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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 5-680
Regulation title(s)	Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act
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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 licensing of businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides. The regulatory action seeks to update the regulation and align it with current agency practices and federal requirements by (i) adding the definition of the term “distribute” or “distribution” and amending the definition of the term “pesticide business location” in order to address current industry practices; (ii) adding the definition of the term “limited household use” in order to clarify the requirements for merchants who are exempt from pesticide business licenses under the Virginia Pesticide Control Act; (iii) adding the definition of the term “multiple violations”; (iv) clarifying the current requirements for the application for a pesticide business license in order to decrease

regulants' confusion and encourage compliance; (v) clarifying the current requirement regarding evidence of financial responsibility in order to decrease confusion and encourage compliance; (vi) amending the language of the recordkeeping requirements to be consistent with other pesticide labeling requirements in this regulation and in 2 VAC 5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law; and (vii) revising the recordkeeping sections to reflect the changes previously mentioned.

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.

"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 (Board) took final action to adopt amendments to 2 VAC 5-680, *Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the 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) 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 of the Code of Virginia authorizes the Board to adopt regulations, including the licensing of businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides.

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 format and a large portion of the content of 2 VAC 5-680, *Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act*, were first implemented in January 1991. The regulations were amended in October 2006 and renumbered in October 2012 when the former Pesticide Control Board was abolished and its duties were transferred to the Board. Because of the inherent safety considerations associated with the application of pesticides, it is imperative that the requirements for pesticide businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides are clear and unambiguous. The 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 are as follows:

1. Amend the definition of “pesticide business location” to reflect the use of technologies when conducting business (e.g. sales, service, etc.), including cell phones, email, and websites.
2. Add the definition of the term “limited household use.” Currently, the regulations require that any person or business operating in Virginia that, in exchange for compensation, sells, stores, distributes, mixes, applies, or recommends the use or application of pesticides obtain a valid pesticide business license. An exemption to these requirements exists for “Merchants of limited quantities of non-restricted use pesticides who sell pesticides primarily intended for limited household use”; however, no definition exists for the term “limited household use.”
3. Add the definition of the term “multiple violations.” Currently, the regulations provide for the revocation of a business license for “Multiple violations of the Act or regulations pursuant thereto within a three-year period”; however, the term “multiple violations” is not defined.
4. Add the definition of the term “sale or sell.” Currently, the regulations are ambiguous as to the meaning of these terms. Because of the inherent safety considerations associated with pesticides, it is imperative that the requirements for pesticide business licensure are as clear and unambiguous as possible.

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 requirements for pesticide business 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 businesses seeking licensure. There are no known disadvantages to the public, 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.

This regulation 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 and rationale
10	N/A	N/A	The definition of “distribute” or “distribution” was derived from 40 CFR Section 152.3. This definition will provide clarity for registrants.
10	N/A	N/A	The definition of “limited household use” was developed in consultation with other states and examination of their laws and regulations. This definition will clarify the requirements for merchants who are exempt from pesticide business licenses under the Virginia Pesticide Control Act. This definition will provide clarity for registrants.
10	N/A	Currently, the definition of “pesticide business location” refers to a fixed	This change is meant to address the use of technologies when conducting business (e.g. sales, service, etc.),

		location or a pesticide business.	including cell phones, email, and websites while excluding locations used solely for storage of service vehicles, equipment, supplies, or telephone answering services. This definition has been amended in order to provide clarity for registrants.
10	N/A	N/A	The definition of “sale” or “sell” was taken from the Virginia Pesticide Control Act. This definition will provide clarity for registrants.
20 A	N/A	Currently, this section addresses the requirement for any person or business operating in Virginia to obtain a valid pesticide business license.	The changes are meant to address, more clearly, that any person or business which, in exchange for compensation, sells, stores, distributes, mixes, applies, or recommends the use or application of pesticides in Virginia, must obtain a valid pesticide business license. This section has been amended to provide clarity for registrants.
20 C	N/A	Currently, an application for a pesticide business license is made by submitting to the department a completed application form and a check or money order in the amount of the annual business license fee established by the Board.	The changes are meant to reference the requirement to submit evidence of financial responsibility referenced in Section 80 of this chapter. This section has been amended in order to provide clarity for registrants.
60 A	N/A	Currently, pesticide businesses that sell restricted use pesticides shall maintain a record of each restricted use pesticide sold and each sales record must contain the brand or common product name.	The change strikes the requirement to maintain a “brand or common product name” in a sales record and replaces that with “brand, trademark, or product name appearing on the product’s label.” This change promotes consistency with Section 30 of 2VAC5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, and has been made in order to provide clarity for registrants.
65	N/A	Currently, licensed pesticide businesses shall maintain a record of each pesticide applied and each application record must contain the brand or common product name.	The change strikes the requirement to maintain a “brand or common product name” in a sales record and replaces that with “brand, trademark, or product name appearing on the product’s label.” This change promotes consistency with Section 30 of 2VAC5-670, Rules and Regulations

			for Enforcement of the Virginia Pesticide Law, and has been made in order to provide clarity for registrants.
70	N/A	Currently, pesticide businesses shall maintain a record of each pesticide applied and each application record must contain the brand or common product name.	The change strikes the requirement to maintain a “brand or common product name” in a sales record and replaces that with “brand, trademark, or product name appearing on the product’s label.” This change promotes consistency with Section 30 of 2VAC5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, and has been made in order to provide clarity for registrants.
80 C	80 D	Currently, the statement regarding maintenance of minimum coverage and notification of the Board to any reduction of coverage is included in Subsection C.	The change strikes the statement regarding maintenance of minimum coverage and notification of the Board to any reduction of coverage in Subsection C and relocates it to Subsection D. This change has been made in order to provide clarity for registrants.