



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-440
Regulation Title:	Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine
Action Title:	Amend
Date:	October 24, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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. This regulation also restricts the movement of regulated articles, such as, seed cotton, gin trash, and used cotton harvesting equipment, to prevent the reintroduction of the boll weevil into Virginia by the use of inspections, certificates, permits, compliance agreements, and treatments, if necessary.

The proposed amendments 1) establish the fixed date of July 1 as the official reporting and payment date for acreage assessments rather than requiring the Commissioner to set the date

annually, 2) reduce penalties assessed on farm operators for the late payment or non-payment of fees from \$10.00 per acre to \$5.00 per acre, 3) eliminate the mandate for the destruction of the cotton crop for non-payment of program fees, 4) clarify that in addition to eradication, the regulation prevents reintroduction of the boll weevil into Virginia, and 5) combine certain sections to improve upon the clarity and intent of the regulation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The legal authority for this regulation is contained in §3.1-188.23 of the Code of Virginia (1950), as amended. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-188.23>

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 requires mandatory participation by all cotton operators in Virginia. Cotton operators must report all cotton acreage at their local USDA - 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.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The goal of this regulation is to prevent the re-infestation 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 100,000 acres annually. 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 Commonwealth.

Setting a fixed date of July 1 of each year for the official reporting of acreage and payment of assessments will allow the cotton growers to better plan their planting activities since they will know the due dates each year. This resolves the problem of uncertainty by growers of when these due dates will occur each year.

Reducing the penalties from \$10 per acre to \$5.00 per acre will bring the penalties in-line with current program costs. When this regulation was instituted in 1986, a \$10.00 per acre penalty was appropriate since the program costs averaged \$8 - \$10 per acre. Over the past five years, the program costs have fallen to approximately \$3 - \$5 per acre. A penalty of \$5 per acre is now a more appropriate figure. Using this reduced penalty will prevent the disproportionate penalty fees that are now being assessed.

Eliminating the mandate for destruction of the cotton crop for non-payment of program costs will allow the Commissioner to consider other alternatives for the collection of fees that would not result in the loss of the cotton crop.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The following are the amendments of substance with respect to the proposed regulatory action:

1. The proposed amendment will reduce penalties assessed on farm operators for the late payment or non-payment of fees from \$10.00 per acre to \$5.00 per acre.
2. The proposed amendment will eliminate the mandate for the destruction of the cotton crop when farm operators are found in violation of the Virginia Cotton Boll Weevil Quarantine for nonpayment of fees and assessments.
3. The proposed amendment establishes the fixed date of July 1 as the official reporting and payment date for acreage assessments rather than requiring the commissioner to set the date annually.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

Currently, there are approximately 500 cotton growers in the state and all would be impacted by the amendments to the quarantine. The cost of the program, which is paid by the grower, would not change, but the penalties for late filing of acreage would be reduced. When this regulation was instituted in 1986, a \$10 per acre penalty was appropriate since the program costs averaged \$8 - \$10 per acre. Over the past five years, the program costs have fallen to approximately \$3 - \$5 per acre. A penalty of \$5 per acre is now a more appropriate figure.

Amending the quarantine to eliminate the mandate for the destruction of the cotton crop for non-payment of fees will allow the Commissioner to pursue alternatives to crop destruction for individuals who do not pay the legally assessed program costs. Currently the only legal recourse in the quarantine is to destroy the cotton crop and bill the grower for the cost of destroying his crop. By pursuing established debt collection procedures, the agency would be assured the grower paid the program costs and the grower would not be faced with the destruction of his crop or significant legal fees.

Establishing the due date for acreage reporting and payment of assessments on July 1 for each year, removes any uncertainty by growers of when these due dates will occur each year. This allows the cotton growers to better plan their planting activities.

There are no disadvantages to the public or the Commonwealth associated with this proposed regulatory action.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The Virginia Department of Agriculture and Consumer Services currently spends approximately \$75,000 in state general funds (Fund 01/Detail 00) to implement the Virginia Cotton Boll Weevil Eradication/Exclusion Program and this regulation. In Program 535, Subprogram 04, Plant Pest and Disease Control, projected annual expenditures in administration and oversight of the Cotton Boll Weevil Program (Cost Code 810) are \$60,000 in personnel costs and \$15,000 in operational costs.

The cost of implementing the Virginia Cotton Boll Weevil Trapping Program is funded by all Virginia cotton growers through annual per acre assessments. The approximately \$400,000 collected annually from Virginia growers covers all costs of hiring contractors to trap all 100,000 plus acres of planted cotton. The trapping program is administered through a Cooperative Agreement with the Southeastern Boll Weevil Eradication Foundation, Inc., (Foundation) in Birmingham, Alabama. The grower assessments are deposited in a non-general fund account (Program 535, Subprogram 04, Fund 02, Detail 00, Cost Code 814). Following the auditing of receipts, these funds are forwarded to the Foundation that directly pays all contract trapping costs. Grower acreage assessments are set annually by the Commissioner and the Foundation to cover the previous year's actual costs and expenditures.

