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Notice of Intended Regulatory Action (NOIRA) 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 21, 2015

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*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

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 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 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; (x)

clarifying warning or caution statements to more closely align with federal requirements and minimize confusion; and (xi) amending the handling and storage requirements.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity 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 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 describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The format and a large portion of the current content of 2 VAC 5- 670, *Rules and Regulations for Enforcement of the Virginia Pesticide Law*, were first implemented in May 1986 and there have not been any substantive amendments since 1991. The regulations were amended in October 2012 following the merger of the former Pesticide Control Board with the Board of Agriculture and Consumer Services. 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. The agency does not anticipate any potential issues that would need to be addressed during the regulatory process.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, 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 our 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 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.
5. Amend 2 VAC 5-670-150 to require that pesticides be secured in a manner that prevents access by anyone other than the applicator or employee of the business.

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.

No alternatives to the proposed regulatory action are available that would meet the essential purpose of the action. In addition, there are no less intrusive or less costly alternatives for small businesses to achieve the purpose of the regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of alternatives to this action, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to:

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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 midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time. A panel will not be used.