

**RULES AND REGULATIONS GOVERNING THE CONSTRUCTION
AND MAINTENANCE OF MIGRANT LABOR CAMPS**

2005

Virginia Department of Health
Richmond Virginia

REGULATIONS GOVERNING THE CONSTRUCTION AND MAINTENANCE OF MIGRANT
LABOR CAMPS

CHAPTER 501.

RULES AND REGULATIONS GOVERNING THE
CONSTRUCTION AND MAINTENANCE OF MIGRANT LABOR CAMPS.

PART I.

DEFINITIONS AND GENERAL PROVISIONS.

12 VAC 5-501-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Approved water supply" means a waterworks that has a valid waterworks operation permit from the commissioner or a water supply that is evaluated, tested and, if found in compliance with the applicable standards, accepted and approved by the director or the director's designee.

"Board" means the State Board of Health.

"Camp operator" means a person who has charge, care, or control of a migrant labor camp.

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"[~~Camp owner~~ Owner]" means a person who owns, leases or proposes to own or lease a migrant labor camp.

"Commissioner" means the State Health Commissioner or his designee who has been delegated powers in accordance with subdivision 2 of 12 VAC 5-501-30.

"Department" means the Virginia Health Department.

"[~~Local health director~~ Director]" means the director of a city, county or district health department or his designated representative who is assigned responsibility for implementation of these regulations at the local level.

"Migrant labor camp" or "camp" means one or more structures, buildings, tents, barracks, trailers, vehicles, converted buildings, and unconventional enclosures of living space, reasonably contiguous, together with the land appertaining thereto, established, operated or used as living quarters for one or more persons, one or more of whom is a migrant worker engaged in agricultural or fishing activities, including related food processing. "Migrant labor camp" does not include (i) a summer camp, campground or hotel as defined in § 35.1-1 of the Code of Virginia, (ii) housing that, in the ordinary course of business, is regularly offered to the general public on a commercial basis and is provided to any migrant worker on the same or comparable terms and conditions as provided to the general public, or (iii) small businesses that are exempt under federal law as provided in the Fair Labor Standards Act (29 USC § 201 et seq.) and the Migrant and Seasonal Worker Protection Act (29 USC § 1801 et seq.).

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"Migrant worker" means any individual from within or outside the Commonwealth who passes seasonally from one place to another for the purpose of employment (agricultural or fishing activities, including related food processing), who is not a year-round employee, and who occupies living quarters other than his permanent home during the period of such work.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Variance" means a conditional waiver of a specific regulation granted by the commissioner or his designee pursuant to 12 VAC 5-501-120 to a specific camp operator relating to a specific situation or facility and may be for a specific period of time.

12 VAC 5-501-20. Purpose of regulations.

This chapter has been promulgated by the State Board of Health to ensure 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. This chapter establishes standards and procedures that the State Health Commissioner will follow in determining whether a permit to operate a migrant labor camp should be issued, denied, revoked, or suspended. In a similar way the chapter also delineates the procedures and requirements with which a camp must comply in order for the camp operator to obtain and retain a permit.

12 VAC 5-501-30. Administration of regulations.

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These regulations are administered by the following:

1. The State Board of Health, hereinafter referred to as the board, has responsibility to promulgate, amend and repeal regulations necessary to protect the public health.

2. The State Health Commissioner, hereinafter referred to as the commissioner, is the chief executive officer of the State Department of Health. The commissioner has the authority to act for the board when it is not in session (see § 32.1-20 of the Code of Virginia). The commissioner may delegate his powers under these regulations in writing to any subordinate.

3. The State Department of Health hereinafter referred to as "department" is designated as the primary agent of the commissioner for the purpose of administering these regulations.

4. The district or local health department is responsible for implementing and enforcing the regulatory activities required by these regulations.

12 VAC 5-501-40. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner, camp operator or custodian, the commissioner or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine compliance with the provisions of this chapter, any order of the board or commissioner, or any conditions in a permit, license or certificate issued by the board or commissioner. If

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the commissioner or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing, or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 of the Code of Virginia.

PART II.**PROCEDURAL REGULATIONS.****12 VAC 5-501-50. Continuing validity of existing permits.**

Operational permits in effect prior to [~~the effective date of this chapter~~ March 1, 2005], unless otherwise revoked, shall remain valid until the expiration date of the permit.