Costs incurred by the Virginia Department of Agriculture and Consumer Services to implement quality control monitoring of contract trappers and to provide storage facilities for trapping supplies are reimbursed annually by the Foundation. These annual costs average \$30,000 and are tracked for reimbursement in a non-general fund account (Program 535, Subprogram 04, Fund 02, Detail 00, Cost Code 812).

All of these expenditures are on-going.

The proposed amendments to this regulation will not have any negative fiscal impacts on the approximately 400 Virginia cotton growers. In fact, the amendments will lessen the fiscal impact of the regulation by reducing penalty fees by 50% and allowing the Commissioner to pursue unpaid fees and assessments through the Virginia Debt Collection Act rather than mandating destruction of the crop.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

2 VAC 5-440-10. Definitions.

Changes in the following words and definitions are reflected throughout the proposed document:

The United States Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS) changed its name to the United States Department of Agriculture, Farm Service Agency (FSA).

The technical name for the cotton boll weevil was changed by the Entomological Society of America by adding a second “grandis” to read *Anthonomus grandis grandis* Boheman.

The definition, “Boll Weevil Eradication and Exclusion Program,” was added to reflect the broadened scope of the program to eradicate the boll weevil and subsequently prevent its reintroduction into areas where it has been eradicated.

The definition of “Compliance agreement” is amended to reflect the cooperative effort between the Virginia Department of Agriculture and Consumer Services and the United States Department of Agriculture in implementation of the Boll Weevil Eradication and Exclusion Program.

Defines the term “Department” to mean the Virginia Department of Agriculture and Consumer Services.

Amends the definition of “Regulated area” to protect the Commonwealth from boll weevil reinfestation from any infested area.

Adds a definition for “Scientific Permit” allow movement of regulated articles to a specified destination for scientific purposes.

2 VAC 5-440-40. Requirements for program participation.

Section A.1. replaces the current section with a new section establishing July 1 as the annual date for completing a cotton acreage reporting form and paying applicable acreage assessment fees.

Section A.3. provides the specific address for a citizen to apply for an exemption to grow noncommercial cotton in the Commonwealth.

Section B. deletes language relating to emergency or hardship waivers and adds corresponding language to new Section C for consolidation and clarity.

Section C. deletes language dealing with penalties for non-payment of assessment fees and replace it with new section D. which reduces the penalty for non-payment of fees from \$10.00 to \$5.00 per acre. New Section D. also changes the Commissioner's actions from "shall" to "may" regarding destruction of the cotton crop when a grower is found not to comply with these regulations.

2 VAC 5-440-50. Conditions governing the issuance of certificates and permits to allow the movement of regulated articles.

Section A. changes "the" to "an authorized" inspector to ensure that only properly trained inspectors may issue certificates for movement of regulated articles.

In Sections A.1. and A.2., the term "infestation" is replaced by "boll weevil in any living stage" to clarify that any number and life stage of weevils applies to this regulation.

Changes to Section A.3. clarify why the regulated article is treated and ensures that only proven treatments are utilized by the inspector.

In Sections A.4., the term "infestation" is replaced by "boll weevil" to clarify that any number and life stage of weevils applies to this regulation.

Section B. changes "the" to "an authorized" inspector to ensure that only properly trained inspectors may issue limited permits for movement of non-certified regulated articles.

Section D. changes "the" to "an authorized" inspector to ensure that only properly trained inspectors may issue compliance agreements.

New Section E. replaces previous Section 2 VAC 5-440-90 Section A. to consolidate sections relating to certificates and permits under 2 VAC 5-440-50.

New Section F. replaces previous Section 2 VAC 5-440-80 to consolidate sections relating to certificates and permits under 2 VAC 5-440-50.

New Section G. replaces previous Section 2 VAC 5-440-90 Section B. to consolidate sections relating to certificates and permits under 2 VAC 5-440-50.

2 VAC 5-440-60. Cancellation of certificates and permits.

Adds non-compliance with any applicable compliance agreement as justification for withdrawal of a certificate or permit.

2 VAC 5-440-80. Assembly and inspection of regulated articles.

Deleted and replaced by 2 VAC 5-440-50 Section F.

2 VAC 5-440-90. Attachment and disposition of certificates or permits.

Section A. deleted and replaced by 2 VAC 5-440-50 Section E.

Section B. deleted and replaced by 2 VAC 5-440-50 Section G.

2 VAC 5-440-100. Inspection of shipments.

Section number changed to 2 VAC 5-440-81.

2 VAC 5-440-110

Section number changed to 2 VAC 5-440-91. Also the title of this section is amended to better reflect its content.

Alternatives

Please describe the specific 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.

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 through the Virginia Boll Weevil Eradication Foundation, Inc. Input is also received from the Farm Service Agency, the Virginia Tech Cooperative Extension Service, the Virginia Farm Bureau, 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 boll weevil.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The agency received no public comment in response to the Notice of Intended Regulatory Action.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The agency intends to review this regulation within three years after the amended regulation takes affect.

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 prevent the boll weevil’s re-infestation of Virginia cotton crop.

Family Impact Statement

Please provide an 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.

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