



Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-390
Regulation Title:	Rules and Regulations for the Enforcement of the Virginia Seed Law
Action Title:	Amend
Date:	September 5, 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 specifications and guidelines to assure quality seeds are available for sale in the Commonwealth. The regulation adopts the Rules for Testing Seed of the Association of Official Seed Analysts and establishes the methods of inspections, sampling, and testing for all seed offered for sale in the Commonwealth.

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.

The regulation is authorized by §3.1-271 of the Code of Virginia (1950), as amended. While the wording of this section appears to be discretionary, the section does authorize the Board of Agriculture and Consumer Services to promulgate such regulations for the administration and enforcement of the Virginia Seed Law. As an example, §3.1-275.5 of the Code of Virginia mandates the Board shall name in the regulations each kind of seed that is a second generation hybrid recognized as having agronomic value which may be sold as a hybrid. In order for the agency to properly carry out this mandate, regulations to adopt said specifications are deemed necessary in order to give the full intent and meaning of the Virginia Seed Law.

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 agency received no public comment on this regulation as the result of the Notice of Periodic Review published in *The Virginia Register of Regulations* on June 18, 2001, to provide notice of opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). No informal advisory group was formed for the purposes of assisting in the 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 this regulations are (1) to protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; and (2) to ensure that seed is truthfully labeled.

This regulation provides the framework for a fair and competitive market where businesses can thrive and prosper by providing a quality product to the consumer. This regulation also prevents noxious and prohibited weed seeds from becoming an economic deterrent in the Commonwealth. The regulation also provides the consumer with labeling information that accurately describes the quality of the seed so that the consumer can make a valued comparison of one packer's seed

to another packer's seed of the same kind. The regulation is clearly written and easily understood by the individuals and entities affected.

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.

The agency considered and rejected the following alternatives:

- 1) Allow voluntary compliance without regulation. This alternative was rejected due to the severe implications regarding reduced economic development, negative environmental impact, reduced fair competition and the human safety concerns.
- 2) Depend upon the seed industry for self-policing to assure seed is labeled truthfully as to variety and to supply seed with the minimum number of noxious weed seeds. This alternative was rejected due to the history of voluntary compliance or self-policing failing in those states without proper regulations. The lawn and turf industry continues to suffer in a number of states that do not address noxious weed seeds and correct variety labeling.
- 3) Depend upon the seed industry to supply Virginia with the same quality of seed as supplied to neighboring states having appropriate regulations. This alternative was rejected due to the importance of each state assuming responsibility for regulating activities within its borders. What is allowed or not allowed through regulation in other states is not necessarily acceptable to the Commonwealth's continuing agricultural economic development. In states with no regulations or other means of enforcement, seed quality is decisively lowered. Lower quality seed generates higher production costs for weed control and seed populations. This reduces the marketability of agricultural products and the return of the farmers' investments, and results in increased prices to the consumer.
- 4) Assume all imported seed is an acceptable kind, variety and meeting minimum requirements for planting. This alternative was rejected due to the fact that Virginia receives more than 80% of its seed from other states and/or countries. The imported seed includes grass, vegetable, flower and special purpose seeds.

Virginia seed importers support this regulation because of the consistency with surrounding states, it protects croplands, and promotes economic development of the Commonwealth's agricultural industry.

Recommendation

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

It is the agency’s recommendation that this regulation be amended.

Substance of Proposed Action

Please detail any changes that would be implemented.

Amend Section 2VAC5-390-10. Methods of Inspecting, Sampling, Testing, and Application Tolerances, item number 4 to provide clarification. (“For seed peanuts the testing tolerance ~~will be~~ is five percent on the minimum germination standard.”)

Delete Section 2VAC5-390-60. Weed Seeds. It has been determined that this section of the regulation which grants an increased tolerance limit for weed seed in certain kinds of seed is no longer needed.

Delete Section 2VAC5-390-100. Origin. It has been determined that this section of the regulation which grants an exemption to lawn or turf grass mixtures in pre-packaged containers of 50 pounds or less is no longer needed.

Add a section to the regulation to require the labeling of transgenetic seed.

Add a section to allow the sale and distribution of certain second-generation hybrid (F₂) seed.

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.

Unless otherwise discussed in this report, this regulation has no impact upon families.