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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- 675
Regulation title(s)	Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services
Action title	Fee review
Date this document prepared	August 4, 2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 establishing a fee structure for licensure, registration, and certification to defray the costs of implementing the Virginia Pesticide Control Act. The proposed action seeks to adjust the current fee structure to reflect actual costs of program implementation and includes a fee increase for commercial pesticide applicator certification, registered technician certification, pesticide business licensure, and pesticide product registration.

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" means the Virginia Department of Agriculture and Consumer Services.

"Virginia Pesticide Control 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(7) of the Code authorizes the Board to adopt regulations establishing a fee structure for licensure, registration, and certification to defray the costs of implementing the Virginia Pesticide Control Act.

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- 675, *Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services*, were first implemented in July 1990. The regulations were amended in September 1994 and March 2009 and renumbered in October 2012 following the merger of the former Pesticide Control Board with the Board of Agriculture and Consumer Services. The current certification fees for pesticide applicators and licensing fees for pesticide businesses have been in place since 1990. The current pesticide product registration fee has been in place since 1999.

The agency has determined that current fees do not provide adequate funding for pesticide-related services. The fees prescribed in 2 VAC 5-675 are utilized to operate the agency's pesticide programs, which protect human health and the environment by ensuring the proper use of pesticides used to control pests that adversely affect crops, structures, health, and domestic animals. Program activities include the certification of approximately 21,000 pesticide applicators, licensing of approximately 3,000 pesticide businesses, registration of approximately 15,000 pesticide products, and the conduct of routine inspections and investigations. In order to ensure compliance with all applicable laws and regulations related to the use of pesticides, it is imperative that fees provide adequate funding for these services.

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.

The substantive changes include an increase to certification fees for commercial pesticide applicators and registered technicians, an increase to licensure fees for pesticide businesses, and an increase in registration fees for pesticide products. The proposed amendments to the regulation will:

1. Increase the annual product registration fee from \$160 per year to \$225 per year;
2. Increase the certification fee for commercial applicators from \$70 every two years to \$100 every two years;
3. Increase the certification fee for registered technicians from \$30 every two years to \$50 every two years; and
4. Increase the annual pesticide business license fee from \$50 per year to \$150 per year.

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 the public and the regulated industry, as the amended fee structure will ensure the continuation of program services, which protect human health and the environment by ensuring the proper use of pesticides used to control pests that adversely affect crops, structures, health, and domestic animals. While increasing fees, these actions do not add any additional regulatory requirements to pesticide applicators, pesticide businesses, or registrants of pesticide products. There are no disadvantages to the public or the Commonwealth.

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.

There are no requirements that exceed applicable 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 (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the regulation on affected small businesses, and (iii) 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:

Liza Fleeson Trossbach
 Program Manager, Office of Pesticide Services
 Virginia Department of Agriculture and Consumer Services
 P.O. Box 1163, Richmond, VA 23218
 Phone: (804) 371-6559
 Fax: (804) 371-2283
 Email: liza.fleeson@vdacs.virginia.gov

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</p>	<p>The cost to the state for implementation is expected to be minimal, as there are no new requirements in the proposed amendments to the regulation that would require extensive changes to</p>
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<p>expenditures.</p>	<p>the agency's current processes. In addition, outreach to the regulated industry would be incorporated into existing communications and outreach opportunities.</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. Section 3.2-3931 of the Code provides an exemption from certification fees for all state agencies, municipal corporations, or other governmental agencies. Additionally, the proposed amendments do not include any new requirements.</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 applicators and pesticide businesses operating within the Commonwealth will be affected by the proposed fee adjustments. In addition, an entity registering a pesticide product in the Commonwealth will be affected by the proposed adjustment to the pesticide product registration fee.</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; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 3,000 licensed pesticide businesses and 18,000 certified applicators, including commercial applicators and registered technicians, in Virginia that will be affected. In addition, there are currently 1,550 registrants of pesticide products that will be affected. It is estimated that the vast majority of the licensed businesses and employers of certified applicators are small businesses.</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>The proposed amendments will have the following costs for affected individuals and businesses (unless otherwise exempt from fees):</p> <ol style="list-style-type: none"> 1. Increase of \$65 per product per year for all pesticides registered; 2. Increase of \$30 every two years for all commercial applicators; 3. Increase of \$20 every two years for all registered technicians; and 4. Increase of \$100 every year for all pesticide businesses. <p>The proposed amendments will not result in additional reporting, recordkeeping requirements, or costs associated with the development of real estate for commercial or residential purposes.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed action is designed to provide adequate funding for pesticide-related services. The fees prescribed in 2 VAC 5-675 are utilized to operate the agency's pesticide programs, which protect human health and the environment by ensuring the proper use of pesticides used to control pests that adversely affect crops, structures, health, and domestic animals.</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, as retaining the current fee structure will not adequately fund the agency’s pesticide-related services.

