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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 VAC25-180
VAC Chapter title(s)	Virginia Field Sanitation Standard, Agriculture
Date this document prepared	November 12, 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.

Section 40.1-22(5) of the Code of Virginia states that "...the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. However, such

standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 01-596).”

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.

The alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal identical field sanitation regulation for agriculture. During a previous regulatory review, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. The panel recommended retention of the regulation in its present form. At this time, the Department is not aware of any alterations in the regulatory environment that would alter that assessment. The repeal of this regulation would result in the implementation of the federal identical regulation for field sanitation in agriculture. With the current regulation, employees are more adequately protected when engaged in field agriculture work. Thus, the current regulation is the least burdensome alternative for the protections of employees in this area.

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.

Commenter	Comment	Agency response

No public comments were received on this regulation during the public comment period which began on April 13, 2020, and ended on May 4, 2020. The agency and the Safety and Health Codes board did not establish an informal advisory group for the purpose of assisting in 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 regulation requires agricultural employers to provide potable drinking water, regardless of the number of employees, hand washing and toilet facilities to field workers performing hand agricultural labor. It is identical to the current federal OSHA standard, except for the requirement that employers provide potable drinking water regardless of the number of employees.

The Field Sanitation regulation has three goals: (1) reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards, (2) require sanitary facilities for agricultural workers equal to those required for construction workers, and (3) protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Provision of sanitary facilities and potable drinking water serve to reduce or eliminate the following four major categories of occupational diseases: heat-related illnesses, communicable diseases, urinary tract infections, and pesticide-related illnesses.

The Field Sanitation regulation is essential to reduce or eliminate the health problems faced by agricultural laborers in the field by providing them with potable drinking water and sanitary facilities. This regulation is not overly complex and is clearly written. There is no negative impact on the regulated community and the regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

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 Safety and Health Codes Board voted to retain the regulation without change.

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.

As a result of this periodic review, the agency determines that the regulation has no negative economic impact on small business.
