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Proposed Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-680
Regulation title(s)	Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act
Action title	Amendments to language to clarify current requirements and program practices and address federal requirements
Date this document prepared	March 25, 2016 Updated September 20, 2016, to include the Periodic Review and Small Business Impact Review Report of Findings section

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board of Agriculture and Consumer Services is authorized to adopt regulations governing the enforcement of the Virginia Pesticide Control Act, including the licensing of businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides. The proposed regulatory action seeks to update the regulation and align it with current agency practices and federal requirements by (i) adding the definition of the term “distribute” or “distribution” and amending the definition of the term “pesticide business location” in order to address current industry practices; (ii) adding the definition of the term “limited household use” in order to clarify the requirements for merchants who are exempt from pesticide business licenses under the Virginia

Pesticide Control Act; (iii) adding the definition of the term “multiple violations”; (iv) clarifying the current requirements for the application for a pesticide business license in order to decrease regulators' confusion and encourage compliance; (v) clarifying the current requirement regarding evidence of financial responsibility in order to decrease confusion and encourage compliance; (vi) amending the language of the recordkeeping requirements to be consistent with other pesticide labeling requirements in this regulation and in 2 VAC 5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law; and (vii) revising the recordkeeping sections to reflect the changes previously mentioned.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“VDACS” or “the agency” 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

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 of the Code of Virginia authorizes the Board to adopt regulations, including the licensing of businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The format and a large portion of the content of 2 VAC 5-680, Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act, were first implemented in January 1991. The regulations were amended in October 2006 and renumbered in October 2012 when the former Pesticide Control Board was abolished and its

duties were transferred to the Board of Agriculture and Consumer Services. Because of the inherent safety considerations associated with the application of 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 proposed amendments are intended to improve the clarity of the regulations and further promote compliance.

The pesticide industry in the U.S. is highly regulated and is aware that regulations undergo regular reviews and are updated as necessary to align the regulations with current federal pesticide laws, agency policies and procedures, and industry standards. The agency does not expect industry to have concerns with the proposed amendments.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Substantive amendments to the regulations are as follows:

1. Amend the definition of "pesticide business location" to reflect the use of technologies when conducting business (e.g. sales, service, etc.), including cell phones, email, and websites.
2. Add the definition of the term "limited household use." Currently, the regulations require that any person or business operating in Virginia that, in exchange for compensation, sells, stores, distributes, mixes, applies, or recommends the use or application of pesticides obtain a valid pesticide business license. An exemption to these requirements exists for "Merchants of limited quantities of nonrestricted use pesticides who sell pesticides primarily intended for limited household use;" however, no definition exists for the term "limited household use."
3. Add the definition of the term "multiple violations." Currently, the regulations provide for the revocation of a business license for "Multiple violations of the Act or regulations pursuant thereto within a three-year period"; however, the term "multiple violations" is not defined.
4. Add the definition of the term "sale or sell". Currently, the regulations are ambiguous as to the meaning of these terms. Because of the inherent safety considerations associated with pesticides, it is imperative that the requirements for pesticide business licensure are as clear and unambiguous as possible.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulatory action is advantageous to private citizens and businesses, as the amendments clarify requirements for pesticide business registration while ensuring continued

compliance. The pesticide industry in the U.S. is highly regulated and is aware that regulations undergo regular reviews and are updated as necessary to align the regulations with current federal pesticide laws, agency policies and procedures, and industry standards. These actions do not add any additional requirements more restrictive than federal requirements to businesses seeking licensure. There are no known disadvantages to the public, businesses, or the Commonwealth. The proposed regulatory action will clarify and streamline requirements and will lead to an increase in compliance through better understanding of applicable requirements.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

This regulation conforms to and is no more restrictive than applicable federal requirements. The proposed amendments reflect the specific needs of the regulated industry and pesticide regulatory program in Virginia and do not add any additional requirements to the existing regulation that would make it more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by the proposed amendments.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping, and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to:

Laura Hare
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Virginia Department of Agriculture and Consumer Services

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 Phone: (804) 786-1908
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Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>The cost of implementation is expected to be minimal, as there are no new requirements in the proposed amendments to the regulation that would require extensive outreach to the regulated industry or changes to the agency’s current processes. Any one-time or ongoing costs would be paid from pesticide fees that are collected pursuant to the Virginia Pesticide Control Act and used by the agency solely for carrying out the purposes of the Act (non-general funds).</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There is no cost associated with the proposed amendments to the regulation on localities. The proposed amendments do not include any new requirements. The proposed amendments seek to clarify existing requirements and streamline the business license process.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Pesticide businesses operating within the Commonwealth will be affected by the proposed amendments.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and;</p>	<p>There are approximately 3,000 licensed pesticide businesses in Virginia. It is estimated that the vast majority of the licensed businesses would be considered small businesses.</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There is no cost associated with the proposed amendments to individuals, businesses, or other entities. The proposed amendments do not include any new requirements. The proposed amendments seek to clarify existing requirements and streamline the business license process.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed amendments seek to clarify existing requirements and streamline the business license process.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No alternatives to the proposed regulatory action are available that would meet the essential purpose of the action. In addition, no less intrusive or less costly alternatives exist for small businesses to achieve the purpose of the regulation.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Pesticides are used for the control of pests that adversely affect crops, structures, human health, and domestic animals. Pesticides have inherent risks because they are designed to prevent, destroy, repel, or mitigate pests. Exemption from existing requirements or establishment of less stringent requirements may lead to unsafe pesticide applications. Thus, the use of pesticides is highly regulated at the federal and state level. The proposed amendments do not include any new requirements. The proposed amendments seek to clarify existing requirements and streamline the business license process.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

