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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	2 VAC 5-680
<b>Regulation title(s)</b>	Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act
<b>Action title</b>	Amendments to language to clarify current requirements and program practices and address federal requirements
<b>Date this document prepared</b>	April 21, 2015

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*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

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 planned 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 "operating in Virginia" 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 regulants' confusion and encourage compliance; (vi) amending the language of the recordkeeping requirements to be consistent with other

pesticide labeling requirements in this regulation; and (vii) revising the recordkeeping sections to reflect the changes previously mentioned.

## Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity 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 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 describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

The format and 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 following the merger of the former Pesticide Control Board with the Board of Agriculture and Consumer Services. Because of the inherent safety consideration 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 proposed 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. The agency does not anticipate any potentials issues that would need to be addressed during the regulatory process.

## Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Substantive amendments to the regulations are as follows:

1. Define the term "operating in Virginia" as used in 2 VAC 5-680-20 A in order to address the internet sale of pesticides.

2. 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.
3. 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 for use pesticides shall obtain a valid pesticide business license pursuant to this chapter. An exemption to these requirements exists for “*Merchants of limited quantities of nonrestricted use pesticides who sell pesticides primarily intended for limited household use*”; however, no definition exists for the term “limited household use”.
4. 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.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

No alternatives to the proposed regulatory action are available that would meet the essential purpose of the action. In addition, there are no less intrusive or less costly alternatives for small businesses to achieve the purpose of the regulation.

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of alternatives to this action, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to:

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Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time. A panel will not be used.