12 VAC 5-501-60. Application of the Administrative Process Act.

The provisions of Article 3 (§ 2.2-4018 et seq.) of the Virginia Administrative Process Act shall govern the procedures for rendering all case decisions.

12 VAC 5-501-70. Emergency orders.

The commissioner may, pursuant to §§ 32.1-13 and 32.1-20 of the Code of Virginia, issue emergency orders as is necessary to preserve the public health, safety, welfare and environment. Emergency orders

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arising out of matters governed by these regulations shall state the reasons and factual basis upon which the emergency order is issued. The emergency order shall state the time period for which it is effective.

12 VAC 5-501-80. Enforcement of regulations.

A. Notice. Whenever the commissioner or any district or local health department official has reason to believe that a violation of Title 32.1 or Title 35.1 of the Code of Virginia or of any provision of this chapter has occurred or is occurring, he shall so notify the alleged violator. Such notice shall be (i) in writing, with a request to the owner or camp operator to respond by providing any pertinent information on this issue they may wish; (ii) cite the statute, regulation or regulations that are allegedly being violated; and (iii) state the facts that form the basis for believing that the violation has occurred or is occurring. Such notification may be accompanied by a request that certain corrective action be taken.

B. Orders. Pursuant to the authority granted in §§ 32.1-26 and 35.1-6 of the Code of Virginia, the commissioner may issue orders to require any owner or camp operator, or other person, to comply with the provisions of these regulations. The order may require the following:

1. The immediate cessation and correction of the violation;
2. Appropriate remedial action to ensure that the violation does not continue or recur;
3. The submission of a plan to prevent future violations;

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4. The submission of an application for a variance; and

5. Any other corrective action deemed necessary to comply with the regulations.

C. Hearing before the issuance of an order. Before the issuance of an order, pursuant to subsection B of this section, the commissioner must comply with the requirements of § 32.1-26 of the Code of Virginia.

D. Order - when effective. All orders issued pursuant to subsection B of this section shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the owner, camp operator or person violating these regulations. Violation of an order is a Class 1 misdemeanor. See § 32.1-27 of the Code of Virginia.

E. Compliance. The commissioner may act as the agent of the board to enforce all effective orders and these regulations. Should any owner or camp operator fail to comply with any effective order or these regulations, the commissioner may:

1. Institute a proceeding to revoke the camp operator's permit in accordance with 12 VAC 5-501-230;

2. Request the attorney for the Commonwealth to bring a criminal action; _

3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or[\]

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4. Do any combination of the above.

F. Not exclusive means of enforcement. Nothing contained in 12 VAC 5-501-70 or this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulation or statute through an injunction, mandamus or criminal prosecution.

12 VAC 5-501-90. Penalties, injunctions, civil penalties, and charges for violations.

A. Any person willfully violating or refusing, failing, or neglecting to comply with any regulation or order of the board or commissioner or any provision of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person willfully violating or failing, neglecting or refusing to obey any lawful regulation or order of the board or commissioner or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the board or commissioner to obey such regulations, order, or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

C. Without limiting the remedies that may be obtained in subsection B of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B of this section shall be subject, in the discretion of the court, to a civil penalty not to exceed [~~\$10,000~~ \$25,000] for each violation. Each day of violation shall constitute a separate offense.

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D. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the board or commissioner or any provision of this chapter, the board may provide, in an order issued by the board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in subsection C of this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection C of this section.

12 VAC 5-501-100. OSHA enforcement.

Nothing contained herein shall be construed to bar the enforcement of occupational safety and health standards adopted by the Safety and Health Codes Board in the manner prescribed in Chapter 3 (§ 40.1-22 et seq.) of Title 40.1 of the Code of Virginia and regulations promulgated thereunder.

12 VAC 5-501-110. Suspension of regulations during disasters.

If, in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with these regulations, he may authorize the suspension of the application of the regulations for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.

12 VAC 5-501-120. Variances.

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A. In accordance with § 40.1-6 (9) of the Code of Virginia, a variance to those occupational safety and health regulations set forth at 29 CFR Part 1910 may be granted by the Commissioner of Labor and Industry. Applications for such variances shall be directed to him.

B. The State Health Commissioner or his designee may grant a variance to these regulations by following the appropriate procedures set forth in this subsection.

