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Periodic Review and Small Business Impact Review Report of Findings

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| Agency name | Board of Agriculture and Consumer Services |
| Virginia Administrative Code (VAC) Chapter citation(s) | 2 VAC 5-670 |
| VAC Chapter title(s) | Regulations Governing Pesticide Product Registration, Handling, Storage and Disposal under Authority of the Virginia Pesticide Control Act |
| Date this document prepared | June 26, 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.

"Board" means the Board of Agriculture and Consumer Services.

"EPA" means U.S. Environmental Protection Agency.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

"Virginia Pesticide Control Act" or "Act" means Chapter 39 of Title 3.2 of the Code of Virginia (Va. Code § 3.2-3900 et seq.).

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 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-3906(2) of the Code authorizes the Board to adopt regulations related to the registration of pesticides for manufacture, distribution, sale, storage, or use.

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 agency has determined that no viable alternatives exist to achieve the purpose of 2 VAC 5 – 670 *Regulations Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Control Act.*

The regulation establishes the requirements for registration of pesticide products in the Commonwealth. All pesticide products that are manufactured, distributed, sold, offered for sale, used, or offered for use in the Commonwealth must be registered with VDACS. This includes pesticide products that have been evaluated and registered by EPA and pesticide products that are exempt from federal registration. The regulation conforms to, and is no more restrictive than, applicable federal requirements. The regulation ensures consistency in labeling, including directions for use, and requires that pesticide products conform to the claims on their labels. The regulation also requires that the disposal, handling, and storage of pesticide products be done in a manner that will not cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects, or any waterway. The agency has determined that this regulation is the least burdensome alternative for effectively regulating the Commonwealth’s pesticide industry.

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 |
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| Debra Santmyers | Rather than have a regulation that calls for pesticide notification to close neighbors of treated cropland, please consider | The regulation does not require notification prior to the application of a pesticide. |

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| | <p>implementing a BMP guideline that mimics the pollinator plan.</p> <p>I think most producers should know their neighbors well enough to have a conversation, allowing the homeowner to take precautions without intruding on the rights of the producer.</p> | |
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Only one comment (as noted above) was received following the publication of the Notice of Periodic Review on April 27, 2020. An informal advisory group was not formed 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 assists in ensuring that only pesticide products that are registered with EPA and VDACS are used in Virginia and, as such, is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understood by the regulated industry.

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 agency recommends that the regulation stay in effect without change. The regulation was revised in 2017 to align it with current federal pesticide laws, agency policies and procedures, and industry standards and to facilitate compliance. Given the risks associated with the use of pesticides, it is imperative that the requirements for pesticide registration, distribution, sale, storage, and use are clear and unambiguous.

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.

The provisions of this regulation continue to be necessary in order to ensure that only pesticide products that are registered with EPA and VDACS are used in Virginia. Given the inherent safety consideration associated with pesticides, it is imperative that the requirements for pesticide businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides are clear and unambiguous. The comment addressed above notwithstanding, VDACS has received no complaints or comments regarding

this regulation. The agency has determined that the regulation is not unnecessarily complex and is easily understood by the regulated industry. The current regulations, which were amended in 2017, are aligned with current federal pesticide laws, agency policies and procedures, and industry standards. The regulation does not add requirements more restrictive than federal requirements to individuals or businesses seeking pesticide product registration. The agency has determined that this regulation is the least burdensome alternative for effectively regulating participants in this industry, including small businesses.
