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Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5- 675
Regulation title(s)	Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services
Action title	Fee review
Date this document prepared	December 12, 2018

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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. The proposed action seeks to adjust the current fee structure to reflect actual costs of program implementation and includes a fee increase for commercial pesticide applicator certification, registered technician certification, pesticide business licensure, and pesticide product registration.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"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

Please 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 December 6, 2018, the Board of Agriculture and Consumer Services (Board) took final action to adopt amendments to 2 VAC 5-675, Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’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 Code authorizes the Board to adopt regulations establishing a fee structure for licensure, registration, and certification to defray the costs of implementing the Virginia Pesticide Control Act.

Purpose

Please 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 format and a large portion of the content of 2 VAC 5-675, Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services, were first implemented in July 1990. The regulations were amended in September 1994 and March 2009 and renumbered in October 2012 following the merger of the former Pesticide Control Board with the Board. The current certification fees

for pesticide applicators and licensing fees for pesticide businesses have been in place since 1990. The current pesticide product registration fee has been in place since 1999.

The agency has determined that current fees do not provide adequate funding for pesticide-related services. The fees prescribed in 2 VAC 5-675 are utilized to operate 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 21,000 pesticide applicators, licensing of approximately 3,000 pesticide businesses, registration of approximately 15,000 pesticide products, and the conduct of routine inspections and investigations. In order to ensure compliance with all applicable laws and regulations related to the use of pesticides, thereby protecting both human health and the environment, it is imperative that fees provide adequate funding for these services.

Substance

Please 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 substantive changes include an increase to certification fees for commercial pesticide applicators and registered technicians, an increase to licensure fees for pesticide businesses, and an increase in registration fees for pesticide products. The proposed amendments to the regulation will:

1. Increase the annual product registration fee from \$160 per year to \$225 per year;
2. Increase the certification fee for commercial applicators from \$70 every two years to \$100 every two years;
3. Increase the certification fee for registered technicians from \$30 every two years to \$50 every two years; and
4. Increase the annual pesticide business license fee from \$50 per year to \$150 per year.

The only change made to this regulatory action since the previously published stage is the separation of the Pesticide Registered Technician certification application into (i) an initial certification application and (ii) an application used by those pursuing retesting or reinstatement.

Issues

Please 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 will ensure the continuation of program services that protect human health and the environment by ensuring the proper use of pesticides to control pests that adversely affect crops, structures, health, and domestic animals. While increasing fees, these actions do not add any additional

regulatory requirements to pesticide applicators, pesticide businesses, or registrants of pesticide products. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to the previously reported information. There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

No other state agencies will be particularly affected by the proposed amendments. No locality will be particularly affected by the proposed amendments.

Certified applicators, pesticide businesses, and pesticide registrants/manufacturers will be affected by the proposed amendments.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
John M Henrietta, UVa and Ivy Horticultural Services	Expressed support for increased fee for pesticide applicator certification.	The agency thanks Mr. Henrietta for his interest in the proposed regulation.
Samantha Dunn, VA Tech Student	Expressed lack of support for implementation of fees. States that there are certifications and licenses that someone applying pesticides must receive, that there are many regulations in place, and that adding fees would add another hoop for businesses,	The agency thanks Ms. Dunn for her interest in the proposed regulation. The agency would like to clarify that the proposed amendments adjust current fees and do not establish new fees. The agency has determined that current fees do not provide adequate funding for pesticide related services. In order to ensure compliance with all applicable laws and

