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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 5-350
VAC Chapter title(s)	Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law
Date this document prepared	October 7, 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.

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. This regulation serves the purpose of enforcing the Virginia Commission Merchant Law (Va. Code § 3.2- 4709 et seq.), which ensures that commission merchants interact properly with producers of farm products.

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.

A viable alternative to 2 VAC 5-350 does not exist. If this regulation were not in place, Virginia tobacco producers would have no practical recourse against a commission merchant who does not properly pay or account for tobacco handled for the producer. Retaining the current regulation represents the least burdensome alternative for commission merchants, while retaining a mechanism to assure tobacco producers that they will be paid.

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
Virginia Farm Bureau Federation (VFBF)	We believe the current regulations are sufficient. VFBF has no recommended changes for 2VAC5-350 but reserves the right to provide additional comment should regulatory changes be proposed.	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.

The agency did not form an informal advisory group to assist with this 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 licensing and bonding of commission merchants and the requirements of this regulation provide protection to tobacco farmers by assuring prompt and accurate payment for their tobacco. As such, this regulation protects the economic welfare of Virginia tobacco producers. This regulation 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 that this regulation stay in effect without change. In the period since this regulation was last evaluated, there have been no significant changes that would necessitate amending this regulation

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 has determined that there is a continued need for this regulation. Tobacco auction warehouses that serve as agents for tobacco farmers on the basis of a fee or commission are required to obtain a license under the Commission Merchants Law. Many farms that grow tobacco are small businesses and the licensing and bonding of commission merchants and the requirements of this regulation, by which commission merchants must abide, provide protection to tobacco farmers by assuring prompt and accurate payment for their tobacco. There have been no complaints received regarding this regulation. The only comment received did not recommend any change to this regulation. The regulation is not complex and does not include any unnecessary or overly burdensome requirements with which small businesses must comply.

This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. No significant changes to technology, economic conditions, or other factors have occurred since the previous periodic review of this regulation in 2015 that would necessitate modifications to this regulation. The agency recommends that the regulation stay in effect without change.
