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Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-670
Regulation title(s)	Rules and Regulations for Enforcement of the Virginia Pesticide Law
Action title	Amendments to language to clarify current requirements and program practices and address federal requirements
Date this document prepared	April 4, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board of Agriculture and Consumer Services is authorized to adopt regulations governing the enforcement of the Virginia Pesticide Control Act, including the registration of pesticides for manufacture, distribution, sale, storage, or use. The proposed action seeks to update the regulation and align it with current agency practices and federal requirements by (i) changing the title and format to be consistent with other pesticide-related regulations; (ii) amending the language of the regulation to reflect the current agency policy regarding requirements for submission of pesticide labels; (iii) clarifying the registration requirements involving mixtures of pesticides and fertilizers, animal feed, animal remedies, or other pesticides; (iv) amending language to align the regulation with federal requirements; (v) adding definitions to align the regulation with federal definitions and encourage compliance; (vi) amending language to more

closely align the regulation with the Virginia Pesticide Control Act; (vii) removing duplicative registration requirements; (viii) amending and clarifying regulatory label requirements to more closely align with federal requirements and minimize confusion; (ix) amending ingredient statement requirements for consistency throughout the regulation; and (x) clarifying warning or caution statements to more closely align with federal requirements and minimize confusion.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“40 CFR” means Title 40 of the Code of Federal Regulations.

“Board” means the Board of Agriculture and Consumer Services.

“EPA” means the United States Environmental Protection Agency or any program thereof.

“FIFRA” means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 *et seq.*).

“VDACS” or “the agency” means the Virginia Department 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.*).

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On March 23, 2017, the Board of Agriculture and Consumer Services took final action to adopt amendments to 2 VAC 5-670, *Rules and Regulations for Enforcement of the Virginia Pesticide Law*.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 3.2-109 of the Code of Virginia (Code) establishes the Board as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-3906(2) of the Code authorizes the Board to adopt regulations governing the enforcement of the Virginia Pesticide Control Act, including the registration of pesticides for manufacture, distribution, sale, storage, or use.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The content of 2 VAC 5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, was transferred from the now repealed 2 VAC 20-20 in October 2012, when the former Pesticide Control Board was abolished and its duties were transferred to the Board. The content of the current regulation has not been substantively amended since approximately 1991. Because of the inherent safety considerations associated with pesticides, it is imperative that the requirements for pesticide registration, distribution, sale, storage, and use are clear and unambiguous. The proposed amendments are intended to improve the clarity of the regulations and further promote compliance.

The pesticide industry in the U.S. is highly regulated and is aware that regulations undergo regular reviews and are updated as necessary to align the regulations with current federal pesticide laws, agency policies and procedures, and industry standards.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Substantive amendments to the regulations that the agency is considering are as follows:

1. Change the title and format to be consistent with the other regulations authorized by the Virginia Pesticide Control Act. This regulation includes requirements for product registration as well as handling and storage, pesticide disposal, application and equipment, and container labeling. The current name of the regulation is not descriptive of what is actually contained in the regulation.
2. Add the requirement for submission of the final pesticide label, including the Material Safety Data Sheet (MSDS) or the Safety Data Sheet (SDS), along with the application for pesticide regulation. This is VDACS's current policy, and pesticide product registrations are not issued in the absence of these two documents.
3. Amend 2 VAC 5-670-220 B to include custom pesticide-animal feed and animal remedy mixtures.

4. Add specific requirements in 2 VAC 5-670-30 for directions for use. The current requirements state: "Directions for use are required for the protection of the public. The public includes not only users of pesticides, but also those who handle them or may be affected by their use, handling, or storage;" however, this section does not include any specific requirements.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The regulatory action is advantageous to private citizens and businesses, as the amendments clarify and streamline the requirements for pesticide product registration while ensuring continued compliance. The pesticide industry in the U.S. is highly regulated and is aware that regulations undergo regular reviews and are updated as necessary to align the regulations with current federal pesticide laws, agency policies and procedures, and industry standards. These actions do not add any additional requirements more restrictive than federal requirements to individuals or businesses seeking pesticide product registration. There are no known disadvantages to individuals, businesses, or the Commonwealth. The regulatory action will clarify and streamline requirements and will lead to an increase in compliance through better understanding of applicable requirements.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The *Rules and Regulations for Enforcement of the Virginia Pesticide Law*, amended to be *Regulations Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Control Act*, conforms to and is no more restrictive than applicable federal requirements. The amendments reflect the specific needs of the regulated industry and pesticide regulatory program in Virginia and do not add any additional requirements to the existing regulation that would make it more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by the amendments.

