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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 15-50
VAC Chapter title(s)	Regulations Governing the Employment of Minors on Farms, In Gardens, and in Orchards
Date this document prepared	October 14, 2020

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**.

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.

Enter statement here

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 legal authority for this regulation is the Code of Virginia, at §§ 40.1-6, 40.1-100. A. 9, and

40.1-114. Pursuant to the requirements of these code sections, the Commissioner of Labor and Industry has the authority and duty to regulate children working in agriculture. The regulation stipulates:

- The occupations on farms, in gardens, and in orchards which are particularly hazardous for minors under 16 years of age that employers shall not employ, suffer or permit minors under 16 years of age to work,
- Exemptions to the restrictions on hazardous occupations on farms, in gardens and in orchards set forth in the regulation,
- Record keeping requirements for employers who employ in agriculture any minor under 16 years of age,
- Nonapplicability of general industry regulations to agriculture.

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.

While the regulation is not mandated, the legislative intent of the 1991 revision of the child labor laws applicable to minors employed in agriculture was that certain hazardous occupations would be prohibited occupations for these minors. Also, it was intended that Virginia’s child labor laws and regulations in this areas would be similar to the federal laws and regulations.

The occupations that are prohibited are not enumerated in the Code of Virginia. Therefore, one of the regulation’s primary purposes is to clearly identify these hazardous occupations for minors employed in agricultural occupations.

The agency can posit two alternatives to this regulation, neither of which are viable. One alternative is to not regulate child labor on farms at all. The second alternative is to promulgate voluntary, rather than mandatory, guidelines for employers. Both alternatives are inadequate to protect minors working for farm employers. Without enforcement accountability, many employers, under the pressure of their duties, would fail to give attention to safety measures. This regulation is thus the least burdensome alternative to ensure that minor age children are protected while employed in agricultural occupations on farms, in gardens and in orchards.

Public Comment

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

The comment period began on July 8, 2019 and ended on July 29, 2019. The Department did not receive any comments.

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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is highly effective in ensuring that agricultural employers do not place minors in truly hazardous situations. All hazardous occupations in this regulation are demonstrable and proven hazards, even for adults. This regulation is essential in focusing society’s attention to the fact that while minors may work at many jobs at age fourteen, and may work at most jobs at age sixteen, certain occupations are so clearly dangerous, even to adults, that they should be only performed by mature adults.

The regulation is clearly written and easily 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).

The Department recommends to the Commissioner that this regulation be retained as is.

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.

This regulation should have minimal economic impact on small businesses. The regulation also offers clarity and guidance for small businesses that employ minors to work on farms, gardens, and orchards.

This regulation does not overlap, duplicate or conflict with federal or state law or regulation. This regulation was last reviewed four years ago. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective.

The Department has determined that retaining the regulation without amendment is consistent with the stated objectives of applicable law, and is the most effective way to minimize the economic impact of regulations on small businesses.
