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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-440
VAC Chapter title(s)	Rules and Regulations for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine
Date this document prepared	June 23, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

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

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 or 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 of Agriculture and Consumer Services (Board) as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-702 of the Code authorizes the agency to conduct surveys for plant pests.

Section 3.2-703 of the Code authorizes the Board to quarantine the Commonwealth or any portion thereof when it determines such action is necessary to prevent or retard the spread of a pest into, within, or from the Commonwealth.

Section 3.2-704 of the Code authorizes the Board to prohibit the importation of any regulated article from any locality of other states, territories, or countries into the Commonwealth when it has good reason to believe in the existence of infested regulated articles in localities in other states, territories, or countries, or that conditions exist that, in the judgement of the Board, render the importation of such regulated articles from such localities a menace to the health of the Commonwealth.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The agency has determined that no viable alternatives exist to achieve the purpose of 2 VAC 5-440, *Rules and Regulations for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine*.

The purpose of this regulation is to ensure that the cotton boll weevil does not re-infest Virginia. The cotton boll weevil is a plant pest that feeds on the buds of the cotton plant, making it impossible for the plant to produce cotton. The agency believes the regulation is the least burdensome mechanism available to prevent the re-infestation of the cotton boll weevil. The regulation requires an annual cotton boll weevil survey to ensure the early detection of and rapid response to any cotton boll weevil infestations. Early detection and rapid response are important to the successful eradication of an infestation. No cotton boll weevils have been detected in Virginia since 1997, and the annual survey confirms that Virginia is cotton boll weevil-free, thereby enhancing the export of Virginia’s cotton. The regulation requires that Virginia’s cotton farmers provide the funding necessary to conduct the annual cotton boll weevil survey. The regulation also requires the inspection of articles capable of transporting the cotton boll weevil prior to such articles entering Virginia to ensure the articles are cotton boll weevil-free.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The agency did not receive any comments during the public comment period following the publication of the Notice of Periodic Review on April 27, 2020. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation assists in the prevention of the re-infestation of the cotton boll weevil in Virginia, thereby protecting the public's health, safety, and welfare. The eradication and exclusion of the cotton boll weevil enhances the quality of the environment by reducing the need for pesticide applications on cotton, which would otherwise be applied to combat the cotton boll weevil. Reduced pesticide applications will also result in decreased production costs for Virginia's cotton growers.

The regulation is clearly written and easily understood.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends that this regulation stay in effect without change.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The agency has determined that this regulation continues to be necessary in order to prevent the reintroduction of the cotton boll weevil into Virginia and ensure the continued export of Virginia cotton. Virginia cotton growers, many of whom are small business owners, planted approximately 100,700 acres of cotton in 2019. A cotton boll weevil infestation would have a significant negative economic impact on these small business owners. Virginia cotton growers are assessed a per-acre fee to cover the cost of the cotton boll weevil survey. The fee is determined each year by the Commissioner of Agriculture and Consumer Services in consultation with the Board of Directors of the Virginia Boll Weevil Eradication Foundation, Inc. All voting members of this board are Virginia cotton growers.

The agency has not received any complaints or comments concerning the regulation. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The regulation was most recently reviewed nine years ago and there have been no changes in technology, economic conditions, or other factors that require the amendment of the regulation.
