



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-685
<b>Regulation title</b>	Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act
<b>Action title</b>	Amendment to remove requirement of concurrent certification in the agricultural plant pest control category for the subcategories of (i) fumigation of soil and agricultural products and (ii) chemigation.
<b>Date this document prepared</b>	May 24, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

This regulatory action will remove from Section 70 of 2 VAC 5-685, *Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act*, the requirement of concurrent certification in the agricultural plant pest control category for the subcategories of (i) fumigation of soil and agricultural products and (ii) chemigation.

### 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 May 23, 2013, the Board of Agriculture and Consumer Services adopted amendments to 2 VAC 5-685 *et seq.*, *Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act*.

## 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) authorizes the Board to adopt regulations in accordance with Title 3.2 of the Code regarding agriculture, animal care, and food.

Section 3.2-3906(4) of the Code authorizes the Board to adopt regulations to establish training, testing, and standards for certification of commercial pesticide applicators.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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 Department of Agriculture and Consumer Services (VDACS) oversees the testing of individuals who desire to become commercial pesticide applicators. 2 VAC 5-685 *et seq.*, *Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act*, establishes the categories and subcategories in which a commercial pesticide applicator may be certified.

Certification in two subcategories, (i) fumigation of soil and agricultural products and (ii) chemigation, currently requires concurrent certification in the agricultural plant pest control category. This requirement was necessary when each of these subcategories did not have its own separate manual and exam.

Now that a manual and exam for both the fumigation of soil and agricultural products subcategory and the chemigation subcategory have been developed, concurrent certification in the agricultural plant pest control category is no longer necessary.

This regulation assists in ensuring that commercial pesticide applicators have the necessary knowledge to enable them to properly use pesticides. The proper use of pesticides is essential to protect the health, safety, and welfare of citizens.

## Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

This rulemaking will remove a now unnecessary regulatory requirement for concurrent certification for two subcategories of commercial pesticide applicators. Representatives from pesticide trade groups, growers, and pesticide educators commented favorably on this proposal. Consequently, as this regulatory action will eliminate an unnecessary requirement, we expect this action to be noncontroversial.

Both of these subcategories now each have a separate exam. As such, individuals conducting fumigation of soil and agricultural products or chemigation will continue to be tested and certified.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

This regulatory action will remove from Section 70 of 2 VAC 5-685, *Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act*, the requirement of concurrent certification in the agricultural plant pest control category for the subcategories of (i) fumigation of soil and agricultural products and (ii) chemigation.

**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 primary advantage of this action for businesses and the agency is the elimination of a now unnecessary regulatory requirement for concurrent certification for two subcategories of commercial pesticide applicators.

This regulation action poses no disadvantage to the public or the Commonwealth.

**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.*

---

There are no federal requirements similar to the concurrent certification requirements that this regulatory action proposes to eliminate.

**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 impacted by this regulatory action.

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

---

This regulatory action will remove a now unnecessary regulatory requirement for concurrent certification for two subcategories of commercial pesticide applicators. Both of these subcategories now each have a separate exam. As such, individuals conducting fumigation of soil and agricultural products or chemigation will continue to be tested and certified. However, these individuals will not have to also take the agricultural plant pest control category exam. The elimination of this unnecessary regulatory requirement will benefit those businesses whose employees will no longer need to invest the time necessary to prepare for and take the exam in a type of pesticide application in which they will not engage.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

---

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>The commercial pesticide applicator certification fee collected by the agency allows an individual to take the core applicator certification exam and the exam for as many categories as the individual chooses during one testing session. The elimination of the concurrent certification requirement will not impact the commercial pesticide applicator certification fees collected by the agency. Additionally, the agency will not incur any expenses related to this regulatory action.</p>
<p><b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b></p>	<p>No locality will incur any costs associated with this regulatory action.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b></p>	<p>Commercial pesticide applicators certified in the fumigation subcategory, commercial pesticide applicators certified in the chemigation subcategory, and the businesses that employ these applicators will benefit from this regulatory action.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Currently, 74 applicators are certified in the fumigation subcategory and 35 applicators are certified in the chemigation subcategory. Approximately 32 businesses will be affected by this regulatory action. The agency estimates that all of these 32 businesses are small businesses.</p>
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>The affected individuals and businesses will not incur any costs associated with this regulatory action.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The elimination of this unnecessary regulatory requirement will benefit the affected individuals and businesses because pesticide applicators desiring certification in fumigation or chemigation will no longer need to invest the time necessary to prepare for and take the exam for the agricultural plant pest control category.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The elimination of a now unnecessary concurrent certification requirement will reduce the compliance burden.

**Family impact**

*Please assess the 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.*

This regulatory action will have no impact on the institution of the family and family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
70(A)(c)	N/A	Certification in the fumigation of soil and agricultural products subcategory requires concurrent certification in the agricultural plant pest control category.	This regulatory action will eliminate the requirement that commercial applicators who are certified in the fumigation of soil and agricultural products subcategory also obtain certification in the agricultural plant pest control category.  This amendment is intended to eliminate a

			now unnecessary concurrent certification requirement.
70(A)(d)	N/A	Certification in the chemigation subcategory requires concurrent certification in the agricultural plant pest control category.	<p>This regulatory action will eliminate the requirement that commercial applicators who are certified in the chemigation subcategory also obtain certification in the agricultural plant pest control category.</p> <p>This amendment is intended to eliminate a now unnecessary concurrent certification requirement.</p>