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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 5-400
VAC Chapter title(s)	Rules and Regulations for the Enforcement of the Virginia Fertilizer Law
Date this document prepared	October 8, 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.

Section 3.2-3601 of the Code of Virginia authorizes the Board to adopt all regulations necessary to carry out the provisions of the Virginia Fertilizer Law. Such regulations may include (i) investigational allowances, (ii) definitions, (iii) records, (iv) manufacturing practices, and (v) distribution and storage of regulated product prior to final sale.

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 5-400 *et seq.*, *Regulations for the Enforcement of the Virginia Fertilizer Law*, does not exist.

This regulation establishes minimum ingredient levels, labeling requirements, investigational allowances, and procedures for sampling and analysis of fertilizer products and soil amendments. This regulation provides clarity for manufacturers and information needed by consumers. This regulation is the only viable alternative to ensure that fertilizer products and soil amendments available for sale in the Commonwealth are properly labeled and of good quality.

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)	After review of the section as currently published, we have found 2 VAC 5 – 400 to be sufficient to protect the health and safety of farmers and members of the fertilizer industry, members of the public, and the environment, while also ensuring the responsible and effective use of fertilizer products. VFBF has no recommended changes for 2 VAC 5 – 400 and appreciates the opportunity to provide additional comments 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 in 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.

This regulation assists in ensuring the quality of fertilizer products available for sale in the Commonwealth, thereby impacting the ultimate quality of crops, human health, the environment, and competition in the marketplace. As such, the regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understood by the regulated industry.

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 the regulation stay in effect without change. This regulation is necessary to ensure the quality of fertilizer products and soil amendments and to prevent the sale of improperly labeled fertilizer products and soil amendments in the Commonwealth, thereby impacting the ultimate quality of crops, human health, the environment, and competition in the marketplace.

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 to assist in ensuring the proper oversight of fertilizer sale in the Commonwealth. The agency has not received any complaints from the public concerning this regulation. The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. In the period since this regulation was last reviewed in 2016, there have been no significant changes in technology, economic conditions, or other factors that necessitate amendments to this regulation.

The agency has determined that the regulation is not unnecessarily burdensome or complex. As such, the agency recommends that the regulation stay in effect without change.
