



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Agriculture and Consumer Services
<b>VAC Chapter Number:</b>	2 VAC 5-400
<b>Regulation Title:</b>	Rules and Regulations for the Enforcement of the Virginia Fertilizer Law
<b>Action Title:</b>	Amend
<b>Date:</b>	June 4, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The purpose of the present regulatory action is to amend the sections of the existing regulation relating to (1) definitions; (2) plant nutrients; (3) labels; (4) investigational allowances and penalties; (5) minimum plant food allowed; and (6) sampling and analysis procedures to further improve clarity and to achieve compatibility with legislation approved by the 1994 General Assembly.

No substantive changes have been made since publishing the proposed action.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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The Board of Agriculture and Consumer Services adopted 2 VAC 5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law, on May 16, 2002.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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The regulation is authorized by §3.1-106.4 of the Code of Virginia (1950), as amended. While the wording of this section appears to be discretionary, the section does authorize the Board to promulgate such regulations as may be necessary to give the full intent and meaning of this chapter. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-106.4>) Hence, §3.1-106.7 (C) of the Code of Virginia (1950), as amended, mandates (shall) the use of methods of sampling and analysis adopted by the Commissioner or the Board. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-106.7>) §3.1-106.13 (A) of the Code of Virginia (1950), as amended, mandates (shall) the use of investigational allowances and assessments for deficiencies as established by regulation. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-106.13>) In order for the agency to properly carry out these mandates, regulations to adopt definitions, records, manufacturing practices, and the distribution and storage of regulated products prior to final sale are deemed necessary in order to give the full intent and meaning of the Virginia Fertilizer Act. The regulation as currently written meets the minimum requirements of the state mandate.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state law and/or federal law.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is*

*essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of this regulation is to ensure that 1) regulated products are properly formulated and labeled; 2) the manufacturer's recommendations for use of these regulated products are in accordance with methods and procedures which enhance the safety, quality and quantity of the food supply for both humans and animals; 3) guidelines are established for the methods used to provide verification of labeling claims for regulated products; and 4) assessments against the manufacturer of a product which is deficient when compared to its guarantee, or which is not properly labeled and thus has caused a negative economic impact on a consumer, are paid to the consumer when he may be identified.

The goal of the regulation is to protect the health and welfare of citizens by properly labeling the contents of regulated products such as fertilizer-pesticide mixtures. The regulation requires the product label to show the proper use and application rates for the product so that improper applications, which might be harmful to persons, pets, livestock or the environment, are diminished.

The amendments serve to make the regulation uniform with the Uniform Rules and Regulations of the Association of American Plant Food Control Officials (AAPFCO). All states and Canada are encouraged by AAPFCO and the National Association of State Departments of Agriculture to promote uniformity and decrease barriers of trade by adopting the AAPFCO uniform regulations. The amendments will assist Virginia based manufacturers of regulated products in competing outside of the Commonwealth of Virginia since the Virginia regulations will mirror regulations in other states.

The regulation serves to clarify provisions within the Code of Virginia and provides guidance to individuals affected. The regulation provides a uniform system of labeling regulated products so consumers can use the products without causing harm to themselves, animals or the environment. The regulation also serves to prevent unscrupulous manufacturers from intentionally marketing products that will cause economic harm to Virginia agricultural and consumers by providing less nutrient value than what is guaranteed on the label.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

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Substantive changes to existing sections include:

1. Reducing the amount of primary and secondary nutrients required in fertilizer to allow for the use of organic and new types of fertilizer. The existing regulation prevents these fertilizers from distribution in Virginia.
2. Reducing the assessments for deficiencies in secondary elements more closely follows the modern agricultural practice of applying fewer nutrients in split applications to more closely meet the nutritional needs of the crop.
3. Amended labeling requirements will allow regulated product manufacturers to use and guarantee new forms of nutrients such as slowly available and organic forms of nitrogen. This will allow more forms of regulated products distributed in Virginia, which will increase competition in the industry while providing more label information for consumers to make informed choices between products.
4. Adopting sampling and analysis procedures that are scientifically based and that are consistent with other states guarantees that Virginia regulatory officials will treat the regulated industry in a fair and equitable manner.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The advantages of the amendments include: 1) the public will have greater access to regulated products that are more precisely labeled to protect the environment; 2) the industry will be able to market products without being burdened by unnecessary regulation; 3) the regulations will be easier to read and understand for industry and regulators; and 4) the regulation will be more uniform with other states allowing for increased interstate competition in the industry.

There are no disadvantages to the public or the Commonwealth.

## Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

There have been no changes to the text of the proposed regulation since its publication.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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The Agency received comments from one citizen. The writer states, “Allowing sale [plant food] by volume rather than [sp. than] weight just introduces confusion.” The Agency’s position is that the proposed amendment will enable the sale of liquid fertilizers by volume or weight. This amendment brings the regulation into agreement with the 1994 amendments to the definition of quantity statement as contained in the Virginia Fertilizer Act. This amendment does not impede the established method of sale for agricultural plant food material (bulk/farming operations).

The writer also states, “Allowing the plant food amount to be reduced is allowing price increases.” The intent is to allow products on the market with lower levels of active ingredient to be sold. The Agency will not set the price for the products. If the consumer believes the prices for these products is too high, they should not buy them. The Agency will attempt to ensure that the amount of ingredients will be as stated on the label so the consumer gets the product he or she believes he or she is getting.

The writer continues, “If this is to provide for reduced cost through increased competition it can only come from more companies doing business in Virginia. Where are they coming from? And do you have a specific statement from any company not presently doing business in the state that they will come?” The intent of this regulation is not to promote or impede industry from entering commerce in the Commonwealth. The reason for the amendment is to make the regulation consistent with the Virginia Fertilizer Act (§3.1-106.1 et seq.). The Act and regulation establish rules that allow businesses to compete on a level playing field. The Act and regulation protect consumers by requiring enforcement action when minimum requirements are not met and when product is not as labeled.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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2VAC5-400-10 – The proposed amendments will reflect the correct citation of the Code of Virginia for the Virginia Fertilizer Act and the Virginia Pesticide Control Act.

2VAC5-400-20 – The proposed amendments will allow for new forms of fertilizer to be sold with guarantees for secondary and minor elements below the minimum percentages currently allowed in other fertilizers.

2VAC5-400-30 – The proposed amendments will allow fertilizers to be sold by net volume for liquids and for some soil amendments rather than just by net weight. It will also allow manufacturers to use and claim on the label new forms of fertilizer ingredients such as slowly available plant nutrients.

2VAC5-400-50 – The proposed amendments will reduce the assessment for deficiencies in secondary and minor elements from three times to two times the value of the deficiency.

2VAC5-400-80 – The proposed amendments will reduce the minimum amount of plant food allowed in a product from 18% to 3.0% for chemical fertilizers and 1.5% for organic fertilizers. Allowing increased industry competition and the marketing of more organic products to Virginia consumers. Less-concentrated fertilizers are easier and safer to use by consumers. Most organic fertilizers do not contain 18% plant food and are currently prohibited from the market.

2VACS5-400-90 – This new section will require the Commissioner to use scientifically based and uniform procedures for sampling, preparing and analyzing fertilizer samples. This provides for fair and equitable regulatory treatment of the industry.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the 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, this regulation has no impact upon families.