This regulation meets the criteria set out in Executive Order 17 (2014) and is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understood. The agency has determined that this regulation is necessary because of the inherent safety considerations associated with pesticides. Because of the inherent safety consideration associated with the application of 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 proposed amendments are intended to improve the clarity of the regulations and further promote compliance. The agency received no public comments during the periodic review public comment period that ran from August 11, 2014 through September 1, 2014.

Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act (2 VAC 5-680), conforms to and is no more restrictive than applicable federal requirements. The proposed amendments reflect the specific needs of the regulated industry and pesticide regulatory program in Virginia and do not add any additional requirements to the existing regulation that would make it more restrictive than federal requirements.

The format and large portion of the content of 2 VAC 5- 680, Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act, were first implemented in January 1991. The regulations were amended in October 2006 and renumbered in October 2012 when the former Pesticide Control Board was abolished and its duties were transferred to the Board of Agriculture and Consumer Services.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The agency received no comments during the public comment period.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments to this regulation will have no direct impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	N/A	N/A	The definition of “distribute” or “distribution” was derived from 40 CFR Section 152.3. This definition has been proposed in order to provide clarity for registrants.
10	N/A	N/A	The proposed definition of “limited household use” was developed in consultation with other states and examination of their laws and regulations. This definition has been proposed in order to clarify the requirements for merchants who are exempt from pesticide business licenses under the Virginia Pesticide Control Act. This definition has been proposed in order to provide clarity for registrants.
10	N/A	Currently, the definition of “pesticide business location” refers to a fixed location or a pesticide business.	This proposed change is meant to address the use of technologies when conducting business (e.g. sales, service, etc.), including cell phones, email, and websites while excluding locations used solely for storage of service vehicles, equipment, supplies,

			or telephone answering services. This definition has been amended in order to provide clarity for registrants.
10	N/A	N/A	The proposed definition of “sale” or “sell” was taken from the Virginia Pesticide Control Act. This definition has been proposed in order to provide clarity for registrants.
20 A	N/A	Currently, this section addresses the requirement for any person or business operating in Virginia to obtain a valid pesticide business license.	The proposed changes are meant to address, more clearly, that any person or business that, in exchange for compensation, sells, stores, distributes, mixes, applies, or recommends the use or application of pesticides in Virginia, must obtain a valid pesticide business license. This section has been amended to provide clarity for registrants.
20 C	N/A	Currently, an application for a pesticide business license is made by submitting to the department a completed application form and a check or money order in the amount of the annual business license fee established by the board.	The proposed changes are meant to reference the requirement to submit evidence of financial responsibility referenced in Section 80 of this chapter. This section has been amended in order to provide clarity for registrants.
60 A	N/A	Currently, pesticide businesses that sell restricted use pesticides shall maintain a record of each restricted use pesticide sold, and each sales record must contain the brand or common product name.	The proposed change strikes the requirement to maintain a “brand or common product name” in a sales record and replaces that with “brand, trademark, or product name appearing on the product’s label”. This change promotes consistency with Section 30 of 2 VAC 5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, and has been made in order to provide clarity for registrants.
65	N/A	Currently, licensed pesticide businesses shall maintain a record of each pesticide applied, and each application record must contain the brand or common product name.	The proposed change strikes the requirement to maintain a “brand or common product name” in a sales record and replaces that with “brand, trademark, or product name appearing on the product’s label.” This change promotes consistency with Section 30 of 2 VAC 5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, and has been

			made in order to provide clarity for registrants.
70	N/A	Currently, pesticide businesses shall maintain a record of each pesticide applied, and each application record must contain the brand or common product name.	The proposed change strikes the requirement to maintain a “brand or common product name” in a sales record and replaces that with “brand, trademark, or product name appearing on the product’s label.” This change promotes consistency with Section 30 of 2 VAC 5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, and has been made in order to provide clarity for registrants.
80 C	80 D	Currently, the statement regarding maintenance of minimum insurance coverage and notification of the board to any reduction of coverage is included in Subsection C.	The proposed change strikes the statement regarding maintenance of minimum insurance coverage and notification of the board to any reduction of coverage in Subsection C and relocates it to the proposed Subsection D. This proposed change has been made in order to provide clarity for registrants.