



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-440
Regulation title	Rules and Regulations for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine
Action title	Amend regulation to reflect program's current operation
Date this document prepared	December 14, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

2 VAC 5-440 *et seq.*, *Rules and Regulation for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine*, establishes a quarantine that is necessary to assist in preventing the cotton boll weevil from re-infesting Virginia's cotton growing areas. Additionally, this regulation provides the procedures growers must follow as required participants in the Boll Weevil Eradication and Exclusion Program (Program). The proposed amendments will update this regulation to reflect the current operation of the Program as well as the agency's current cotton boll weevil quarantine enforcement activities.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"FSA" means the United States Department of Agriculture, Farm Service Agency.

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

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 3.2-109 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services (Board) to adopt regulations in accordance with Title 3.2 of the Code of Virginia regarding agriculture, animal care, and food.

Section 3.2-703 of Virginia’s Tree and Crop Pests Law (Va Code § 3.2-700 *et seq.*) authorizes the Board to quarantine the Commonwealth or any portion thereof when the Board determines such action is necessary to prevent or slow the spread of a pest into, within, or from the Commonwealth. The cotton boll weevil quarantine was promulgated under this authority of the Board.

On December 6, 2012, the Board adopted proposed amendments to *Rules and Regulations for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine (2 VAC 5-440 et seq.)* and authorized staff to take all actions necessary to publish the proposed amendments in the Register of Regulations.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The substance of this regulation was last amended in 2004. The agency has determined that this regulation should be amended to more accurately reflect current practices and procedures related to the Program as well as the agency’s current cotton boll weevil quarantine enforcement activities. The Program and the cotton boll weevil quarantine assist in preventing the re-infestation of Virginia’s cotton growing areas by the boll weevil, thereby protecting the economic welfare of citizens.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The regulation will be amended to more accurately reflect current practices and procedures related to the Program as well as the agency’s current cotton boll weevil quarantine enforcement activities.

The regulation currently includes an outdated mailing address for the agency. The proposed amendments will remove this information. The regulation currently requires that fees to participate in the Program must be paid by cotton producers prior to July 1 of each year and directs that the fees will be collected by FSA. FSA no longer collects these payments. The proposed amendments to the regulation will reflect this change in the program and replace the payment due date of July 1 with a more general due date of 30 days from the date of the invoice that VDACS now generates. Additionally, the agency intends to revise the penalties for late payments and acreage underreporting. Currently, the penalties in the regulation are \$5.00 per acre. The agency believes this penalty is excessive, particularly in light of the fact that the fees for 2011 and 2012 were \$1.00 per acre and \$0.50 per acre, respectively. The proposed amendments eliminate the current requirement that a grower submit a financial statement when requesting authorization to delay payment of the program fees he owes. The proposed amendments also eliminate the subsection regarding refunds in the event of emergency or hardship as this subsection was relevant when the program fee was collected prior to harvest. Currently, growers now pay the program fee at or near the time of harvest, thereby eliminating the need for a refund provision.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The proposed amendments will update the provisions of the regulation to reflect the Program’s current operation. Additionally, the proposed amendments will clarify provisions of the current regulation that are difficult to understand. As such, one advantage to the public and the Commonwealth of the proposed regulatory action is a regulation that is easier to read and understand.

The proposed amendments reduce the penalties for late payments and acreage underreporting from prescribed amounts that are excessive in light of the current program fees to a percentage of the program fee. This reduction in penalties is another advantage to the public.

This regulatory action poses no disadvantage to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The federal government has not issued a cotton boll weevil quarantine.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will bear a disproportionate material impact as a result of the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to

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Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including	The agency does not expect to incur any additional costs as a result of the amendments to the
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(a) fund source, and (b) a delineation of one-time versus on-going expenditures.	regulation.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	Localities will incur no costs associated with the proposed amendments to the regulation.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	<p>The proposed amendments will reduce the amount of penalties that a cotton grower will be required to pay for the late payment of his program fee or should he underreport his cotton acreage.</p> <p>The proposed amendments to the regulation will reduce the penalties for late payment of the program fee from \$5.00 per acre to 10% of the total fee due.</p> <p>The proposed amendments to the regulation will reduce the penalties for underreporting cotton acreage from \$5.00 per acre to 10% of the program fee due on the unreported acreage. The program fee for 2012 was \$0.50 per acre.</p>
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	The agency estimates an average of five cotton growers may be subject to late payment or underreporting penalties per year. Virginia has approximately 375 cotton growers, all of which are small businesses.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	The proposed amendments to the regulation will not result in new compliance costs for any entity.
Beneficial impact the regulation is designed to produce.	The proposed amendments to the regulation are intended to reduce the penalties associated with the regulation and to update the regulation so that it reflects the Program’s current operation and is easier to understand.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

No viable alternative to the cotton boll weevil quarantine exists, as this quarantine is necessary to assist in preventing the re-infestation of Virginia's cotton growing areas by the boll weevil.

