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Fast-Track Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-675 and 2 VAC 5-685
VAC Chapter title(s)	2 VAC 5-675, Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services 2 VAC 5-685, Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act
Action title	Fee amendments
Date this document prepared	July 23, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board of Agriculture and Consumer Services is authorized to adopt regulations establishing a fee structure for licensure, registration, and certification to defray the costs of implementing the Virginia Pesticide Control Act (Act). The proposed action seeks to remove the renewal fee for commercial applicator renewal certifications and registered technician renewal certifications. This action is expected to be noncontroversial. Current budget projections allow for the removal of the renewal fee while continuing to defray the cost of implementing the Act.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

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

“Commercial applicator” means any person who has completed the requirements for certification to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator found in Va. Code § 3.2-3900.

“Registered technician” means an individual who has satisfactorily completed the Board requirements for certification to apply general use pesticides, and to apply restricted use pesticides while under the direct supervision of a certified commercial applicator. Registered technicians render services similar to those of a certified commercial applicator, but have not completed all the requirements to be eligible for certification as a commercial applicator.

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

“Virginia Pesticide Control 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

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 July 20, 2021, the Board authorized staff to take any and all steps necessary to amend 2 VAC 5-675, *Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services*, and 2 VAC 5-685, *Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act*, to eliminate the renewal fee for certified commercial applicators and registered technicians.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The impetus for the change was a review of the current pesticide fee structure by the Board to determine if current fees provide adequate funding for VDACS’s pesticide program. The fee structure was last amended July 11, 2019. During the most recent amendment to the fee structure, the Board directed VDACS to reconvene the Regulatory Advisory Panel two years from the effective date of the fee changes to evaluate the fees and the revenue generated from those fees to determine if additional changes were

necessary. The proposed amendments eliminate certification renewal fees charged to industry and, as such, are expected to be noncontroversial and appropriate for the fast-track process.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency 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 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(7) of the Virginia Pesticide Control Act (Act) authorizes the Board to adopt regulations establishing a fee structure for licensure, registration, and certification to defray the costs of implementing the Act.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The agency has determined that current fees provide more than adequate funding for VDACS's pesticide program. The fees prescribed in 2 VAC 5-675 and 2 VAC 5-685 are utilized to operate VDACS's pesticide programs, which protect human health and the environment by ensuring the proper use of pesticides used to control pests that adversely affect crops, structures, health, and domestic animals. Pesticide program activities include the certification of approximately 24,000 pesticide applicators, licensing of approximately 3,000 pesticide businesses, registration of approximately 16,000 pesticide products, and conducting routine inspections and investigations. VDACS is able to ensure compliance with all applicable laws and regulations related to the use of pesticides, thereby protecting human health, while eliminating the fee for pesticide applicator renewals, which will support the economic welfare of the businesses currently responsible for paying these renewal fees.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed amendments will eliminate the certification renewal fee for (i) commercial applicators, which is currently \$100 every two years and (ii) registered technicians, which is currently \$50 every two years.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The proposed regulatory action is advantageous to the public and the regulated industry as the amended fee structure eliminates fees assessed on the regulated industry, thereby reducing the costs to pesticide applicators and pesticide businesses, while allowing for the continuation of VDACS’s pesticide program services, which protect human health and the environment by ensuring the proper use of pesticides used to control pests that adversely affect crops, structures, health, and domestic animals. Eliminating the pesticide applicator renewal fees does not add any additional regulatory requirements to pesticide applicators or pesticide businesses. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

The proposed amendments do not include any requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity is particularly affected by the proposed amendments.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and</p>	<p>The cost to the state to implement the proposed amendments is expected to be minimal, as there are no new requirements in the proposed amendments that would require extensive changes to VDACS’s current processes. There is a projected cost savings, as elimination of the renewal fee eliminates the costs</p>
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<p>c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>associated with depositing and processing the fees. In addition, outreach to the regulated industry would be incorporated into existing communications and outreach opportunities. The proposed amendments will result in an annual revenue loss of approximately \$600,000; however, the long-term projection is that the remaining revenue is sufficient to carry out the program's mission.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no cost or savings associated with the proposed amendments to the regulation to other state agencies. Section 3.2-3931 of the Code provides an exemption from certification fees for all state agencies, municipal corporations, or other governmental agencies. Additionally, the proposed amendments do not include any new requirements.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There is no direct benefit to agencies from this regulatory change.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There is no cost or savings associated with the proposed amendments to the regulation for localities. Section 3.2-3931 of the Code provides an exemption from certification fees for all state agencies, municipal corporations, or other governmental agencies. Additionally, the proposed amendments do not include any new requirements.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There is no direct benefit to localities from this regulatory change.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Pesticide applicators and pesticide businesses operating within the Commonwealth will be affected by the proposed amendments to the fee structure.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 3,000 licensed pesticide businesses and 17,000 certified pesticide applicators, including commercial applicators and registered technicians, in Virginia. VDACS estimates that the vast majority of the licensed businesses and employers of certified pesticide applicators are small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p>	<p>The proposed amendments will have the following cost savings for affected individuals and businesses (unless otherwise exempt from fees): 1. After initial certification as a commercial applicator, a decrease in cost of</p>

