



## 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</b>	2 VAC 5-685
<b>Regulation title</b>	Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act
<b>Action title</b>	Amendments to certain definitions and certification requirements for pesticide applicators, as well as clarifying language to reflect current program practices
<b>Date this document prepared</b>	July 29, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The Board of Agriculture and Consumer Services is authorized to adopt regulations to establish training, testing, and standards for certification of commercial pesticide applicators. The proposed action seeks to update the regulation and align it with current agency practices by (i) amending certain definitions; (ii) deleting the requirement that individuals who fail the certification examination must wait a prescribed number of days before retaking the examination; (iii) revising the process by which persons who cannot read or understand pesticide labels can be certified to apply restricted use pesticides on their own property; (iv) clarifying the on-the-job training requirements for prospective applicators; (v) establishing numeric identifiers for the existing categories of private applicator certification; (vi) prescribing the minimum requirements for board-approved recertification training programs; and (vii) clarifying the requirements for the issuance of a certificate pursuant to a reciprocal agreement with another state. The proposed action is intended to ensure the competence of pesticide applicators through consistent standards of training, testing, and certification.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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(4) of the Code authorizes the Board to adopt regulations to require individuals who sell, store, or apply pesticides commercially are adequately trained and observe appropriate safety practices. This authority is discretionary.

### Need

*Please detail 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, delineate any potential issues that may need to be addressed as the regulation is developed.*

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The format and much of the current content in 2 VAC 5-685, *Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act*, were first implemented in March 1999. The regulations underwent a substantive change in December 2008, renumbering in October 2012 following the merger of the former Pesticide Control Board with the Board of Agriculture and Consumer Services, and a minor fast-track amendment in September 2013. Because of the inherent safety risks associated with the application of pesticides, it is imperative that all training, testing, and certification standards for individuals who apply pesticides be as clear and unambiguous as possible. The proposed amendments are intended to improve the clarity of the regulation by updating the regulation to align it with current agency practices.

The pesticide industry in the United States is highly regulated, and pesticide applicators know that certification standards are continually being reviewed and updated. The agency does not expect any potential issues as the regulation is amended.

### Substance

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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The proposed amendments to the regulation are as follows:

1. Amend the definition of the terms "Under the direct supervision of" and "Under the direct on-site supervision of" to clarify that the individual be a certified commercial applicator. Currently, the regulations call for the individual providing instruction and control to others who apply pesticides must be a certified applicator.

2. Remove the requirement that individuals who fail to pass the certification examination must wait a specific number of days to retake the exam. Currently, individuals must wait ten days to retake the exam after failing the exam for the first time and 30 days after failing the exam the second or subsequent times. We intend to propose that individuals who fail to pass the exam may, at any time, reapply to take the exam and be placed in the work queue along with other pending applications.
3. Revise the process by which persons who cannot read or understand pesticide labels can demonstrate competence and obtain certification as private applicators to apply restricted use pesticides on their own properties. Currently, in order for an individual to obtain a waiver of the literacy requirement, a pesticide investigator must make a recommendation to the Board regarding the waiver. We intend to propose that the individual petition the Board directly for the waiver.
4. Eliminate inconsistent language regarding the period of time during which individuals seeking certification as registered technicians must receive on-the-job-training.
5. Establish a category number for Registered Technicians, in a manner similar to the category codes already being used in other pesticide application specialties.
6. Formalize the minimum training requirements for Board-approved training for the recertification of commercial applicators.
7. Clarify that a person seeking pesticide applicator certification in Virginia on a reciprocal basis must hold current certification by the reciprocating state or federal agency.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

No alternatives to achieve 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 on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 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 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) 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 (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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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It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.