	farmers, and commercial applicators to jump through.	regulations related to the use of pesticides, it is imperative that the fees collected provide the funding necessary for these services.
Alan Musselman, Weed Man	Expressed opposition to raising fees on business. Supports looking at waste and fraud in government as a better source for revenue.	The agency thanks Mr. Musselman for his interest in the proposed regulation. The agency would like to clarify that the Office of Pesticide Services is a nongeneral fund program, thus, all program revenues come from fees collected for applicator certification, licensing of pesticide businesses, and the registration of pesticides.
Virginia Crop Production Association (VACPA)	Does not object to fee increase. Feels strongly that excess cash funds in the Office of Pesticide Services should not be accumulated. Rather, a stakeholders' group should reconvene in two years to discuss the possibility of lowering the fees should this be occurring	The agency thanks VACPA for its interest in the proposed regulation. VDACS does intend to convene an advisory committee two years after the effective date of the amended regulation to determine if pesticide related fees are appropriate to both ensure adequate funding for the agency's pesticide programs and prevent excessive increase in the cash balance in the Pesticide Control Fund.
Virginia Agribusiness Council (VAC)	Expressed support for the fee increase conditional upon the funding being used to make the program more efficient moving forward. Requested the establishment of an advisory stakeholders group to reevaluate the fees if, and when, the program becomes sustainable again.	The agency thanks VAC for its interest in the proposed regulation. VDACS does intend to convene an advisory committee two years after the effective date of the amended regulation to determine if pesticide related fees are appropriate to both ensure adequate funding for the agency's pesticide programs and prevent excessive increase in the cash balance in the Pesticide Control Fund.
Aaron Hobbs, Responsible Industry for a Sound Environment (RISE) and Bucky Kennedy, Southern Crop Production Association	Expressed support for the proposed fee increases as long as funds from pesticide fees remain accessible to the Office of Pesticide Services and are not taken from the office to support Virginia's general fund or other activities unrelated to pesticides. Asks VDACS to ensure that the special projects the pesticide office supports are truly within the office's purview and recommends VDACS implement the fee increases in phases.	The agency thanks RISE and Southern Crop Production Association for their interest in the proposed regulation. The Virginia Pesticide Control Act specifies the powers and duties of the Board of Agriculture and Consumer Services to include contracting for projects and entering into agreements to promote the purposes of the act. Thus, any related activities are limited to projects deemed within the office's purview. The agency considered the phased implementation of fees and determined the increased administrative burden would negatively impact business processes and ultimately postpone adequate funding for program services.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
Forms	N/A	No amendments to the Forms section were included in prior stages. Currently, registered technicians wishing to apply for initial certification as well as retesting/reinstating/recertifying complete application form VDACS-07212.	The proposed change results in two separate application forms: (1) Pesticide Registered Technician Application/General Training Requirements for Registered Technicians (Initial Certification) [VDACS 07212-A]; and (2) Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination (Retest/Reinstate) [VDACS-07212-B].	The change is intended to reduce confusion to the regulated industry and make the application process for registered technicians mirror the commercial applicator process, which utilizes two separate forms.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of updated requirements
20	N/A	Currently, the regulation states that “[e]very pesticide product which is to be manufactured, distributed, sold, offered for sale, used or offered for use within the Commonwealth shall be registered with the commissioner.”	The proposed change strikes the phrase “which is to be” to reflect the current language found in Va. Code § 3.2-3914 regarding registration requirements.
20	N/A	Currently, the annual fee for registering each pesticide product is \$160.	The proposed change increases the annual fee for registering each pesticide product to \$225. This fee adjustment, in conjunction with the

			other proposed fee adjustments, is intended to provide adequate funding for pesticide related services.
30	N/A	Currently, the fee for any person applying for a certificate as a commercial applicator is an initial nonrefundable fee of \$70 and a biennial nonrefundable renewal fee of \$70 thereafter. In addition, the fee for reexamination is \$70 and is nonrefundable.	The proposed change increases the initial fee for any person applying for a certificate as a commercial applicator to \$100 and increases the biennial renewal fee to \$100. In addition, the fee for reexamination is increased to \$100. These fee adjustments, in conjunction with the other proposed fee adjustments, are intended to provide adequate funding for pesticide related services.
40	N/A	Currently, the fee for any person applying for a certificate as a registered technician is an initial nonrefundable fee of \$30 and a biennial nonrefundable renewal fee of \$30 thereafter. In addition, the fee for reexamination is \$30 and is nonrefundable.	The proposed change increases the initial fee for any person applying for a registered technician certificate to \$50 and increases the biennial renewal fee to \$50. In addition, the fee for reexamination is increased to \$50. These fee adjustments, in conjunction with the other proposed fee adjustments, are intended to provide adequate funding for pesticide related services.
50	N/A	Currently, the fee for any pesticide business that distributes, stores, sells, recommends for use, mixes, or applies pesticides is a nonrefundable annual fee of \$50.	The proposed change increases the annual fee for any pesticide business that distributes, stores, sells, recommends for use, mixes, or applies pesticides to \$150. This fee adjustment, in conjunction with the other proposed fee adjustments, is intended to provide adequate funding for pesticide related services.
Forms	N/A	Currently, registered technicians wishing to apply for initial certification as well as retesting/reinstating/recertifying complete application form VDACS-07212.	The proposed change results in two separate application forms: (1) Pesticide Registered Technician Application/General Training Requirements for Registered Technicians (Initial Certification) [VDACS 07212-A]; and (2) Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination (Retest/Reinstate) [VDACS-07212-B]. The change is intended to reduce confusion to the regulated industry and make the application process for registered technicians mirror the commercial applicator process, which utilizes two separate forms.