Virginia Department of Planning and Budget
Economic Impact Analysis

2 VAC 5-390 Rules and Regulations for the Enforcement of the Virginia Seed Law
Department of Agriculture and Consumer Services
Town Hall Action/Stage: 5930 / 10094
October 10, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation

The Board of Agriculture and Consumer Services (Board) proposes to 1) establish that cotton seeds sold in the Commonwealth must have a germination rate of at least 60 percent and 2) state that cotton seed that tests below the germination rate stated on the label can be sold, provided that the tested germination rate is at least 60 percent and the seed is relabeled to indicate the actual germination rate.

Background

Code § 3.2-4008 requires the germination rate of each seed product sold in Virginia to be listed on the product's label.[2]

According to the Virginia Department of Agriculture and Consumer Services (VDACS), Virginia cotton growers voiced concerns to the agency that they believe that the cotton seed that they are buying and planting is germinating at a substandard rate or that it is germinating at a rate

[1] Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.
[2] See https://law.lis.virginia.gov/vacode/title3.2/chapter40/section3.2-4008/

below that which is labeled on the seed packaging. Virginia cotton growers also expressed their concern that most other cotton-growing states in the Southeastern United States require minimum germination rates for cotton, which may result in the offering for sale in Virginia of cotton seed that failed to meet the minimum germination requirements in those other states. In most of these states, the minimum germination rate for cotton seed is 60 to 70 percent. VDACS determined that the most appropriate means of addressing these concerns is utilizing the regulatory process to establish a minimum germination rate for cotton seed sold in Virginia.

To determine if seed is in violation of the labeled germination rate, VDACS inspectors take samples of the seed when the seed is in a seed dealer's warehouse and before it has been distributed to farmers. The sample is submitted to the VDACS Seed Laboratory for analysis. Seed analysis for germination can take several weeks as laboratory staff complete the grow out germination tests. Once the germination tests are complete, seed that is in violation of the labeled germination rate and has not been distributed to growers is placed under "stop sale." Such seed may be relabeled by the seed manufacturer with the new germination rate and sold or the seed can be returned to the seed manufacturer. Thus, stating in the regulation that cotton seeds that test below the germination rate stated on the label can be sold if the seeds are relabeled to indicate the actual germination rate reflects current policy, with the exception that seeds with true germination rates below 60 percent may no longer be sold under the proposed regulation.

Though seed companies may sell cotton seeds that test below the germination rate stated on the label if the seeds are relabeled to indicate the actual germination rate, there is a penalty for selling seed at a germination rate below the labeled rate. The penalty assessment for variance from label guarantee is equivalent to one percent of the amount of money the person from whom the sample was taken receives from the sale of the seed or $100 (whichever is greater) on each lot of seed or portion found in violation.[3]

Estimated Benefits and Costs

The fine for selling cotton seeds that germinate at below the rate stated on the label is small, and is not likely on its own to deter seed companies. Purchasing and planting seeds that have lower than anticipated germination is costly for cotton growers in that less cotton is produced than expected. The proposal to not allow the relabeling and sale of seeds that VDACS

[3] See https://law.lis.virginia.gov/vacode/title3.2/chapter40/section3.2-4014/

Seed Laboratory analysis indicates has germination below 60 percent disincentivizes seed sellers from selling substandard seeds in Virginia. Thus, cotton growers in Virginia may benefit.

Businesses and Other Entities Affected

The proposed amendments affect the approximate 245 cotton producers in Virginia, as well as the five cotton seed companies selling cotton seed in the Commonwealth.[4] According to VDACS, all five cotton seed companies are based out of state. The agency estimates that all Virginia cotton producers are small businesses, but is unable to determine if the cotton seed companies are small businesses.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity based in the Commonwealth, even if the benefits exceed the costs for all entities combined.[6] As no Virginia-based entity is specifically expected to have an increase in net cost or reduction in net benefit due to the proposed amendments,[7] no adverse impact is indicated.

Small Businesses[8] Affected:[9]

The proposed amendments do not appear to adversely affect Virginia small businesses.

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[4] Data source: VDACS.

[5] Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

[6] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[7] It is possible that a Virginia cotton grower may wish to purchase seeds with below 60 percent germination rate if they are priced well below higher germinating seeds, but no such individual is specifically known, and the agency has indicated that at least most growers support the amendments. No objections were received at the Notice of Intended Regulatory Action stage.

[8] Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

[9] If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a

Localities[10] Affected[11]

The proposed amendments particularly affect the cotton-growing regions of Virginia, in particular the Cities of Chesapeake and Suffolk and the Counties of Accomack, Brunswick, Charles City, Dinwiddie, Greensville, Henrico, Isle of Wight, New Kent, Northampton, Prince George, Southampton, Surry, and Sussex.[12] No costs for local governments are expected.

Projected Impact on Employment

The proposed amendments do not appear likely to substantively affect total employment.

Effects on the Use and Value of Private Property

The proposal may lead to more consistent higher yielding cotton, which could increase the value of some cotton growing businesses. The proposed amendments do not affect real estate development costs.

proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[10] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[11] § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[12] Source: VDACS.