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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-675
VAC Chapter title(s)	Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services
Date this document prepared	June 26, 2020

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**.

Acronyms and Definitions

Define all acronyms used in this Report, 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.

"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.).

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 or 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 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(7) of the Code authorizes the Board to adopt regulations establishing a fee structure for licensure, registration, and certification to defray the costs of implementing the Act.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The agency has determined that no viable alternatives exist to achieve the purpose of 2 VAC 5-675, *Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services*.

The Act authorizes the Board to adopt regulations establishing a fee structure to defray the costs of implementation of pesticide related programs. The fees prescribed in 2 VAC 5-675 are assessed on (i) certified commercial applicators and certified registered technicians who apply pesticides in the Commonwealth; (ii) licensed pesticide businesses that manufacturer, sell, store, recommend for use, mix or apply pesticides in the Commonwealth; and (iii) registered pesticide products that are manufactured, distributed, sold, offered for sale, used, or offered for use in the Commonwealth. The collection of such fees are necessary to fund the operation of the agency’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. 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 the conduct of routine inspections and investigations, This regulation is the least burdensome alternative available to establish the fee structure for pesticide registrations, licenses, and certifications.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The agency did not receive any comments during the public comment period following the publication of the Notice of Periodic Review on April 27, 2020. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary for the protection of public health, safety, and welfare. The regulation establishes fees to obtain (i) a pesticide product registration, (ii) a commercial applicator or registered technician certification, and (iii) a pesticide business license. In order for the agency to continue to fund the operation of the Commonwealth’s pesticide programs, it is necessary to collect such fees. These programs are necessary to fulfill the licensure, registration, and certification requirements of the Act, which assist in ensuring the proper labeling of pesticide products and the proper training of individuals applying or recommending the use of pesticide products. This regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends that this regulation stay in effect without change. The regulation was amended in 2019 to ensure that the prescribed fees provide adequate funding for pesticide-related services.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The agency has determined that this regulation continues to be necessary as the fees established in the regulation are a significant source of the funds that support the Commonwealth’s pesticide programs. The fees established in this regulation were last increased in 2019 in consultation with a stakeholder advisory committee, and the agency has not received any complaints or comments regarding the regulation.

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. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last amended in 2019, and the agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate further amendments at this time.