1. Requirements for a variance to these regulations. The commissioner may grant a variance if he finds that the hardship imposed, which may be economic, outweighs the benefits that may be received by the public and that granting such a variance does not subject the public to unreasonable health risks or environmental pollution.

2. Application for a variance to these regulations. Any camp operator who seeks a variance shall apply in writing within the time period specified in this subsection. The request should be sent to the local health department. Any request for a variance must be made in writing and received by the department prior to the denial of the migrant labor camp permit, or within 30 days after such denial. In the event a person applies for a variance within the 30-day period after the permit has been denied, the date for appealing the denial of the permit, pursuant to 12 VAC 5-501-160, shall commence from the date on which the department acts on the request for a variance. The application for a variance shall include:

a. A citation to the regulation from which a variance is requested;

b. The nature and duration of the variance requested;

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c. Any relevant analytical results including results of relevant tests conducted pursuant to the requirements of these regulations;

d. Statements or evidence that establish that the public health, welfare and environment would not be adversely affected if the variance were granted;

e. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;

f. Other information believed pertinent by the applicant; and

g. Such other information as the district or local health department or commissioner may require.

C. Evaluation of an application for a variance to these regulations.

1. The commissioner shall act on any request for a variance to these regulations submitted pursuant to this subsection within 60 days of receipt of the request.

2. In evaluating a variance application, the commissioner shall consider such factors as the following:

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a. The effect that such a variance would have on the operation of the migrant labor camp;

b. The cost and other economic considerations imposed by this requirement;

c. The effect that such a variance would have on protection of the public health, safety, welfare and the environment; and

d. Such other factors as the commissioner may deem appropriate.

D. Disposition of a request for a variance to these regulations.

1. If the commissioner proposes to deny the variance, he shall provide the camp operator an opportunity to an informal hearing as provided in § 2.2-4019 of the Code of Virginia. Following this opportunity for an informal hearing, the commissioner may reject any application for a variance by sending a rejection notice to the applicant. The rejection notice shall be in writing and shall state the reasons for the rejection. A rejection notice constitutes a case decision.

2. If the commissioner proposes to grant a variance request submitted pursuant to this chapter, the applicant shall be notified in writing of this decision. Such notice shall identify the variance and the migrant labor camp involved, and shall specify the period of time for which the variance will be effective. Such notice shall provide that the variance will be terminated when the migrant labor camp comes into compliance with the applicable regulation and may be terminated upon a finding by the commissioner that

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the migrant labor camp has failed to comply with any requirements or schedules issued in conjunction with the variance. The effective date of the variance shall be as noted in the variance letter.

3. All variances to these regulations granted to any migrant labor camp are not transferable unless otherwise stated. Each variance shall be attached to the permit to which it is granted. Each variance is revoked when the permit to which it is attached is revoked.

4. No camp operator may challenge the terms or conditions of a variance after 30 calendar days have elapsed from the receipt of the variance.

12 VAC 5-501-130. Case decisions.

The commissioner or his designee may make case decisions based on informal hearings. An informal hearing is conducted by a district or local health department with the district or local health director presiding and held in conformance with § 2.2-4019 of the Code of Virginia. The district or local health department may record the hearing or create a written summary or record of the proceedings.

12 VAC 5-501-140. Request for hearing.

A request for a hearing shall be made by sending the request in writing to the district or local health department in the locality where the migrant labor camp is located. Requests for hearings shall cite the reasons for the hearing request and shall cite the sections of these regulations involved and must be received within 30 calendar days of the decision by the department that led to the hearing request.

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12 VAC 5-501-150. Hearing.

Any owner, camp operator or named party whose rights, duties, or privileges have been, or may be affected by any case decision of the board or its subordinates in the administration of these regulations shall have a right to a hearing.

12 VAC 5-501-160. Appeals.

A. Any appeal from a denial of a permit to operate a migrant labor camp must be made in writing and received by the local or state health department within 30 days of the date the denial letter was received.

B. Any request for hearing on the denial of an application for a variance pursuant to 12 VAC 5-501-120 D 1 must be made in writing and received within 30 days of receipt of the denial notice.

C. Pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), an aggrieved owner or camp operator may appeal a final decision of the commissioner to the appropriate circuit court.

