



Virginia  
Regulatory  
Town Hall

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

<b>Agency Name:</b>	Agriculture and Consumer Services
<b>VAC Chapter Number:</b>	2 VAC 5-440
<b>Regulation Title:</b>	Rules and Regulations for Enforcement of the Virginia Pest Law- Cotton Boll Weevil Quarantine
<b>Action Title:</b>	Amend
<b>Date:</b>	December , 2000

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 restricts the movement of regulated articles, such as seed cotton, gin trash, and used cotton harvesting equipment, that may harbor the boll weevil to prevent the reintroduction of the boll weevil into Virginia and other non-infested states by the use of inspections, certificates, permits, compliance agreements, and treatments, if necessary.

This regulation requires all cotton farm operators in Virginia to participate in the eradication program, which includes reporting of acreage planted in cotton and field locations, compliance with all cotton boll weevil regulations, and payment of per-acre fees to support the trapping of all cotton fields. It also prohibits non-commercial cotton from being planted in Virginia unless the grower applies for and receives an exemption to grow cotton.

### 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 legal authority for this regulation is contained in §§3.1-188.23 of the Code of Virginia (1950), as amended.

The scope of the mandate is that the Board of Agriculture and Consumer Services must quarantine the Commonwealth or any portion thereof if the Board determines that a quarantine is necessary to prevent or retard the spread of a pest into, within, or from the Commonwealth. This mandate requires mandatory participation by all cotton operators in Virginia. Cotton operators must report all cotton acreage at their local Farm Service Agency office and pay a fee that is based on the reported cotton acreage. Noncommercial cotton shall not be planted unless the grower applies for and receives an exemption from VDACS. Movement of regulated articles must be approved by VDACS.

### 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 September 11, 2000 advertising the opportunity to comment on this regulation pursuant to Executive Order

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.*

The goal of this regulation is to prevent the reinfestation of Virginia's cotton crop by the cotton boll weevil. By conducting surveys in cooperation with the Southeastern Boll Weevil Eradication Foundation, VDACS is able to determine the efficacy of this regulation. Since 1997, there have been no boll weevils detected in Virginia.

The eradication of the cotton boll weevil and the enforcement of the quarantine, which ensures that the boll weevil does not re-infest Virginia, provide an alternate crop that enhances the economic conditions for growers in eastern and southern Virginia. Since the eradication of the boll weevil in Virginia, the acreage planted in cotton has increased from approximately 300 acres in 1978 to over 107,000 acres in 2000. The benefit of the eradication and continued exclusion of the boll weevil has been estimated by researchers at North Carolina State University at approximately \$75.00 per acre per year in increased land values, increased cotton yields, and reduced pesticide use.

The eradication and exclusion of the boll weevil enhances the quality of the environment by eliminating the need for approximately seven pesticide applications per year on cotton. Prior to the eradication of the boll weevil, there were more pesticides applied per acre of cotton than to any other crop.

The eradication and continued exclusion of the boll weevil is also responsible for the resurgence of the industry associated with cotton production. When the cotton boll weevil quarantine was implemented in 1977, there were no cotton gins operating in Virginia. By 1999, the number of cotton gins in Virginia had increased to six. The re-emergence of cotton has also been responsible for increases in economic activities for the purchase of cotton equipment and the contracting of services or equipment necessary to produce, gin and market cotton. If the quarantine were not in place, all cotton, lint, seeds or cotton harvesting equipment would have to be fumigated or treated in an approved manner before being transported into a regulated area.

The continued monitoring, required by the Virginia Cotton Boll Weevil Quarantine, is necessary to prevent the re-establishment of the pest and ensure Virginia cotton remains free of the boll weevil. The administration and enforcement of the quarantine will be necessary until the pest is eliminated from the United States and there is no threat of reintroduction. The continued resurgence of the cotton industry with the associated economic benefits is dependent upon the maintenance of a boll weevil free state.

The regulation is clearly written and easily understandable by the individuals and entities affected

## 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.*

The agency considered the alternative of privatizing the functions of the regulation. The agency believes, however, that extending to the private sector the power to prohibit imports and exports, which is a fundamental power of government, might prove difficult.

Each year the agency, along with the Southeastern Boll Weevil Eradication Foundation, reviews the previous year's activities, including costs for monitoring and controlling for boll weevil infestations, accepted EPA-approved spraying practices, and the results of the eradication and monitoring efforts. In each year's review, the Department solicits ideas for better ways to run the quarantine program. Cotton grower input is requested each year on aspects of the program. Input is also received from the Farm Service Agency, the Virginia Tech Cooperative Extension Service, and cotton industry representatives to facilitate a more efficient, cost-effective program. Each year the grower assessment is adjusted to reflect the actual costs of monitoring for the weevil in Virginia.

The agency believes the regulation is the least burdensome and intrusive mechanism available to prevent re-infestation by the cotton

## Recommendation

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

VDACS recommends the current regulation be reviewed for effectiveness and clarity of language relating to penalties, exemptions, and reporting and filing deadlines. VDACS also recommends the current regulation be amended to allow liens to be placed on the cotton crops of those producers who do not pay their fees. VDACS also recommends recognition of the Virginia Cotton Boll Weevil Eradication Foundation.

Amending the quarantine to allow VDACS to place a lien on the cotton will reduce the administrative and legal problems of collecting from individuals who do not pay the legally assessed program costs. Currently the only legal recourse in the quarantine is to destroy the crop and bill the grower for the cost of destroying his crop. By placing a lien on the crop, the

Department would be assured the grower paid the program costs and the grower would not be faced with having his crop destroyed or significant legal fees.

Currently, there are approximately 500 cotton growers in the state and all would be impacted by the amendments to the quarantine. The costs of the program, which is paid by the grower, would not change but the penalties for late filing of acreage would be reduced.

Section 3.1-188.27 of the Virginia Pest Law was amended by the 2000 General Assembly to allow the Commissioner to cooperate and officially recognize grower organizations. The recognition of an official Virginia cotton grower organization would give the Virginia cotton farm operators a grower representative on the Board of the Southeastern Boll Weevil Eradication Foundation to voice their opinions and concerns as well as to cooperate in an official capacity with VDACS.

### Substance of Proposed Action

*Please detail any changes that would be implemented.*

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Section 4.C. of this regulation establishes penalties imposed on farm operators for the late payment or non-payment of fees.

The agency proposes to reduce the fee assessed to farmers for late payment from \$10.00 per acre to \$5.00 per acre.

Under the current regulation, farm operators that do not pay their fees and are subsequently found in violation of the Virginia Cotton Boll Weevil Quarantine will have their crop destroyed for nonpayment. To gain compliance by the farm operator for the payment of assessments, the agency proposes to place a lien on the farm operator's cotton crop instead of destroying the crop.

A section will be added to the existing regulation recognizing the Virginia Boll Weevil Eradication Foundation, Inc. as the official grower organization that represents the interests of Virginia's cotton growers in matters pertaining to the eradication of the boll weevil.

### 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 amendments to this regulation will have no impact upon families.