<p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>maintaining certification of \$100 every two years.</p> <p>2. After initial certification as a registered technician, a decrease in cost of maintaining certification of \$50 every two years.</p> <p>The proposed amendments will not result in additional reporting, recordkeeping requirements, or costs associated with the development of real estate for commercial or residential purposes; purchases of equipment or services or changes to the time required to comply with the requirements.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The changes will align the pesticide-related fees VDACS collects with its costs to administer the pesticide program.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Alternatives to the proposed regulatory action include no changes to the fees, or increasing, decreasing, or eliminating fees for pesticide business licenses or pesticide product registration. The Pesticide Fee Regulatory Advisory Panel created by the Board recommended the elimination of the fees for pesticide applicator renewals as the best option. If no changes are made to the fees, VDACS’s pesticide program’s funds would be significantly greater than what is necessary to carry out the mission of the program. Additional decreases to other pesticide-related fees would result in the program being underfunded in the coming years.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

Pesticides are used for the control of pests that adversely affect crops, structures, human health, and domestic animals. Pesticides can also cause harm because they are designed to prevent, destroy, repel, or mitigate pests. Given the risk associated with the application of pesticides to both human health and the environment, the use of pesticides is highly regulated at the federal and state level. VDACS’s pesticide programs protect human health and the environment by ensuring the proper use of pesticides. These programs include the certification of pesticide applicators, the licensing of pesticide businesses, the registration of pesticide products, and inspections and investigations to ensure compliance with all applicable laws and regulations. Exemptions from or less stringent requirements or a reduction in the

services provided by VDACS would not provide protection for human health and the environment. The proposed regulatory action seeks to reduce the fees paid by industry, thereby minimizing the adverse impacts to businesses. The proposed amendments ensure adequate funding to continue to carry out program services.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of and reason for your objection to using this process.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

Liza Fleeson Trossbach
Program Manager, Office of Pesticide Services
Virginia Department of Agriculture and Consumer Services
P.O. Box 1163, Richmond, VA 23218
Phone: (804) 371-6559
Fax: (804) 371-2283
Email: liza.fleeson@vdacs.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
675-30		<p>Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of \$100 and a biennial nonrefundable renewal fee of \$100 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. All certificates not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the applicator does not file an application for renewal of his certificate prior to COB June 30, the commissioner shall assess a late filing fee of 20% that shall be added to the renewal fee.</p>	<p>The proposed amendment eliminates the commercial applicator certification biennial renewal fee of \$100 and the late filing fee for renewals.</p> <p>The impact of the elimination of the renewal fee will decrease the cost to commercial applicators to maintain their pesticide applicator certification and reduce the revenue received by VDACS. The estimated reduction in annual revenue from this change is approximately \$386,100 per year.</p> <p>This amendment is intended to align the pesticide-related fees VDACS collects with its costs to administer the pesticide program.</p>
675-40		<p>Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of \$50 and a biennial nonrefundable renewal fee of \$50 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the application for renewal of any certificate is not filed prior to COB June 30, a late filing fee of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued.</p>	<p>The proposed amendment eliminates the registered technician certification biennial renewal fee of \$50.</p> <p>The impact of the elimination of the renewal fee will decrease the cost to registered technicians to maintain their pesticide applicator certification and reduce the revenue received by VDACS. The estimated reduction in annual revenue from this change is approximately \$235,625 per year.</p> <p>This amendment is intended to align the pesticide-related fees VDACS collects with its costs to administer the pesticide program.</p>
685-130		<p>This section establishes requirements for the renewal of private or commercial</p>	<p>The proposed amendment strikes the reference to the biennial certification fee.</p>

		applicator or registered technician certification and requires the payment of a biennial certification fee.	This amendment is needed to reflect the proposed amendments to eliminate certain certification renewal fees established in 2 VAC 5-675. These amendments are intended to align the pesticide-related fees VDACS collects with its costs to administer the pesticide program.
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