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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Virginia Department 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>Date this document prepared</b>	March 22, 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 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.*

"VDH" means the Virginia Department of Health.

"Regulations" means the Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps.

"SHCB" means the Safety and Health Codes Board of the Commonwealth of Virginia.

## 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.*

Section 32.1-12 of the Code of Virginia gives authority to the Board of Health (Board) to promulgate regulations. It states, in part, that the Board may make, adopt, promulgate and enforce regulations and provide reasonable variances and exemptions as necessary to carry out the provisions of this title.

Section 32.1-211.B of the Code of Virginia gives authority to the Board to adopt regulations governing migrant labor camps as a supplement to the occupational safety and health regulations adopted by the Safety and Health Codes Board (SHCB) pursuant to Chapter 3 (§ 40.1-22 et seq.) of Title 40.1 of the Code of Virginia. The adoption of such regulations is necessary to protect the health, safety, and welfare of migrant workers in the Commonwealth of Virginia.

**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.*

No viable alternatives for achieving the purpose of the existing regulations could be determined.

The regulations enable the Board to fulfill the statutory requirements established under Chapter 6 (§ 32.1- 203 et seq.) of Title 32.1 of the Code of Virginia. Such requirements include the Board ensuring that safe and healthy living conditions are provided for migrant workers and their families while they are employed and living in the Commonwealth of Virginia and to establish standards for the permitting of migrant labor camps in addition to enforcement protocols for those migrant labor camps found not in compliance.

The Regulations are administered in the least burdensome method.

**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.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Marissa L. Baer, Esq. Virginia Justice Project for Farm and Immigrant Workers	The commenter provided several suggestions as the agency reviews the Regulations:  1) Combine regulations for all migrant labor housing be combined into one regulatory scheme, which would apply to all migrant labor camps equally, regardless of when they were built. This would make the regulations much more easily	The board thanks the commenter for their comment and will consider the proposed recommendations during the regulatory review process.

<p>Legal Aid Justice Center</p>	<p>understandable than the patchwork of regulations that currently exists, crossing between two different government agencies.</p> <ol style="list-style-type: none"> <li>2) Require all migrant labor camps have the capacity for some form of climate control, which would allow the spaces to be heated to at least 70 degrees Fahrenheit and cooled to at least 75 degrees Fahrenheit. Other states have cooling requirements for migrant housing; there are standards for when migrants work in the heat, however there are none that exist for when they are residing in the camps. A standard would create a safer, healthier, and more comfortable environment.</li> <li>3) Amend the regulations so that migrant labor camps occupied by laborers in the Commonwealth on H-2B, non-agricultural labor temporary visas, would also be inspected according to the requirements set out in the regulations.</li> <li>4) Recommend inspections of migrant labor housing occur more regularly than just annually, and that inspections can occur without the consent of property owners or a warrant.</li> <li>5) Recommend regulations be amended to decrease the number of people allowed per bedroom, bathroom, and kitchen facilities. This should include amendments making it so that there is at least one water closet or privy seat for each sex in the ratio of at least one such unit for each 10 occupants, as well as at least one showerhead per 10 persons.</li> </ol>	
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An informal advisory group was not formed for the purposes of assisting with the periodic review.

**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.*

The regulations meet the criteria set forth in Executive Order 14 (as amended, July 16, 2018). The regulations provide standards for the permitting of migrant labor camps in the Commonwealth of Virginia. Such standards address the following areas of public health and safety: permitting requirements, trash and garbage collections, requirements for approved water supply, storage of hazard material, and conformity with the Uniform Statewide Building Code and select occupational safety and health standards as proscribed by the SHCB. Such standards are necessary to protect the public health, safety, and welfare of migrant laborers. In addition, the regulations 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).*

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The regulation has not undergone a comprehensive review since its initial administrative codification, approximately 20 years ago. The regulation, in its current form, does not reflect existing industry standards, changes in technology or safety, and no longer aligns with other regulations that govern food safety and disease prevention. The agency is recommending that the regulation be amended.

### 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.*

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Section 32.1-211.B of the Code of Virginia gives authority to the Board to adopt regulations governing migrant labor camps as a supplement to the occupational safety and health regulations adopted by the SHCB pursuant to Chapter 3 (§ 40.1-22 et seq.) of Title 40.1 of the Code of Virginia. The continued need for the regulation is necessary as it outlines public health standards and supplements the regulations adopted by the SHCB.

VDH received a public comment requesting an increase in inspection frequency, amending standards for sanitation, the addition of H-2B workers to our regulatory authority, additional standards for safety (cooling standards), and other recommendations.

The regulations are clearly written and easily understandable; however, several sections are outdated or no longer relevant, may conflict with other state regulations, and do not reflect or reference current standards related to the health, safety, and welfare of migrant labor camps. It has been several decades since the Regulations have undergone amendment and an evaluation is necessary to determine how or if technology, economic conditions, or other factors could have an impact on the regulated population or the general public.

As the agency is recommending to amend the Regulations, staff will engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of regulations on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.