



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5 - 405
Regulation title	Regulations for the Application of Fertilizer to Nonagricultural Lands
Action title	This new regulation seeks to prescribe training and application requirements for contractor-applicators and licensees who apply fertilizers on non-agricultural property.
Date this document prepared	September 4, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The regulation is designed to ensure that contractor-applicators and licensees applying fertilizers on non-agricultural property are trained and certified in the proper use and application of fertilizers in order to minimize the potential environmental impact that may result from improper use and over application.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 686 of the Acts of the 2008 General Assembly amended the Virginia Fertilizer Act (Act), §3.1-106.1 et seq, Code of Virginia. The resulting §3.1-106.4:2 of the Act authorizes and instructs the Board of Agriculture and Consumer Services to adopt regulations to certify the competency of contractor-applicators and licensees who apply any regulated product to nonagricultural lands. The authority is mandatory.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Board of Agriculture and Consumer Services is required to promulgate these regulations which the General Assembly has deemed necessary in order to minimize the potential environmental impact that may result from improper use and over application of fertilizer on nonagricultural lands.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Board of Agriculture and Consumer Services is required to form a technical advisory committee of stakeholders and to consult with that advisory committee, as well as the Department of Conservation and Recreation, in the development of the regulations. The proposed regulation must establish requirements for licensee and contractor-applicator training, certification of competency, recordkeeping and nutrient management practices in conformance with § 10.1-104.2 of the Code, Voluntary nutrient management training and certification program. Such program is administered by the Department of Conservation and Recreation. The first meeting of the technical advisory committee will be later in 2008.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Promulgation of this regulation is required by statute.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, and 2) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable

effect of the regulation on affected small businesses, and 3) description of less intrusive or less costly alternative methods of achieving the purpose of the regulation. Anyone wishing to submit written comments may do so by mail, email or fax to:

Robert E. Bailey
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Virginia Department of Agriculture and Consumer Services
102 Governor St
Richmond VA 23219
Telephone: (804) 786-2476
Fax: (804) 786-1571
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Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

A technical advisory committee of stakeholders was established by the Board of Agriculture and Consumer Services during an official meeting of the Board on August 19, 2008. The proposed composition of the technical advisory committee includes the Virginia Agribusiness Council, Virginia Farm Bureau Federation, Virginia Cooperative Extension, Virginia Crop Production Association, Virginia Golf Course Superintendents Association, Virginia Green Industry Council, Virginia Nursery & Landscape Association, Virginia Turfgrass Council, and Virginia Department of Conservation and Recreation. The Board of Agriculture and Consumer Services authorized the Commissioner of the Virginia Department of Agriculture and Consumer Services to add additional organizations and individuals to the technical advisory committee as he deems appropriate during the regulation making process.

Family impact

Assess the potential impact of the proposed 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.

The proposed regulation will have no potential impact on the institution of the family and family stability.