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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-319
<b>VAC Chapter title(s)</b>	Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability
<b>Date this document prepared</b>	October 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.*

"Apiary" means any place where one or more colonies of bees are kept.

"Apiary operator" means a person who operates an apiary and seeks to limit his liability for any personal injury or property damage that occurs in connection with his keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries, or appliances as provided for in § 3.2-4411.1 of the Code of Virginia.

"Board" means the Board of Agriculture and Consumer Services.

### 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 3.2-4411.1 of the Code authorizes the Board to adopt initial regulations to implement the provisions of this section and provides that beekeepers who following the best management practices established in the regulations shall not be liable for personal injury or property damage that occurs from his keeping and maintaining bees, bee equipment, queen breeding equipment, apiaries, or appliances.

Section 3.2-4401 of the Code authorizes the Board to establish regulations that suppress bee diseases by regulating the movement of bees and controlling or destroying disease reservoirs; require apiary identification; adopt colony strength standards for pollination services; promote the sale and distribution of bees and their products; and effectively administer and enforce the Virginia Beekeeping Law.

**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.*

A viable alternative to 2VAC5-319 *et seq.*, *Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability*, does not exist.

The purpose of the regulation is to provide the best management practices that an apiary operator must employ in order to be provided protection from liability for any personal injury or property damage that occurs in connection with keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries, or appliances. This regulation is the least burdensome approach to providing a limitation on liability as it determines those best management practices that are known to promote honey bee colony health while reducing the chances of stinging incidents associated with an apiary that an apiary operator must follow in order to limit the liability from operating such apiary.

**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.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Farm Bureau Federation (VFBF)	We believe the current regulations are sufficient. VFBF has no recommended changes for 2VAC5-319 but reserves the right to provide additional comment should regulatory changes be proposed.	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.

The agency did not form an informal advisory group to assist in this 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 outlines clearly written and easily understood best management practices that apiary operators can follow in order to limit their liability. The best management practices in the regulations not only safeguard the apiary operator by limiting his or her liability, but also protect the public health, safety, and welfare by including certain provisions that are intended to reduce the chances of stinging incidents associated with keeping and maintaining honeybees. The regulations also safeguard honeybee health and can increase survivability by preventing exposure to environmental stressors and establishing proper management strategies.

**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 is recommending that this regulation stay in effect without change, as this regulation is the only alternative for limiting the liability for a person owning or operating an apiary.

**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 is necessary in order to provide liability protection for those apiary operators that follow the best management practices in 2 VAC 5-319, *Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability*. There are no small business impacts, as a person is not required to comply with the provisions of this chapter unless he seeks to limit his liability as provided for in § 3.2-4411.1 of the Code.

The agency received one complaint in 2017 regarding 2 VAC 5-319, *Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability*. The complainant filed a petition for rulemaking requesting, in part, that the Board (i) provide a mechanism to offer public comment regarding the regulation via a regional apiary inspector; and (ii) establish provisions for short-term waivers, long-term waivers, and permanent exemptions from the best management practices included in the regulation. On December 7, 2017, the Board considered and subsequently denied the petition for rulemaking as Virginia’s Beekeeping Law does not provide authority to the Board to establish methods for a person to request amendments to the regulation. In addition, § 2.2-4007 of the Administrative Process Act establishes a formal process by which a person can request changes to a regulation. Virginia’s

Beekeeping Law does not provide authority to the Board to amend the regulation to allow for waivers or exemptions to provisions established in the regulation. The best management practices in the regulation are those that reduce risks associated with keeping honeybees and amending the regulation to allow for waivers or exemptions to a voluntary best management practice could provide liability protection for those operations that should not be afforded the limited liability.

The regulation does not overlap, duplicate, or conflict with federal or state laws. No significant changes to technology, economic conditions, or other factors have occurred that would necessitate amendments to this regulation. The agency has determined that the regulation is not unnecessarily burdensome or complex, especially considering that apiary operators are not required to comply with this regulation unless they choose to follow the best management practices in order to limit their liability. As such, the agency recommends that the regulation stay in effect without change.

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