12 VAC 5-501-170. Notice of intention to construct or remodel camp and submission of plans.

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Any person planning to construct, substantially remodel, or enlarge for occupancy or use a migrant labor camp or any portion of the facility thereof, or to convert a property for use or occupancy as a camp shall give notice in writing to the local health director of his intent to do so at least 30 days before the date of beginning such construction, remodeling, enlargement, or conversion. The notice shall include the name of the city or county in which the property is located; the location of the property within that area; plans of the proposed construction, remodeling, enlargement or conversion; and the name, mailing address and telephone number of the person giving the notice. Upon receipt of such notice, the local health director shall forward to such person a copy of Article 6 (§ 32.1-203 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia relating to migrant labor camps and a copy of this chapter.

12 VAC 5-501-180. Permits.

A. No person shall own, establish, conduct, maintain, manage, or operate any migrant labor camp in this Commonwealth unless the migrant labor camp is permitted as provided in this section. All permits shall be in the name of the camp operator. Permits shall not be issued to newly constructed or extensively remodeled migrant labor camps until a certificate of occupancy has been issued by the building official. Only a person who complies with the requirements of these regulations shall be entitled to receive or retain such a permit.

B. Nontransference of migrant labor camp permits. Permits issued shall not be transferable from one person to another or from one location to another. A new camp operator shall be required to make a written application for a permit. The application forms are available from local health departments.

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C. Requirements for posting permits. The permit shall be posted in a location in the camp readily visible and accessible to the migrant workers.

12 VAC 5-501-190. Application for permit.

A. Application for a permit to operate a migrant labor camp shall be made on a form prescribed by the board to the local health director of the county or city in which the migrant labor camp is located at least 30 days before such camp is to be opened. A separate application shall be submitted for each camp every year.

B. The local health director shall issue a permit after an inspection if the camp is found to be in compliance with this chapter.

C. If the camp is not found to be in compliance, the local health director may deny, revoke or suspend the permit or recommend denial of a variance.

D. Any expansion or modification of a permitted migrant labor camp shall require the obtaining of a new permit.

12 VAC 501-200. Issuance of permit.

Prior to the issuance of a permit, the director or his designee shall inspect the migrant labor camp to determine compliance with the requirements of these regulations. The department shall issue a permit to

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the applicant if its inspection reveals that the proposed migrant labor camp complies with all requirements of these regulations. The permit shall expire annually on December 31. Also, changes in the camp operator void the permit and the new camp operator must apply for a new permit.

12 VAC 5-501-210. Denial of a permit.

Whenever the department denies a permit to operate a migrant labor camp, it shall, within 10 days of the inspection, send the applicant a written explanation of the reasons why the permit was denied.

12 VAC 5-501-220. Suspension of a permit.

The director may suspend a permit to operate a migrant labor camp without an informal hearing if the director finds the continued operation constitutes a substantial and imminent threat to the public health. Upon receipt of such notice that a permit is suspended, the permit holder shall cease operation immediately and begin corrective action.

Whenever a permit is suspended, the holder of the permit or the camp operator shall be notified in writing by certified mail or by hand delivery. Upon service of notice that the permit is immediately suspended, the former permit holder shall be given an opportunity to request an informal hearing. If a permit holder wants to request an informal hearing, he must submit a request in writing to the director within 10 working days after he receives notice of the suspension. The written request shall be filed with the local health director by the former holder of the permit. If written request for an informal hearing is not filed within 10 working days, the suspension is sustained. Each holder of a suspended permit shall be afforded

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an opportunity for an informal hearing within three working days of receipt of a request for an informal hearing. The director may end the suspension at any time if the reasons for suspension no longer exist.

12 VAC 5-501-230. Revocation.

Prior to revocation, the director shall notify in writing the holder of the permit, or the camp operator, of the specific reason or reasons for which the permit is to be revoked. The permit shall be revoked at the end of the 30 days following service of such notice unless a written request for an informal conference is filed with the director within 10 days after the permit holder received the notice of revocation. If no request for an informal conference is filed within the 10-day period, the revocation of the permit shall be final.

12 VAC 5-501-240. Application after revocation.

Any person whose permit has been revoked may apply for a new permit, after complying with these regulations, by following the procedures of these regulations.

12 VAC 5-501-250. Compliance with regulations.

The camp operator shall be responsible for ensuring that the migrant labor camp is in compliance with these and any applicable occupational safety and health regulations throughout the period for which the permit is valid.

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12 VAC 5-501-260. Inspections to be conducted.

