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

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-350
Regulation title	Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law
Date	October 19, 2015

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 (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.

This regulation serves the purpose of enforcing the Virginia Commission Merchant Law (Va. Code § 3.2-4709 *et seq.*), which ensures that commission merchants interact properly with producers of farm products.

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.

A viable alternative to 2 VAC 5-350 does not exist. If this regulation were not in place, Virginia tobacco producers would have no practical recourse against a commission merchant who does not properly pay or account for tobacco handled for the producer. Retaining the current regulation represents the least burdensome alternative for commission merchants, while retaining a mechanism to assure tobacco producers that they will be paid.

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.

The agency received no comments during the public comment period and did not form an informal advisory group to assist in this 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.

The licensing and bonding of commission merchants and the requirements of this regulation provide protection to tobacco farmers by assuring prompt and accurate payment for their tobacco. As such, this regulation protects the economic welfare of Virginia tobacco producers. This regulation is clearly written and easily understood.

Result

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

The agency recommends that this regulation stay in effect without change. In the period since this regulation was last evaluated, there have been no significant changes that would necessitate amending this regulation.

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 has determined that there is a continued need for this regulation. Tobacco auction warehouses that serve as agents for tobacco farmers on the basis of a fee or commission are required to obtain a license under the Commission Merchants Law. Many farms that grow tobacco are small businesses and the licensing and bonding of commission merchants and the requirements of this regulation, by which commission merchants must abide, provide protection to tobacco farmers by assuring prompt and accurate payment for their tobacco. There have been no complaints or comments received from the public regarding this regulation. The regulation is not complex and does not include any unnecessary or overly burdensome requirements with which small businesses must comply.

This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. No significant changes to technology, economic conditions, or other factors have occurred since the previous periodic review of this regulation in 2011 that would necessitate modifications to this regulation. The agency recommends that the regulation stay in effect without change.