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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-685
VAC Chapter title(s)	Regulations Governing Pesticide Applicator Certification under Authority of 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.

"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(4) of the Code authorizes the Board to adopt regulations to establish training, testing, and standards for certification of commercial applicators, registered technicians, and private applicators. This authority is discretionary.

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 for achieving the purpose of 2 VAC 5-685, *Regulations Governing Pesticide Applicator Certification under Authority of the Pesticide Control Act*.

The regulation establishes requirements for the certification of an individual who commercially applies pesticides or applies restricted-use pesticides while producing an agricultural commodity on property owned or rented by him. Certified applicators are required to complete Board-approved training and demonstrate practical knowledge of principles and practices of pest control and the safe use of pesticides, to include (i) federal and state pesticide laws, (ii) understanding and interpreting pesticide labels, (iii) handling of accidents and incidents, (iv) proper methods of storing, mixing, loading, applying, and disposing of pesticides, (v) safety and health and using personal protective equipment, (vi) potential adverse effects from the application of pesticides, and (vii) common pests and general pest biology. Given the inherent safety considerations associated with the application of pesticides, it is imperative that individuals applying pesticides meet the requirements established in the regulation. This regulation is the least burdensome alternative to ensure the competence of pesticide applicators through consistent standards of training, testing, and certification. The continued competence of pesticide applicators ensures individuals who apply pesticides make informed decisions while on the job, reducing the chance for misapplication and minimizing potential threats to the environment and the health, safety, and welfare of citizens.

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.

The agency did not receive any comments during the public comment period 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 is necessary for the protection of public health, safety, and welfare. Pesticides are used for the control of pests that adversely affect crops, structures, human health, and domestic animals. Given the risk associated with the application of pesticides to both human health and the environment, the use of pesticides is highly regulated at the federal and state level. VDACS’s pesticide programs protect human health and the environment through programs that certify pesticide applicators, license pesticide businesses, register pesticide products, and inspections and investigations to ensure compliance with all applicable laws and regulations. This regulation sets forth the minimum requirements for individuals who apply pesticides and is clearly written and easily understood.

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 this regulation stay in effect without change. The regulation was revised in 2016 to align the regulations with current agency policies and procedures and industry standards and to facilitate compliance. The agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate amending the regulation at this time.

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 agency recommends continuation of the regulation as it ensures the ability of pesticide applicators to properly apply pesticides, thereby reducing the chance for misapplication and potential threats to the environment and to the health, safety, and welfare of citizens. There have been no complaints from the public or industry regarding this regulation. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. The regulation does not overlap, duplicate, or conflict with federal or state laws or regulations. The regulation does not add requirements more restrictive than federal requirements. The regulation was last amended in 2016, and the agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate further amendments at this time. There are no known disadvantages to the public, small businesses, or the Commonwealth.