Family impact

Please assess the impact of this 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 amendments to this regulation will have no direct impact on the institution of the family or family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

The Board did not make any changes to the text of the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

The Board did not receive any comments during the public comment period following the publication of the proposed stage.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Title	N/A	Currently, the title of the regulation is “Rules and	The current title of the regulation is not descriptive of what is actually

		Regulations for Enforcement of the Virginia Pesticide Law".	contained in the regulation, and was amended to be: "Regulations Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Control Act." This regulation includes requirements for product registration as well as handling and storage, pesticide disposal, application and equipment, and container labeling. The new title better reflects the chapter's purpose. The title of the statute that provides the authority for this regulation, Va. Code § 3.2-3900 <i>et seq.</i> , was updated in 2008.
10	N/A	Currently, the word "vise" is being utilized in the phrase "vice versa", meaning "conversely". The phrase currently reads "vise versa".	The word "vise", in this situation, is being used incorrectly and should be replaced with "vice."
10	N/A	N/A	The definition of "custom mixture" was taken from 2 VAC 5-690, Regulations for Pesticide Containers and Containment under Authority of the Virginia Pesticide Control Act. This definition has been added in order to provide clarity for registrants.
10	N/A	N/A	The definition of "department" was taken from other agency regulations for consistency. This definition was added in order to provide clarity for registrants and to align the regulation with federal requirements.
10	N/A	N/A	The definitions of "distributor," "EPA," "FIFRA," and "minimum risk pesticide" were derived from 40 CFR Section 152.132. These definitions were added in order to provide clarity for registrants.
10	N/A	N/A	The definition of "producer" was derived from the EPA's definition. This definition was added in order to provide clarity for registrants.
10	N/A	N/A	The definition of "temporary storage" was created through consultation with other states and examination of their laws and regulations. This definition was added in order to provide clarity

			for registrants.
30 A	N/A	Currently, the regulation states that the name and address of the manufacturer shall appear on the pesticide label.	The word “manufacturer” has been replaced with “producer, registrant, or person for whom the product was produced” in order to make this regulation’s label requirements consistent with those stated in the EPA’s Label Review Manual and align the regulation with federal requirements.
30 D	N/A	Currently, the regulation states that directions for use are required for the protection of the public and the public includes not only users of pesticides but also those who handle them or may be affected by their use, handling, or storage.	The statement denoting that “the public includes not only users of pesticides, but also those who handle them or may be affected by their use, handling, or storage” has been stricken. This statement has been deemed unnecessary as it is vague and does not provide the necessary clarity.
30 D	30 E	Currently, exceptions to retail container requirements are listed in Subsection D.	The exceptions are no longer listed in Subsection D and are now listed in the new Subsection E. This reorganization was necessary in order to provide clarity for registrants.
30 D		N/A	This specification of directions for use of a pesticide was made to Subsection D. These specifications were derived from 40 CFR Section 156.10. The goal of the amended language is to align the regulation with federal requirements. These specifications provide clarity for registrants.
30 D	30 E	Currently, the regulation discusses pesticides that are sold to distributors.	The word “distributors” has been changed to the word “producer.” The word “producer” is more accurate than the word “distributors.” In addition, this term is utilized by the EPA and pesticide industry.
40 A	N/A	Currently, it is not specified where an ingredient list shall appear on a pesticide label.	The words “the front of the label” were added to make this part of regulation consistent with Section 60 of this chapter. This change was necessary in order to provide clarity for registrants.
40 A	N/A	Currently, the regulation states that ingredient statements shall be in larger type than surrounding words on the	The word “type” was replaced with “font.” “Font” is more commonly used to describe type and size of typography. This change was necessary in order to provide clarity

		label.	for registrants.
40 C	N/A	N/A	This statement regarding “Plant Incorporated Protectants” was added to Subsection C and is derived from the EPA’s discussion of the topic. The statement has been added because such protectants do not have labels with traditional ingredients statements and the agency must have the ability to register them because the EPA registers them. The goal of the amended language is to align the regulation with federal requirements. Additionally, this change was necessary in order to provide clarity for registrants.
40 D	N/A	Currently, the regulation states that the term "inert ingredient" shall appear in the same size type.	The word “type” has been replaced with “font.” “Font” is more commonly used to describe type and size of typography. This change was necessary in order to provide clarity for registrants.
50 A, 50 C	N/A	Currently, the word “which” is being used in this section.	The word “which” has been replaced with “that.” “Which” is being used incorrectly, and the use of “that” is grammatically correct.
50 C	N/A	Currently, the terms “LD50” and “LC50” are described in the subsection without proper wording or punctuation.	Wording and punctuation were amended in order to correct grammatical mistakes. The wording and punctuation changes were necessary in order to provide clarity for registrants.
60 A, 60 B	N/A	Currently, the catchline for this section is “Warning or caution statement.” Also, signal words are described.	The current wording regarding “warning or caution statements” has been stricken and replaced with “precautionary statements.” References to “signal words” have also been stricken. “Precautionary statements” more accurately describes the type of statements that are necessary for the protection of the public. “Signal words” are not required for all pesticide labels, as prescribed in FIFRA. The goal of the amended language is to align the regulation with federal requirements. These changes were necessary in order to provide clarity for registrants.
60 C, 60 D	N/A	Currently, the regulation states that every pesticide	The stricken language in Subsections C and D is identical to the federal

