



Virginia  
Regulatory  
Town Hall

## Periodic Review and Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Department of Agriculture and Consumer Services
<b>VAC Chapter Number:</b>	2 VAC 5-470
<b>Regulation Title:</b>	Rules and Regulations Pertaining to the Registration and Certification of Grape Nursery Stock
<b>Action Title:</b>	Repeal
<b>Date:</b>	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 a voluntary program requiring participants to meet certain criteria for the establishment and maintenance of grape nursery stock nurseries and requires the Department to issue certificates for grape nursery stock that meet the requirements.

### 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.*

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The authority for this regulation is contained in §3.1-28, §3.1-188.35, and §3.1-188.41 of the Code of Virginia (1950), as amended.

In Section 3.1-28 (Request of parties financially interested), the Commissioner "...is authorized, when requested by parties financially interested in a lot of any agricultural products, to investigate and certify the quality, condition, grade or other classification of such agricultural product, under such rules as the Board of Agriculture and Consumer Services may prescribe ..."

Section 3.1-188.35 (Rules and Regulations) states "... the Board shall promulgate rules and regulations as are necessary for the efficient execution of this article ..." (Article is referring to Article 7, Plants and Plant Products Inspection Law.)

Section 3.1-188.41 (Commissioner may inspect plants, etc.) states "Any person growing or possessing any plants or plant products or other substance or thing may have such inspected by applying to the Commissioner for a special inspection...the Commissioner may comply with the request...and shall issue to the applicant a certificate showing the condition found."

The language "is authorized ... to investigate and certify," "may inspect plants, etc., on request" and "may comply" infer a discretionary aspect to the Commissioner's decision to establish and administer a program of this voluntary nature. The only mandatory language occurs as "shall promulgate ... rules and regulations" and "shall issue... a certificate" when a request for participation has been received and the Commissioner has decided to comply with the request.

The scope of this regulation is to allow the Commissioner of Agriculture and Consumer Services (hereinafter "the Commissioner") or duly appointed official to administer a program for the registration and certification of grape nursery stock when requested. The voluntary program requires that participants meet requirements for the establishment and maintenance of grape nursery stock nurseries. The program also 1) requires the Commissioner to issue certification tags for grape nursery stock that meets the requirements of the rules and regulations; 2) implements the "Virginia Certified Grape Nursery Stock" program; 3) makes provision for the

Commissioner or designated official to test grape nursery stock for the presence of designated pests, and requires participants to pay a \$100.00 application fee annually, 5% of gross sales receipts of all grape nursery stock sold between July 1 and June 30, and an inspection fee due at time of registration (for mother block - \$100.00/1000 vines, for increase block - \$35.00/acre, for nursery block - \$120.00/acre); and 4) requires that the Commissioner appoint members to the Viticultural Technical Advisory Committee to advise the Department on additions, deletions or modifications to the program.

### 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.*

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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.*

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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, and (2) to increase the marketability of a specific commodity; grape seedlings.

The concept of certified, virus-free grape nursery stock attracted only one participant since this regulation was adopted in 1985. Virginia grape nursery stock growers have shown no interest in participation in this voluntary program for over ten years. This lack of interest is attributed to the realization that virus-free certified grape nursery stock does not bring any economic benefit when offering the stock for sale. Grape nursery stock that is not certified as virus-free must still meet pest cleanliness requirements or "apparent disease-free" status for interstate movement as required by the Plants and Plant Products Inspection Law, Sections 3.1-188.32 through 3.1-

188.49, Code of Virginia, 1950, as amended. Since other states do not require specific virus-free certification and there is no economic incentive in the marketplace, it is recommended that this regulation be repealed. Repeal of this regulation will not negatively impact Virginia's grape nursery stock growers. This regulation is not considered essential to protect the health, safety or welfare of citizens. Although the regulation is clearly written and understandable, it has not generated sufficient participation to warrant its continuation.

### 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.*

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The Plants and Plant Products Inspection Law, Sections 3.1-188.32 through 3.1-188.49, Code of Virginia, 1950, as amended, requires that grape nursery stock meet pest cleanliness requirements or "apparent disease-free" status for interstate movement. Since this routine certification meets other states' virus-free requirements, there is no economic incentive for growers to invest in this registration and certification program. Therefore, no other alternative to this regulation is needed.

### Recommendation

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

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Due to the lack of participation by grape nursery growers in the voluntary certification program, the agency recommends repealing this regulation.

### Substance of Proposed Action

*Please detail any changes that would be implemented.*

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The entire regulation will be repealed.

### 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.*

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Unless otherwise discussed in this report, the repeal of this regulation will have no impact upon families.