The local health director or his designated representative shall make inspections of camps occupied by migrants to determine compliance with this chapter. If a camp is found not to be in compliance, the local health department may move to suspend or revoke the permit. Migrant labor camps shall be inspected as often as necessary during their occupancy to ensure compliance with the regulations.

12 VAC 5-501-270. Inspection report.

The ~~inspector~~ director or his designated representative who conducts an inspection of a camp] shall provide the camp operator with a copy of ~~the a~~ completed inspection report after an inspection has been conducted. The report shall indicate that the camp is ~~either~~ in compliance or shall specify which specific standards ~~the director or his designated representative has reason to believe~~ have been ~~or are being~~ violated. The inspection report shall further specify needed corrective action or abatement procedures and a date by which this action is ~~required~~ requested] to be completed or the problem abated.

12 VAC 5-501-280. Correction.

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The completed inspection report ~~may~~ shall specify a reasonable period of time for the correction of the [suspected] violations found. Where a period of time for the correction is specified, the correction shall be accomplished within the period specified and in accordance with the following provisions:

1. Should a substantial and imminent health hazard be declared by the director, including, but not limited to, substantial fire damage, sewage backing into the living or food preparation and service areas, lack of refrigeration or lack of water, the operator shall immediately cease operations. Operations shall not be resumed until authorized by the director. Authorization shall not be granted until such violations are corrected.

2. All [suspected] violations identified by the department [are] to be corrected within a reasonable period of time ~~[for correction shall be corrected or]~~ as soon as possible, but in any event, within the period of time specified. A follow-up inspection shall be conducted by the director or his designee to confirm the corrections.

PART III.

STANDARDS.

12 VAC 5-501-290. Primary source of standards.

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The occupational safety and health (OSHA) standards governing temporary labor camps (29 CFR

1910.142) promulgated by the Virginia Safety and Health Codes Board shall apply to migrant labor

camp, subject to the exceptions and regulations in 12 VAC 5-501-300.

12 VAC 5-501-300. Exception to occupational safety and health standards.

A. Migrant housing facilities constructed or under construction prior to April 3, 1980, or where a contract for construction was signed prior to March 4, 1980, shall be governed by either: (i) 20 CFR 654.401 et seq.; (ii) 12 VAC 5-501-250; or (iii) variances granted thereto. The choice of governing standards shall be left to the discretion of the individual camp operator. The camp operator shall specify in his application the standard by which he elects to be governed.

B. Migrant housing facilities constructed or under construction on or after April 3, 1980, or where a contract for construction was signed on or after March 4, 1980, shall be governed by the requirements of 12 VAC 5-501-290 or variances granted thereto.

12 VAC 5-501-310. Trash and garbage collections.

The camp operator shall provide either a bulk container into which family trash containers may be emptied by the migrant families or provide for a regular trash and garbage collection service. Refuse from the individual garbage cans and the bulk containers shall be disposed of by the camp operator in a manner authorized by the Solid Waste Management Regulations (9 VAC 20-80) of the Virginia Waste Management Board.

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12 VAC 5-501-320. Requirements for water supplies.

All migrant labor camps shall have an approved water supply.

12 VAC 5-501-330. Requirements of sewage disposal.

All migrant labor camps shall comply with the board's regulations governing the disposal of sewage (12 VAC 5-[600 610]), promulgated pursuant to §§ 32.1-163 through 32.1-166 of the Code of Virginia. A copy of these regulations may be obtained from the local health department.

12 VAC 5-501-340. Storage of hazardous materials.

Agricultural pesticides or toxic chemicals shall be stored in secure, partitioned areas that are separate from food and living quarters. Pesticide storage areas shall be at least 100 feet from existing wells or surface water unless barriers or environmental safeguards are present that will prevent contamination of groundwater or surface water from a discharge. The entry to the pesticide storage area shall be clearly marked indicating that pesticides or hazardous materials are stored within. When not in use, the pesticide storage area shall be locked to minimize the unauthorized entry into the storage area. Water and personal protective equipment, as required on the labels of the stored pesticides, shall be available for employee protection in the event of a discharge or other emergency.

12 VAC 5-501-350. Conformity with Uniform Statewide Building Code.

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All newly constructed migrant labor camps shall comply with the Virginia Uniform Statewide Building
Code (13 VAC 5-62).

I certify that this regulation is full, true, and correctly dated.

Robert B. Stroube, M.D., M.P.H.

State Health Commissioner

Virginia Department of Health

Date: