



Virginia  
Regulatory  
Town Hall

Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Agriculture and Consumer Services
<b>VAC Chapter Number:</b>	2 VAC 20-40
<b>Regulation Title:</b>	Rules and Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Department of Agriculture and Consumer Services under the Authority of the Virginia Pesticide Control Act
<b>Action Title:</b>	Amend
<b>Date:</b>	May 10, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This regulation establishes: (1) requirements of pesticide businesses to obtain an annual business license and specifies exemptions from the licensing requirement; (2) requirements of each licensed pesticide businesses to keep records of who purchased restricted-use pesticides and of how those pesticides are used; (3) requirements of each licensed pesticide business to provide proof of financial responsibility, as a means of compensating persons who may suffer legal damages because of pesticide-related mishap by the license holder, and provides several options

for meeting this requirement; and (4) conditions for revocation, suspension, and denial of a pesticide business's license.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

Section 3.1-249.30 of the Code of Virginia (1950), as amended, provides the legal authority of the Pesticide Control Board (Board) to license businesses that manufacture, sell, store, recommend for use, mix or apply pesticides. The authority is discretionary. In addition, other sections of the statute, 3.1-249.46, 3.1-249.49 and 3.1-249.50, provide the Board both mandatory and discretionary authority to promulgate regulations in support of Section 3.1-249.30. The regulation does not exceed the minimum requirements of the state mandate.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

The Department published its notice in The Virginia Register of Regulations on February 12, 2001 advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). The agency did not receive any public comments concerning this regulation. An informal advisory group was not formed for the purpose of assisting with this periodic review.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

The specific and measurable goals of the regulation are to (1) protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (2) establish standards for the licensure of pesticide businesses (and for the

denial, suspension, or revocation of the license); and (3) establish record keeping requirements for licensed pesticide businesses, as a means of ensuring that pesticides are stored and used safely.

The regulation is effective in that 2,096 pesticide businesses were licensed in calendar year 2000.

The regulation is necessary to protect the health, safety and welfare of citizens because it ensures that all businesses applying pesticides for compensation employ an individual who is knowledgeable of (1) pesticide laws and regulations, (2) potential hazards of pesticides to man and the environment, and (3) the safe distribution, use and disposal of pesticides. The regulation requires a minimum amount of liability insurance to protect the citizens of the Commonwealth from any pesticide misapplications or accidents. In addition, the regulation requires pesticide businesses to keep and maintain records of the sale of restricted use pesticides and commercial applicators to keep and maintain records of the application of restricted use pesticides.

The regulation is clearly written and easily understood but several sections of the regulation need to be amended to reflect statutory changes made in 1993 and 1995.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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No alternatives to this regulation exist to protect human health, the environment, or the public from fraudulent commercial pesticide applications. Without pesticide business licensing, no uniformity or safety criteria would exist that would be enforceable under state authority.

## Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

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The agency recommends the regulation be amended to be compatible with changes to the statute in the areas of charging a penalty fee, financial responsibility and definition of pest management consultant. The agency also recommends clarifying what is a separate outlet or location of a pesticide business. In addition, the agency recommends amending the regulation to require licensed pesticide businesses to maintain records of all pesticide applications as required by commercial applicators under 2 VAC 20-40-70 and report pesticide accidents and incidents as required of certified applicators under 2 VAC 20-51-170.

Amending the regulation to clarify what is a separate outlet or business location will enable the regulated community to more clearly understand the intent of the regulation and statute. It will reduce the administrative requirement of determining the meaning of a separate outlet or location

in response to inquiries from the regulated community and ensure proper licensing of pesticide businesses.

Commercial applicators are currently required to maintain records of each restricted use pesticide. Amending the regulation to require licensed pesticide businesses to maintain records of all pesticide applications will assist with the investigation of pesticide misuse complaints and enforcement of the Virginia Pesticide Control Act (Act).

Certified applicators are currently required to report pesticide accidents or incidents in 2 VAC 20-51-170. Amending the regulation to require licensed pesticide businesses to report pesticide accidents or incidents will protect the health and safety of Virginia citizens.

### Substance of Proposed Action

*Please detail any changes that would be implemented.*

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2 VAC 20-40-10 establishes definition of terms. The agency proposes to amend the definition of pest management consultant by changing the reference to restricted use pesticides to all pesticides. In addition, the agency proposes to add a definition for a pesticide business location to clarify what is meant by “each separate outlet or location”.

2 VAC 20-40-20 establishes the general requirement for all pesticide businesses. In paragraph H, the agency proposes to amend the date for charging a penalty for the late renewal of a business license to the day following the expiration date of the license or April 1 of each year.

2 VAC 20-40-80 establishes financial responsibilities for licensed pesticide businesses. In paragraph A, the agency proposes to delete references to a surety bond and self-insurance, requiring a liability insurance policy as the sole acceptable evidence of financial responsibility. In paragraph E, the agency proposes to amend the minimum amounts of financial liability to those required by the Act; \$100,000 for property damage, and \$100,000 for personal injury to or death of one person, and \$300,000 per occurrence. Accordingly, the agency proposes to delete the definition of bond in 2 VAC 20-40-10.

The agency proposes to add a new VAC section outlining record keeping requirements by licensed pesticide businesses. Licensed pesticide businesses will be required to maintain a record of all pesticide applications for a period of two years. Each record will contain the information required of commercial applicators in 2 VAC 20-40-70.

The agency proposes to add a new VAC section outlining the reporting of pesticide accidents or incidents by licensed pesticide businesses. Licensed pesticide businesses will be required to report pesticide accidents or incidents as required of certified applicators in 2 VAC 20-51-170.

**Family Impact Statement**

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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Unless otherwise discussed in this report, the amendments to this regulation will have no impact upon families.