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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- 675
<b>Regulation title(s)</b>	Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services
<b>Action title</b>	Amendments
<b>Date this document prepared</b>	December 27, 2016

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 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 conduct a comprehensive review of the current fee structure and adjust the current fee structure, if appropriate, to reflect actual costs of program implementation.

### 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.*

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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(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 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.*

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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 of Agriculture and Consumer Services. 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, it is imperative that fees provide the funding necessary for these services.

The pesticide industry in the U.S. is highly regulated and is aware that regulations undergo reviews and are updated periodically. In the event the fees are increased, the agency anticipates some individuals would express concern over increased costs for regulants.

### 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.*

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Substantive changes being considered include an increase in one or more fee schedules for certification of pesticide applicators, licensing of pesticide businesses, and registration of pesticide products.

### 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.*

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No alternatives to the proposed regulatory action are available.

## 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.*

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The agency is seeking comments on this regulatory action, including but not limited to (i) ideas to be considered in the development of this proposal, (ii) the costs and benefits of alternatives to this proposal, and (iii) 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:

Liza Fleeson Trossbach  
Program Manager, Office of Pesticide Services  
Virginia Department of Agriculture and Consumer Services  
P.O. Box 1163, Richmond, VA 23218  
Phone: (804) 371-6559  
Fax: (804) 371-2283  
Email: [liza.fleeson@vdacs.virginia.gov](mailto:liza.fleeson@vdacs.virginia.gov)

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 regulatory advisory panel will be appointed to assist in the development of this regulatory proposal. Should you be interested in serving on the panel, please contact Liza Fleeson Trossbach as indicated above.

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.

## Periodic review/small business impact review announcement

*If you wish to use this NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.*

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.