



Economic Impact Analysis Virginia Department of Planning and Budget

**2 VAC 5-685 – Regulations Governing Pesticide Applicator Certification under Authority
of the Virginia Pesticide Control Act**
Department of Agriculture and Consumer Services
June 26, 2015

Summary of the Proposed Amendments to Regulation

The Board of Agriculture and Consumer Services (Board) proposes many clarifying, and two substantive, changes to its pesticide applicator certification regulation.

Result of Analysis

For most proposed changes, benefits will likely outweigh costs. There is insufficient information to ascertain whether benefits will outweigh costs for one proposed change.

Estimated Economic Impact

Most of the changes that the Board proposes to make to this regulation are solely to make the requirements of the regulation more easily understood. For instance, the Board proposes to add language that specifies that only commercial applicators may provide supervision for technicians. Since it is already the case that only commercial applicators may provide supervision, no entity is likely to incur any costs on account of this change (or other changes like this). Regulated entities as well as other interested parties will benefit from the added clarity that changes such as these bring to the regulatory text.

Currently, this regulation requires applicants for certification who have failed the certification exam to wait 10 days after the date that they failed the exam for the first time to retake the exam. Applicants who fail the exam a second or subsequent time must currently wait 30 days to attempt to retake it. The Board now proposes to remove these limitations as they believe the failing applicant has both the responsibility to remediate their knowledge before re-taking the exam and the incentive to do so since they have to pay the exam fee (\$70) each time it

has to be taken. No entity is likely to incur costs on account of this change. Both applicants for certification, and the companies that employ them, will benefit from applicants being able to retake the exam without unnecessary and artificial delay as this may allow applicants to become certified more quickly.

Current regulation requires prospective pesticide applicators seeking certification as registered technicians to take the certification exam within 90 days of being hired for, or transferred into, a position that includes duties involving the commercial application of pesticides. If they do not pass the exam initially, the regulation gives them 30 days from exam failure to retake it and pass. The regulation prohibits them from applying pesticides, even under supervision, if they fail to retake and pass the exam within 30 days. The Board is concerned that a not inconsiderable number of individuals who are hired into positions that involve the commercial application of pesticides either 1) wait until the end of the 90 day period to take the exam and then fail to retake the exam, or 2) just never take the exam in the first place. The result of this is individuals treating their job as short term (90 to 120 day) employment where they will leave one pesticide company after the time limit to take the exam runs out only to be hired by another pesticide company, or even rehired by the same company after a period of time, where they will again work for 90 or 120 days without ever becoming certified as pesticide applicators. Board staff reports that, of the 3,286 prospective applicators who submitted applications to become registered technicians to the Board in the last 12 months, 581 failed to take the certification exam within 90 days.

The Board proposes to amend this regulation so that individuals seeking certification as registered technicians will have 90 days to take and pass the exam. Individuals who do not pass the exam within 90 days will not be able to apply pesticides, even under supervision, until they do pass it. The Board further proposes to change the rules so that individual applicants seeking certification as registered technicians will only have one 90 day period in which they may pass the exam. After that one 90 day period, prospective applicators will not be able to apply pesticides for any employer even under supervision. To the extent that requiring certification for pesticide applicators keeps the public from being harmed by pesticide application, the public will benefit from this change that stops individuals from applying pesticides while avoiding certification requirements. Individuals who have been engaging in this avoidance will incur costs as they will either have to pass the exam or find other, presumably less optimal, employment.

Without knowing the extent of harm that might be avoided on account of pesticide applicator certification, DPB cannot ascertain whether the benefits of this regulatory change will outweigh its costs.

Businesses and Entities Affected

Board staff reports that there are approximately 3,000 licensed pesticide businesses in the Commonwealth; the vast majority of these businesses would qualify as small businesses. Board staff also reports that the Board currently certifies 22,750 pesticide applicators and that 3,286 prospective pesticide applicators have submitted an application for examination in the last 12 months. All of these entities, as well as any individuals who might apply for certification in the future, will be affected by these proposed regulatory changes.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulation.

Projected Impact on Employment

Board staff reports that some technicians who habitually avoid the exam requirements in this regulation by working a short time (less than 90 days), and then quitting or switching employers, will not qualify for employment with pesticide applicators if they continue this behavior pattern under the proposed regulation. The new rules for exam time limits are, however, unlikely to change total employment in this field.

Effects on the Use and Value of Private Property

These proposed regulatory changes are unlikely to have any impact on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

Small business pesticide applicator companies will likely have to hire employees from a smaller pool of applicants once these regulatory changes become effective. If applicant pools end up significantly smaller, small business employers may incur costs for higher wages needed to attract and keep qualifying employees.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There are likely no alternative rules that the Board could have adopted that would both meet their goal of enforcing certification and result in lower costs for small businesses.

Real Estate Development Costs

Real estate development costs are unlikely to be affected by this proposed regulation.

Legal Mandate

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

AMH

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