



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-380
Regulation Title:	Rules and Regulations for Enforcement of the Virginia Agricultural Products Dealers Licensing and Bonding Law
Action Title:	Amend
Date:	May 8, 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 operating practices for dealers of agricultural products and requires (1) dealers of agricultural products to issue receipts to producers; (2) contracts between dealers of agricultural products and producers to be filed with the Commissioner; and (3) dealers of agricultural products to be bonded.

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 3.1-722.13 authorizes the Board of Agriculture and Consumer Services to promulgate regulations for the administration of the Dealers in Agricultural Products Law. The authority given to the Board related to the promulgation of regulations is discretionary.

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 comment 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 this regulation are:

- (1) The protection of the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth;
- (2) The establishment of time frames under which both dealers and producers must act to receive protection under the law. The law protects the producer by allowing him to make a claim against the dealer's bond for non-payment and protects the dealer by requiring that the producer make a claim within five days of discovering the dealer's failure to pay or properly account for produce.

(3) The clarification of the function of the license to operate as a dealer in agricultural products by declaring, at the time of applying for a license, the conditions under which the dealer intends to operate, and the license issued shall be limited to the conditions declared.

The goal of this regulation is to assure that producers of agricultural products receive accurate, prompt payment from dealers contracted to sell on their behalf. The agency's role under this regulation is to assure that all dealers operating in the Commonwealth are identified, licensed with the agency, and post monetary surety in the form of a bond to protect the interest of the producer. Due to the effectiveness of the regulation, the agency has greatly reduced and in most, if not all, cases eliminated any monetary loss to producers of agricultural products related to non-payment by dealers.

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 has considered and rejected repealing this regulation. In the absence of the regulation, Virginia producers would have no other recourse against a dealer who does not properly pay or account for produce handled for the producer.

The second alternative considered was to require that dealers pay cash at the farm for all produce handled for a Virginia producer. This was rejected as too burdensome for the dealer and contrary to normal banking and business practices.

The regulation addresses the methods a dealer may use to handle and notify Virginia producers concerning each producer's account. The regulation also addresses procedures for notifying a producer if the final buyer rejects the produce and how the produce will be handled and paid for after the notice of rejection is received. The final buyer for the produce is normally located out of Virginia and the Virginia producer would have no other recourse for obtaining payment from an out of state buyer other than through the dealer.

Retaining the current regulation with one amendment represents the least burdensome alternative to dealers while retaining a mechanism for Virginia producers to be assured they will be paid for their produce. The regulation serves to clarify provisions within the Code and provides guidance to individuals affected. A less burdensome alternative that retains the ability to protect the economic welfare of Virginia producers does not exist.

Recommendation

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

VDACS recommends the regulation be amended to allow a Virginia producer of agricultural products additional time to file a complaint against a dealer that has not properly paid or accounted for products handled on behalf of the producer.

Substance of Proposed Action

Please detail any changes that would be implemented.

Amend 2 VAC 5-380-50 as follows: “Any producer aggrieved by the failure of a dealer to comply with 2 VAC 5-380-30 and 2 VAC 5-380-40 must file a complaint with the department within [delete"five" and insert "forty-five"] days after discovery of the failure.”

The time frame of five days is too restrictive since a dealer has thirty days to pay the producer for the produce. The additional time will allow the parties to negotiate a settlement agreeable to both parties without having to request assistance from the Department. This will reduce the number of complaints received by the Department that are later settled by the involved parties. Some producers allow a dealer to report all transactions at the end of the growing season if the dealer handles the grower’s entire crop. The proposed change will allow a producer, especially a producer using an independent accountant, a more reasonable time to discover the dealer has not complied with the requirements of the law.

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.