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 can also cause harm because they are designed to prevent, destroy, repel, or mitigate pests. 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. The agency’s pesticide programs protect human health and the environment by ensuring the proper use of pesticides. These programs include the certification of pesticide applicators, the licensing of pesticide businesses, the registration of pesticide products, and inspections and investigations to ensure compliance with all applicable laws and regulations. Exemptions from or less stringent requirements or a reduction in the services provided by the agency would not provide protection for human health and the environment. The proposed amendments seek to ensure adequate funding to carry out program services.

Public comment

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

Commenter	Comment	Agency response
Commenter: Virginia Crop Production Association, VACPA, Laurie Coulter (Received via Town Hall)	“VACPA, Virginia Crop Production Association, is requesting that 1) VDACS conduct a stakeholder advisory group to assist the VDACS agency in their review of current Pesticide fee structures and possible adjustments to the current fee structures in the future, and 2) That a member of VACPA appointed by the VACPA board serve on the Advisory group	1) The agency convened a Regulatory Advisory Panel as part of the regulatory process. 2) The Virginia Crop Production Association was represented on the Regulatory Advisory Panel.

	reviewing current Pesticide fee structures and possible adjustments to the current Pesticide fee structures in the future.”	
Virginia Agribusiness Council (Received via email)	Virginia Agribusiness Council requested representation on the stakeholder advisory group organized to assist VDACS in its review of the current pesticide fee structures and the possible adjustment to these fees.	1) The agency convened a Regulatory Advisory Panel as part of the regulatory process. 2) The Virginia Agribusiness Council was represented on the Regulatory Advisory Panel.

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.

This regulatory action has no 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
20	N/A	Currently, the regulation states that “[e]very pesticide product which is to be manufactured, distributed, sold, offered for sale, used or offered for use within the Commonwealth shall be registered with the commissioner.”	The proposed change strikes the phrase “which is to be” to reflect the current language found in Va. Code § 3.2-3914 regarding registration requirements.
20	N/A	Currently, the annual fee for registering each pesticide	The proposed change increases the annual fee for registering each pesticide

		product is \$160.	product to \$225. This fee adjustment, in conjunction with the other proposed fee adjustments, is intended to provide adequate funding for pesticide related services.
30	n/a	Currently, the fee for any person applying for a certificate as a commercial applicator is an initial nonrefundable fee of \$70 and a biennial nonrefundable renewal fee of \$70 thereafter. In addition, the fee for reexamination is \$70 and is nonrefundable.	The proposed change increases the initial fee for any person applying for a certificate as a commercial applicator to \$100 and increases the biennial renewal fee to \$100. In addition, the fee for reexamination is increased to \$100. These fee adjustments, in conjunction with the other proposed fee adjustments, are intended to provide adequate funding for pesticide related services.
40	N/A	Currently, the fee for any person applying for a certificate as a registered technician is an initial nonrefundable fee of \$30 and a biennial nonrefundable renewal fee of \$30 thereafter. In addition, the fee for reexamination is \$30 and is nonrefundable.	The proposed change increases the initial fee for any person applying for a registered technician certificate to \$50 and increases the biennial renewal fee to \$50. In addition, the fee for reexamination is increased to \$50. These fee adjustments, in conjunction with the other proposed fee adjustments, are intended to provide adequate funding for pesticide related services.
50	N/A	Currently, the fee for any pesticide business that distributes, stores, sells, recommends for use, mixes, or applies pesticides is a nonrefundable annual fee of \$50.	The proposed change increases the annual fee for any pesticide business that distributes, stores, sells, recommends for use, mixes, or applies pesticides to \$150. This fee adjustment, in conjunction with the other proposed fee adjustments, is intended to provide adequate funding for pesticide related services.