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Final Regulation 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	July 8, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action seeks to establish a minimum germination rate of 60 percent for cotton seed sold in Virginia. 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, and 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, the regulations do not provide for a minimum standard germination rate for cotton seed sold in Virginia.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Board of Agriculture and Consumer Services.

"Department" or "VDACS" means the Virginia Department 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.).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On May 22, 2025, the Board of Agriculture and Consumer Services adopted final amendments to 2 VAC 5-390, *Rules and Regulations for the Enforcement of the Virginia Seed Law*.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the information reported in the "Mandate and Impetus" section of the Agency Background Document submitted for the proposed stage of this regulatory action.

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 with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

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, and lawn and turf seeds; mixtures of such seeds; and screenings sold in the Commonwealth.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The proposed regulatory action protects 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 of each seed product sold in Virginia to be listed on the product’s label; however, not all seed products have a minimum germination rate established in Rules and Regulations for the Enforcement of the Virginia Seed Law. Thus, cotton seed can currently be sold in Virginia at any germination rate, so long as that rate appears on the product’s label and is accurate.

Over the past several years, Virginia’s cotton growers have reported that 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. Many cotton producing states in the Southeastern United States currently have regulations establishing a minimum germination rate for cotton seed. In most of these states, the minimum germination rate for cotton seed is 60 to 70 percent.

Establishing a minimum germination rate for cotton seed will ensure that the cotton seed offered for sale in Virginia meets or exceeds 60 percent, thereby enabling Virginia’s cotton growers to maximize cotton yield and profit.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

Through this regulatory action, the Board is establishing a minimum germination rate of 60 percent for cotton seed sold in Virginia. In addition, the amendments to the regulation allow cotton seed that does not meet the labeled germination rate for that seed to be relabeled and sold with the correct germination rate, as determined by germination tests conducted by VDACS’s Seed Laboratory, provided such germination rate is 60 percent or higher.



Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.

The primary advantages of the proposed amendment will be for Virginia cotton growers, most if not all of whom are small businesses, as it will ensure that the cotton seeds that they purchase will meet or exceed a minimum germination standard, which will increase the growers' plant population density and production. The proposed amendment would only disadvantage cotton seed sellers that offer for sale cotton seeds that fall below the minimum germination rate. VDACS does not expect requiring a minimum germination rate of 60 percent to appreciably change cotton seed sellers' business operations or production costs. Under the proposed amendments to the regulations, cotton seed with mislabeled germination rates above 60 percent may be relabeled and sold with the correct germination rate, which would advantage both sellers and buyers.

The proposed regulations have no disadvantages to the Commonwealth as VDACS already has the capacity to sample and conduct germination tests on agricultural seed sold in Virginia.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There is no federal minimum germination rate for cotton seed. Thus, there are no requirements more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the information previously reported in the "Agencies, Localities, and Other Entities Particularly Affected" section of the Agency Background Document submitted for the proposed stage of this regulatory action. No other agency, locality, or entity is particularly affected by the proposed amendments to this regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Lewis Everett	Supports minimum germination rate of 60% as this will protect cotton producers and guarantee the integrity of the seed they plant.	The agency concurs with the comment received from Mr. Everett.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
2 VAC 5-390-10	N/A	N/A	*The Department shall not apply a tolerance to cotton for agricultural seed when the seed’s germination rate is less than the minimum germination rate for cotton for agricultural seed.	The amendment provides that the testing tolerance set forth in the Association of Official Seed Analysts’ Rules for Testing Seeds (Rules for Testing Seeds) shall not be applied to cotton seed that has a germination rate, as determined by the Department, below 60 percent. Eliminating the tolerance on cotton seed with a germination rate below 60 percent prohibits the sale or distribution of such seed that, with the tolerance applied, would be eligible for sale or distribution yet below the established germination rate.
	2 VAC 5-390-190 B	Subsection B as published in the proposed stage is	Subsection B in the final stage provides that cotton seed that has a germination	This amendment is intended to clarify that cotton seed with a germination rate less than

		subsection C in the final stage.	rate, as determined by the Department, less than 60 percent shall not be offered for sale, sold, or distributed in Virginia.	60 percent shall not be sold in Virginia.
	2 VAC 5-390-190 C	Subsection C in the final stage was subsection B as published in the proposed stage. This subsection provides that a licensee may relabel and distribute certain cotton for agricultural seed if the seed is relabeled with the germination rate determined by the Department.	*At the final stage, the Board proposes to amend this subsection to provide that a licensee may relabel and distribute certain cotton for agricultural seed if the seed is relabeled with the germination rate determined by the Department and this germination rate, without a tolerance applied, is at least 60 percent.	This provision will prohibit the relabeling and subsequent sale or distribution of cotton seed with a germination rate of less than 60 percent.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
2 VAC 5-390-10		Provides that the method of inspecting, sampling, and testing seeds and the application of tolerances shall be in accordance with the Rules for Testing Seeds and establishes specific exceptions.	Provides that tolerances established in the Rules for Testing Seeds shall not be used for cotton seed when the germination rate of such cotton seed, as determined by the Department, is below the minimum rate established in 2VAC5-390-190 A. This will prohibit the sale or distribution of cotton seed that the Department

			determines to be below the minimum germination rate established in 2VAC5-390-190 A.
N/A	2 VAC 5-390-190 A	Not applicable	Establishes a minimum germination rate of 60 percent for cotton seed sold in Virginia. This will require that cotton seed sellers offer for sale cotton seed that has a germination rate of at least 60 percent and aligns Virginia's minimum germination rate requirement with that of other cotton producing states.
N/A	2 VAC 5-390-190 B	Not applicable	Prohibits the distribution, sale, or offer for sale of cotton seed that, when tested by the Department, has a germination rate below 60 percent.
N/A	2 VAC 5-390-190 C	Not applicable	Allows for the relabeling and sale of cotton seed that tested below the germination rate stated on the label of the cotton seed, provided the germination rate as determined by the Department, without the tolerance established in Rules for Testing Seeds, is at least 60 percent. This will prohibit relabeling of cotton seed for sale or distribution that tested below the minimum germination rate of 60 percent, but with the tolerance applied would have been above the minimum germination rate and allowed to be sold or distributed.