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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-690
Regulation title	Regulations for Pesticide Containers and Containment under Authority of the Virginia Pesticide Control Act
Date	May 9, 2018

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

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

Section 3.2-3906 of the Code authorizes the Board to adopt regulations that may be necessary to carry out the purposes of Chapter 39 of Title 3.2 of the Code regarding pesticides. This authority is discretionary.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Two alternatives for achieving the purpose of the existing regulations exist:

1. Enforce provisions of the federal rule using federal credentials; or
2. Incorporate the federal rule into the state's current regulations;

With respect to Alternative 1, the enforcement of the federal rule using federal credentials is deemed a less desirable, less practical, and less cost-effective alternative. Enforcement under state regulations allow investigators to perform container and containment inspections in conjunction with other inspection activities at all applicable sites. Alternative 2 is not applicable in Virginia because the statute does not authorize the Board to incorporate by reference the federal rule.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The agency received no public comment in response to the Notice of Periodic Review published on February 19, 2018. An informal advisory group was not formed for the purpose of assisting this periodic review.

Effectiveness

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.

This regulation, 2 VAC 5-690 *et seq.*, *Regulations for Pesticide Containers and Containment under Authority of the Virginia Pesticide Control Act*, is necessary for the protection of public health, safety, and welfare, as it assists in minimizing human exposure during container handling and protecting the environment from potential contamination resulting from accidental pesticide discharges.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The agency is recommending the regulation stay in effect without change. The current regulation has been found to be sufficient to minimize human exposure during container handling and protect the environment from potential contamination resulting from accidental pesticide discharges.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, 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. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation establishes (i) standards for container design and residue removal in non-refillable pesticide containers, standards for container design in refillable pesticide containers, standards for repackaging pesticide products into refillable containers, and pesticide containment structures; and (ii) recordkeeping requirements. Individuals, businesses, or other entities affected by the proposed regulations may include pesticide registrants, retailers, distributors, commercial applicators, custom blenders, and end-users. Virginia's own regulations are equivalent to the federal regulations that are currently in place and allow more flexibility and greater discretion in the enforcement of pesticide container and containment requirements based on Virginia's unique needs and conditions. No complaints or comments concerning the regulations have been received from the public. This regulation became effective in January 2014, and no conditions or factors have changed since this time that would necessitate any revisions to this regulation.

Approximately 50 facilities are required to comply with the regulations. The vast majority of these facilities are small businesses. As the regulation is equivalent to the federal regulation, this regulation does not prescribe requirements for regulants with which they would not have to comply were the regulation repealed. Amendments to the current regulation providing exemptions from its provisions or less stringent requirements for certain regulants would not provide protection for human health and the environment.