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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5 - 390
VAC Chapter title(s)	Rules and Regulations for the Enforcement of the Virginia Seed Law
Action title	Amendments to Establish a Minimum Germination Rate for Cotton Seed
Date this document prepared	February 15, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

Section 3.2-4001 of the Virginia Seed Law authorizes the Board of Agriculture and Consumer Services to adopt regulations governing: (i) methods of sampling; (ii) methods of inspection; (iii) methods of testing in the laboratory and in the field; (iv) the establishment of standards; (v) the establishment of code designations; and (vi) the establishment of tolerances for agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds, and screenings.

Rules and Regulations for the Enforcement of the Virginia Seed Law (2 VAC 5-390 et seq.) provides specific requirements for seeds sold in Virginia, including minimum germination rates for vegetable, flower, and peanut seeds. Currently, cotton seed sold in Virginia has no minimum standard for germination rate. The proposed action seeks to determine an appropriate minimum germination rate for cotton seed sold in Virginia and establish such minimum germination rate in *Rules and Regulations for the Enforcement of the Virginia Seed Law*.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” means the Board of Agriculture and Consumer Services.

“Germination” means the percentage, by count, of seed under consideration capable of producing normal seedlings in a given period of time and under conditions specified by regulations.

“Law” means the Virginia Seed Law (Va. Code § 3.2-4000 et seq.).

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory action was not prompted by a mandate but was initiated in response to stakeholder feedback.

Virginia cotton growers voiced concerns regarding low cotton seed germination rates, and VDACS determined that the most appropriate means of addressing these concerns is utilizing the regulatory process to establish a minimum germination rate in *Rules and Regulations for the Enforcement of the Virginia Seed Law*.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Section 3.2-109 of the Code of Virginia (Code) establishes the Board as a policy board.

Section 3.2-4001 of the Law authorizes the Board to establish standards, such as minimum germination rates, for agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds, and screenings sold in the Commonwealth.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is necessary to protect the economic welfare of Virginia’s cotton farmers by ensuring that they are purchasing cotton seed that meets or exceeds an established minimum germination rate. The Law currently requires the germination rate to be listed on the label of all seed products sold in Virginia, however not all seed products have a minimum germination rate established in *Rules and Regulations for the Enforcement of the Virginia Seed Law*. Establishing a minimum germination rate for cotton seed will ensure that the cotton seed offered for sale in Virginia meets or exceeds a minimum germination rate standard thereby enabling Virginia’s cotton growers to maximize cotton yield and profit.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Through this regulatory action, the Board is considering whether to establish a minimum germination rate for cotton seed sold in Virginia. Over the past several years, Virginia’s cotton growers have reported that much of their planted cotton seed has had low germination rates. Low germination can negatively impact plant density and lead to a reduction in the yield of harvested cotton. The establishment of a minimum germination rate ensures that cotton seed meets or exceeds a minimum germination standard so that proper plant population density in the field can be achieved and maximum production realized. Without an established minimum cotton seed germination rate, cotton seed with substandard germination rates can be sold in the Commonwealth, thereby negatively impacting Virginia’s cotton producers.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternatives to the proposed regulatory action are available that would meet the essential purpose of the action. In addition, there are no less intrusive or less costly alternatives for small businesses to achieve the purpose of the regulatory change. Many Virginia cotton farms are small businesses and will be positively impacted by a minimum germination rate for cotton seed.

**Periodic Review and
Small Business Impact Review Announcement**

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email, or fax to:

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102 Governor Street, Room LL54
Richmond, VA 23219
Fax: (804) 371-7793
Email: David.Gianino@vdacs.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

The Board will not hold a public hearing on the proposed amendments to this regulation.