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Periodic Review and Small Business Impact Review Report of Findings

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| Agency name | Board of Agriculture and Consumer Services |
| Virginia Administrative Code (VAC) Chapter citation(s) | 2 VAC 5-690 |
| VAC Chapter title(s) | Regulations for Pesticide Containers and Containment under Authority of the Virginia Pesticide Control Act |
| Date this document prepared | July 18, 2022 |

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.

"Board" means the Board 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

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 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 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.

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

1. Enforce provisions of the federal rule pertaining to pesticide management and disposal 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 Act does not authorize the Board to incorporate by reference the federal rule.

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.

The agency received no public comment in response to the Notice of Periodic Review published on May 23, 2022, and did not form an informal advisory group for the purpose of assisting 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, 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. The agency has determined that this 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 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

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.

This regulation establishes (i) standards for container design and residue removal in nonrefillable 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 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. Amending the current regulation to provide exemptions from its provisions or less stringent requirements for certain regulants would not provide protection for human health and the environment.
