shall have the power and duty to enforce compliance with such plan.”

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 are no viable alternatives for achieving the purpose of the Sanitary Regulations for Marinas and Boat Moorings (“Regulations”). The Regulations enable the Board to fulfill its statutory mandates as established in Chapters 6 of Title 32.1 of the Code of Virginia. Further, the Regulations are necessary to ensure the Board’s statutory requirements are executed in the least burdensome and most efficient and cost-effective manner while protecting the health, safety, and welfare of the citizens of Virginia.

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.

The General Assembly has charged the Board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect health and safety as it relates to establishing minimum requirements for adequate sewerage facilities at all marinas, other places where boats are moored, and boating access facilities. The regulations were reviewed, and it was determined they are essential to protecting public health.

The regulations meet the criteria set forth in Executive Order 19 (2022). The regulations are necessary to interpret and apply the requirements imposed by the Board and are clearly written and understandable.

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 regulations have not undergone a comprehensive revision since 2015, therefore the Board recommends amending the regulations to address certain sections which prohibit the permitting of marinas by local health departments. Under the current regulatory scheme, applicants must submit their application to the local health department who in turn must submit the application to the Office of Environmental Health Services. This creates a bifurcated system of inspection and program administration which is inefficient to staff and applicants. This amendment is intended to simplify the application process for industry, improve the administration and enforcement of marina standards, and reduce administrative burden to regulants.

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.

Chapter 6 of Title 32.1 of the Code of Virginia directs the Board to adopt and promulgate regulations establishing minimum requirements for adequate sewerage facilities at marinas and other places where boats are moored according to the number of boat slips and persons such marinas and places are designed to accommodate. The continued need for the regulations is established and required by Virginia Code section 32.1-246. No comments were received during the periodic reviews public comment period. The regulations are clearly written, easily understandable, and do not overlap, duplicate, or conflict with any federal, state law, or regulation. The Regulations have not undergone an evaluation to assess changes in technology, economic conditions, or other factors since 2015. Amending the regulations will minimize the economic impact on small businesses because it will simplify the permitting process for regulated entities.

