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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Board of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC5-501
<b>VAC Chapter title(s)</b>	Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps
<b>Action title</b>	Amend Migrant Labor Camp Regulations following Periodic Review
<b>Date this document prepared</b>	November 4, 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 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*.

### 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 Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps (hereafter, "Regulations") protect the health, safety, and welfare of migrant workers and their families during their employment and residence in Virginia. These regulations establish standards for (i) licensure and enforcement, (ii) adequate and convenient supply of water, (iii) disposal of sewage, and (iv) general maintenance of facilities such as bathrooms, cooking facilities, sleeping quarters, and lighting and ventilation.

This action, following a periodic review, seeks to amend the regulatory text to ensure an effective regulatory program governing living quarters for migrant agricultural workers within the Commonwealth. The Regulations have not undergone a comprehensive review since their promulgation over twenty years ago.

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- remove outdated information;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 industry and subject matter experts.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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VDH- 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 the ORM procedures, "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."*

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This regulatory change is not a result of a mandate.

This regulatory change is prompted by (i) feedback received as part of the public comment received during the periodic review process, (ii) agency staff review of the regulation, and (iii) the amount of time that has elapsed since the Regulations have undergone a comprehensive review.

Both the public and agency staff have identified areas where the regulation would benefit from revision or clarification to ensure the regulation achieves its intended purpose to protect the public welfare and health of migrant workers living in the Commonwealth.

## 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.*

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The promulgating agency is the State Board of Health. Section 32.1-12 of the Code of Virginia authorizes the Board to make, adopt, promulgate, and enforce the Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps. Chapter 6, Article 6 of Title 32.1 of the Code of Virginia enumerates the legal authority for VDH to regulate migrant labor camps.

Section 32.1-207 of the Code of Virginia allows the Commissioner to issue migrant labor camp permits following an inspection in response to applications submitted pursuant to § 32.1-206 that conform or will conform to the provisions of the chapter and any applicable regulations.

Section 32.1-211 of the Code of Virginia outlines the Board of Health’s authority to adopt regulations governing migrant labor camps, including the adoption of outlined safety standards necessary to protect the health of migrant workers that supplement the occupational safety and health regulations adopted by the Safety and Health Codes Board pursuant to §40.1-22. The occupational health and safety code regulations applicable to migrant labor camps cannot be more stringent than the regulations enforced by the United States Department of Labor.

**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.*

The Regulations are essential to protecting the health and safety of migrant workers and their families located within the Commonwealth and are statutorily mandated as outlined in §§ 32.1-207 and 32.1-211 of the Code of Virginia.

At any given time, there are approximately 350 migrant labor camps in operation in Virginia and approximately 12,300 agricultural migrant workers reside in migrant labor camps yearly. The Regulations have not undergone a comprehensive review in over twenty years. The current regulations require updates to standards for safe and healthy living conditions such as (i) heating and cooling, (ii) sanitation practices, (iii) prevention and response to communicable disease, (iv) waste disposal, and (v) facility maintenance. In addition, the regulations are restrictive to new innovations in construction and technology, impeding the modernization and expansion of migrant labor camps; this has the potential to be burdensome on small businesses.

The above listed issues are not inclusive of all potential issues that may be addressed during development of the regulations. VDH will work with industry and community partners, academic, state and federal agencies, and others during the promulgation process.

**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.*

As the proposed regulatory action involves a comprehensive review of the chapter, revisions to all areas of the regulation will be considered, including updates to standards for safe and healthy living conditions such as:

- Heating and cooling;
- Sanitation practices;
- Prevention and response to communicable disease;

- Waste disposal; and
- Facility maintenance.

### 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 to achieving the purpose of the regulation could be determined. The regulations enable VDH to fulfill its statutory mandates established by Chapter 6, Article 6, of Title 32.1 of the Code of Virginia. Further, the regulation is necessary to ensure VDH's statutory requirements are executed in the least burdensome and most efficient and cost-effective manner possible while protecting health, safety, and welfare of migrant laborers in 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 the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it 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 a 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.*

VDH 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:  
Kristin Marie Clay  
Policy Analyst Senior

109 Governor Street  
Richmond, VA 23219  
[kristin.clay@vdh.virginia.gov](mailto:kristin.clay@vdh.virginia.gov)  
(804)864-7474

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 following the publication of the proposed stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.