The intended regulatory action will update this regulation to reflect the current and cost-effective operation of the Boll Weevil Eradication and Exclusion Program as well as the agency's current cotton boll weevil quarantine enforcement activities.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This quarantine is necessary to assist in preventing the re-infestation of Virginia's cotton growing areas by the boll weevil. This regulatory action will update the regulation to reflect the current operation of the Boll Weevil Eradication and Exclusion Program, which has been streamlined since the regulation was last amended.

Small business impact review result

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The quarantine established by this regulation is necessary to assist in preventing the re-infestation of Virginia's cotton growing areas by the boll weevil. The agency has not received any complaints or comments from the public concerning this regulation. The provisions of the regulation are not unnecessarily complex. This regulation does not duplicate or conflict with a federal or state law or regulation. The intended regulatory action will update this regulation to more accurately reflect current practices and procedures related to the Boll Weevil Eradication and Exclusion Program as well as the agency's current cotton boll weevil quarantine enforcement activities.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The agency did not receive any comments during the public comment period following the publication of the Notice of Intended Regulatory Action.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

The proposed regulatory action will have no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	N/A	Definitions	The proposed amendments to the definitions section are intended to clarify the regulation.
40	N/A	This section establishes the requirement that cotton growers participate in the Boll Weevil Eradication and Exclusion Program. This section establishes the process by which growers	The non-substantive amendments to this section are intended to clarify the requirements of this section.

		report their cotton acreage and pay their program fees.	
40 A	N/A	This subsection establishes various entities that may advise cotton growers of their program costs.	The proposed amendment to this section reflects the current practice in which VDACS notifies growers of the program cost.
40 A 1	N/A	This subsection establishes the process by which a cotton grower must report his cotton acreage. This subsection also includes provisions regarding the program fee owed by cotton growers. This subsection also provides that a grower who does not report his acreage on time is subject to a penalty.	Under the practices of the current program, the program fee is not due at the time the grower reports his cotton acreage to FSA. As such, we have removed provisions of this subsection that require that the program fee be paid at the time the grower makes his report to FSA. We have moved the remaining provisions regarding the program fee that currently appear in this subsection to 2VAC5-440-40 A 2. The proposed amendments specify that the penalty for failing to timely report cotton acreage is 10% of the fee due for the unreported acreage.
40 A 2	N/A	This subsection establishes the process by which a cotton grower must pay his program fee.	The proposed amendments revise this subsection to reflect the current practice in which VDACS collects the growers' program fees. Additionally, provisions regarding the commissioner's establishment of the program fee each year were moved from 2VAC5-440-40 A 1 to this subsection.
40 A 3		This subsection establishes the process to apply for an exemption in order to grow cotton for noncommercial purposes.	The proposed amendments eliminate the use of an old program name and an out of date program address. Additionally, the amendments to require that applications for an exemption to grow cotton for noncommercial purposes be submitted to the Commissioner rather than the program manager.
40 B		This subsection establishes penalty of \$5.00 per acre for unreported cotton acreage.	We believe the current penalty is excessive, particularly in light of the fact that the program fee for 2011 was \$1.00/acre and the fee for 2012 is \$0.50/acre. The proposed amendment reduces the penalty for unreported cotton acreage from \$5.00 per acre to 10% of the fee due on the acreage that is not reported.

40 C		This subsection establishes the procedure for requesting authority to delay payment of the Program fee.	The proposed amendment strikes the requirement that a grower submit a financial statement along with his request. The agency believes this will provide more flexibility in determining whether to allow a delay.
40 D		This subsection establishes the date by which growers must pay the Program fee. This subsection also establishes a late fee of \$5.00 per acre.	The proposed amendment replaces the specific due date with a requirement that the fee is due within 30 days of the date on the invoice that VDACS sends. The proposed amendment also reduces the late fee from \$5.00 per acre to 10% of the fee due.
40 E		This subsection establishes the availability of a refund if hardship conditions occur after a grower pay the Program fee.	The proposed amendment strikes this subsection because it is no longer necessary as growers now pay the Program fee at or near the time of harvest of cotton. Any hardship that may occur can now be taken into consideration before the grower is required to pay.
40 F	40 E	This subsection authorizes the Commissioner to purchase growing cotton when he determined it to be in the best interest of the Program.	The proposed amendments add a qualifier that the Commissioner’s purchase of growing cotton may occur, provided the funding is available to do so. The proposed amendments also revise how the purchase price is determined, as FSA does not establish a yield for each farm, as the current regulation states. The proposed amendment provides that, if the Commissioner decides to purchase growing cotton and the funding is available to do so, the purchase price will be based on an average of the previous five years of cotton yield figures for that particular locality, as determined by the National Agricultural Statistics Service.
40 G	40 F	This subsection authorizes the Commissioner to destroy or order the destruction of cotton when necessary to prevent boll weevil reinfestation.	The proposed amendments are not substantive and are intended to clarify this section.
50		This section establishes the conditions governing the issuance of certificates and permits to allow the movement of regulated	The proposed amendments are intended to provide consistent use of the term “authorized inspector” throughout the section. Additional amendments are intended to further clarify this section, but

		articles.	do not substantively amend the section.
110		This section provides that the Commissioner may determine that certain costs shall be paid by the affected person.	The proposed amendments are intended to clarify this section, but do not substantively amend this section.