		that is highly toxic must have specific caution words on the label. Additionally, the regulation states that caution statements that comply with FIFRA will be considered in compliance with this chapter.	registration process for pesticides and is, therefore, duplicative.
70 B	N/A	N/A	The new Subsection B describes all products that require registration under FIFRA as well as “minimum risk pesticides” as pesticides that are required to be registered in the Commonwealth. Additionally, all products requiring federal registration must have and maintain a valid federal registration to be registered in the Commonwealth. The goal of the new language is to align the regulation with federal requirements. The new wording was necessary in order to provide clarity for registrants.
70 B	70 C	Currently, Subsection B describes that applications for pesticide registration should be made on a provided form.	<p>The changes describe that applications for registration should be made on a form provided by VDACS. The changes also describe additional materials required to accompany the application. The changes describe the agency’s current policy and that pesticide product registrations are not issued in the absence of these documents. The additional materials required to accompany the application for registration are established by the EPA and considered part of the pesticide’s labeling.</p> <p>These changes will allow for the use of alternative forms, including electronic forms, as long as they are provided by VDACS. The goal of the amended language is to align the regulation with federal requirements. The wording was necessary in order to provide clarity for registrants.</p>
70 C, 70 D, 70 E, &	70 D, 70 E, 70 F, & 70 G	Currently, the Subsections are lettered C, D, E, and F.	The changes preceding these subsections require the relettering of each of these sections.

70 F			
80 A	N/A	Currently, Section 130 is cited as “2VAC5-670-130 of this chapter.”	The change seeks to correct the reference to Section 130 by proposing the correct citation, “2VAC5-670-130.”
130	N/A		The changes seek to re-letter the section and make the section grammatically correct. The amended wording was necessary in order to provide further clarity for registrants.
N/A	130 B		The amended language describes the products exempt from the requirements of this chapter. These exempt products are described in 40 CFR Part 152 and have been included in order to align the regulation with federal requirements. The amended wording was necessary in order to provide clarity for registrants.
150	N/A	Currently, the word “which” is being used in this section.	The word “which” has been replaced with “that.” “Which” is being used incorrectly, and the use of “that” is grammatically correct.
160	N/A	Currently, the word “which” is being used in this section, and there is no mention of responsibility for disposal.	The word “which” has been replaced with “that.” These changes were proposed in order to make the section grammatically correct. Additionally, new language has been added in order to make clear that the end user of a pesticide is responsible for its proper disposal.
180	N/A	Currently, the word “which” is being used in this section.	The word “which” has been replaced with “that.” “Which” is being used incorrectly, and the use of “that” is grammatically correct.
220 A	N/A	Currently, general sale of mixtures is described without respect to the type of mixtures of pesticides with fertilizers or with other pesticides. Additionally, references to the Virginia Fertilizer Law, Commercial Feed Law, and Animal Remedies Law are made.	The amendments include additional detail regarding the sale of mixtures, including a list of the types of mixtures commonly found: pesticide-fertilizer, pesticide-pesticide, pesticide-animal feed, and pesticide-animal remedy mixtures. These changes seek to provide further clarity for registrants and correctly reference all related laws regarding the mixtures outlined in the new language.
220 B	N/A	Currently, custom mixtures may be created without label registration when pesticide products within	The amendments add the potential for all mixtures to be exempt from registration when pesticide products within the mixture are registered and

		the mixture are registered and when such mixtures are not prohibited.	when such mixtures are not prohibited. The amendments provide clarity for those companies seeking registration for their products regarding the current exemption for custom mixtures containing registered pesticide products when such mixtures are not otherwise prohibited.
220 C	N/A	Currently, parentheses are being used to make several words in this section plural. Additionally, "proper, safe use, and disposal of the mixture" is referenced.	Wording and punctuation were amended in order to correct grammatical mistakes. The wording and punctuation changes were necessary in order to provide clarity for registrants.