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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

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| Agency name | Board of Agriculture and Consumer Services |
| Virginia Administrative Code (VAC) citation | 2 VAC 5-405 |
| Regulation title | Regulations for the Application of Fertilizer to Nonagricultural Lands |
| Date | October 20, 2016 |

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services (Board) as a policy board. Section 3.2-3602.1 of the Code of Virginia authorizes the Board to adopt regulations to certify the competence of certain individuals who apply a product regulated under the Virginia Fertilizer Law (Va. Code § 3.2-3600 *et seq.*) to nonagricultural land.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The regulation, which Va. Code § 3.2-3602.1 requires the Board to promulgate, establishes the qualifications for certification as a certified fertilizer applicator and outlines the application process. The regulation also outlines the qualifications for trained applicators and recordkeeping requirements for the training records of a trained applicator. The agency determined these requirements are not unnecessarily burdensome and provide an important means of ensuring the proper training, certification, and recordkeeping for licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural lands. The regulation also provides a means of enforcing reporting requirements for certain fertilizer applications and is necessary in order to minimize the risk of environmental harm resulting from the improper application of fertilizers to nonagricultural land.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comments were received during the public comment period that followed the publication of the Notice of Periodic Review on September 5, 2016, and an informal advisory group was not formed for the purposes of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation is required by Va. Code § 3.2-3602.1 and protects public health by minimizing the risk of environmental harm resulting from the improper application of fertilizers to nonagricultural land. The regulation is clearly written and easily understandable.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The agency recommends that the regulation stay in effect without change because it provides an important means of ensuring the proper training, certification, and recordkeeping for licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural lands.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the

regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The agency determined these requirements are not unnecessarily burdensome and provide an important means of ensuring the proper training, certification, and recordkeeping for licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural lands. The regulation also provides a means of enforcing reporting requirements for certain fertilizer applications and is necessary to minimize the risk of environmental harm resulting from the improper application of fertilizers to nonagricultural lands. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses.

Regulations for the Application of Fertilizer to Nonagricultural Lands (2 VAC 5-405) does not appear to overlap, duplicate, or conflict with any federal or state law or regulation. The agency has determined that no change in the affected industry has occurred since the regulation was last amended in February 2012 that would necessitate the amendment or repeal of this regulation.